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# WEST POINT JOURNAL OF POLITICS AND SECURITY

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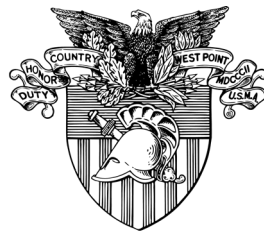
Volume 2, Issue 1: Fall 2023

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# West Point Journal of Politics and Security



WEST POINT  
PRESS

**Volume 2, Issue 1: Fall 2023**

*The views expressed in this journal are those of the authors and not of the US Military Academy, the Department of the Army, or any other agency of the US Government.*

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## Letter from the Editors

In this volume of the *West Point Journal of Politics and Security (WPJPS)*, we are proud to present works by scholars who are tackling questions central to international security, from the impacts of China's Belt and Road Initiative in East Africa to the ethics of preventive versus preemptive war, and vital to American politics, including congressional polarization, election security, and nonpartisanship in the military.

Our third issue begins with articles by graduates of the United States Military Academy. First, Second Lieutenant (2LT) Bryce Johnston examines the negative consequences of a "one size fits all" approach to allocating US federal grants to states for election security purposes. Then, 2LT Seth Benson considers how high periods of congressional party polarization drive minority parties to weaponize institutional rules to obstruct voting, thereby setting in motion a cycle of retaliation by the majority. 2LTs Julia Franzoni, Olivia Omev, Caleb Richardson, and Edwin West propose a policy solution to the worrisome combined trend of low civilian trust and high perceptions of partisanship in the military. The *WPJPS* team sincerely hopes that these contributions spark new thinking and shed fresh light on topics of central importance to American politics today.

Later in the issue, Deye Li, a graduate student at the University of Chicago, considers what lessons US policymakers in particular might draw from the British Cold War challenge of strategic prioritization amid peripheral contingencies that culminated in the Falklands War. Willis Wang, a recent Georgetown undergraduate, assesses how China's increasing cyberattacks against Taiwan shaped the formation of Taiwan's new cyber defense command. Then, Ensign Xiang Chi, a graduate of the US Naval Academy, examines China's foreign policy approach in East Africa through the lens of the Belt and Road Initiative, addressing the tension between its stated commitment to non-interference and evidence of a neocolonial agenda.

Ezekiel Vergara, a doctoral student at the University of Pennsylvania, closes out this issue with a thoughtful examination of the distinction between preemptive wars and preventive wars. In advancing a novel approach to distinguishing the two – focusing on the certainty of unjustified rights violations as opposed to their imminence – he addresses questions about war that remain all-too relevant in the world today.

We hope that the ideas in this issue inspire, provoke, and challenge our readers. Thank you for your support of the early scholars whose ideas we aim to advance at the *West Point Journal of Politics and Security*.

*Go Army!*

Dr. Charlotte Hulme

MAJ Josh Woodaz

# TABLE OF CONTENTS

ONE SIZE FITS ALL? A STUDY ON STATE PROFESSIONALISM AND ELECTION SECURITY GRANT EXPENDITURES BRYCE JOHNSTON (US MILITARY ACADEMY)	1
MODELING MAJORITARIAN CONGRESSIONAL RULE CHANGES IN A POLARIZED ENVIRONMENT SETH BENSON (CARNEGIE MELLON UNIVERSITY)	14
REVISING DOD DIRECTIVE 1344.10 TO ENFORCE NONPARTISANSHIP IN THE MILITARY JULIA FRANZONI, OLIVIA OMEY, CALEB RICHARDSON, AND EDWIN WEST (US MILITARY ACADEMY)	22
THE EMPIRE STRIKES BACK FROM THE AIR? BRITISH AIRPOWER ON THE ROAD TO FALKLANDS DEYE LI (UNIVERSITY OF CHICAGO)	33
CYBERSECURITY AS AN INSTRUMENT OF STATE POWER: EVALUATING THE REPUBLIC OF CHINA'S (ROC'S) INFORMATION, COMMUNICATIONS, AND ELECTRONIC FORCE COMMAND (ICEFCOM) AGAINST THE PEOPLE'S REPUBLIC OF CHINA'S (PRC'S) ESCALATING THREATS WILLIS WANG (GEORGETOWN UNIVERSITY)	45
NON-INTERFERENCE OR NEO-COLONIALISM? ASSESSING THE IMPLICATIONS OF CHINESE FOREIGN POLICY AND INFLUENCE IN EAST AFRICA VIA THE BELT AND ROAD INITIATIVE XIANG CHI (GEORGETOWN UNIVERSITY)	54
RETHINKING PREEMPTION AND PREVENTION: WAR, IMMINENCE, AND CERTAINTY EZEKIEL VERGARA (UNIVERSITY OF PENNSYLVANIA)	69

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## Submissions

WPJPS accepts submissions from current or recent undergraduate students. WPJPS also considers the publication of work by recent graduates, provided that the work was produced while the author was an undergraduate.

All submissions should include:

- A brief cover letter summarizing the article background, overarching research question, and main contribution to existing knowledge. The cover letter should also confirm that the submitted manuscript is original work, and has not been published or submitted elsewhere for publication.
- The proposed manuscript in Word (not PDF) format, which should be between 3,500 and 5,000 words, including a 200-word opening abstract. For citations, please use footnotes in Chicago style.
- A copy of the author's CV.

Submissions should be sent to the editors at [wpjps@westpoint.edu](mailto:wpjps@westpoint.edu).

# One Size Fits All? A Study on State Professionalism and Election Security Grant Expenditures

Bryce Johnston

*Currently, the United States pursues a “one size fits all” policy for federal grants to states by conflating their legislative capacity. This may not be effective: many states have differing levels of professionalization measured by frequency of sessions, staffing resources for legislatures, and pay. This study examines state expenditures of grant funding made available through the Help America Vote Act (HAVA). Variations in state expenditures potentially illustrate how professionalism affects state spending on election security. The study finds that more professional state legislatures tend to spend more on election security regardless of political affiliation. The effect of professionalism on election expenditure is more pronounced when the Federal Government increases requirements on state legislatures during the application process. While this study is focused on grants geared towards election expenditures, it could have broad applications for how the Federal Government incentivizes states to spend money on national initiatives.*

The benefit of federalism is best summed up in Supreme Court Justice Louis Brandeis’ oft-cited opinion that recognized states as laboratories of democracy.<sup>1</sup> The ability to experiment with policies across fifty different states is a significant advantage to the United States. However, there are instances where one state’s policy decisions have a broader effect on the rest of the country. A salient example is election security. The closeness of recent elections and their polarization in recent years shows that election security is an issue that bleeds across state lines. Additionally, security upgrades are expensive. The 2020 election was the costliest in United States history with a price tag of over \$10 billion.<sup>2</sup> Grants are one way that the Federal Government can incentivize states to act in the best interest of the country while leveling the playing field for states that may not have the funds to pursue these initiatives.

The main source of election security grants is the Help America Vote Act (HAVA). Enacted in 2002, HAVA enables states to apply for federal funding to upgrade election infrastructure. Ahead of the 2018 midterm elections, Congress used this act to make \$380 million available for states to spend on election security.<sup>3</sup> While this was a positive step towards securing the 2018

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<sup>1</sup> “New State Ice Co. v. Liebmann,” 1932, United States Supreme Court.

<sup>2</sup> Charles Stewart, *The Cost of Conducting Elections* (Boston, MA: MIT Election Data and Science, 2022).

<sup>3</sup> Before the pandemic, Congress made \$425 million in HAVA funds available for 2020 as well; Miles Parks, “Congress Allocates \$425 Million For Election Security In New Legislation”, *National Public Radio*, December 16, 2019, <https://www.npr.org/2019/12/16/788490509/congress-allocates-425-million-for-election-security-in-new-legislation>. While this may seem like a lot, this is short of the \$600 million that Democrats hoped for and even shorter of the nearly \$2.2 billion that the Brennan Center estimated would be necessary to shore up our elections over the next five years; Lawrence Norden and Edgardo Cortes, “What Does Election Security Cost?”, (Washington, DC: Brennan Center for Justice, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/what-does-election-security-cost>.

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elections, a report released by the Election Assistance Commission (EAC) stated that most states had only spent a fraction of the funds.<sup>4</sup> These leftover funds pose an interesting question: what factors make some states more effective at spending federal grant money than others?

Leftover funds indicate that state legislatures are either unwilling or unable to spend all the funds they are allocated. This study leverages past expenditures from the HAVA to evaluate how professionalism and partisanship shape state expenditures on election administration. As the Federal Government attempts to provide additional resources to the states for election security in the future, the differences in state legislatures and their political motivations could lead to different outcomes across the United States. Professionalism in this context is defined by the time and resources available to members of the state legislature as measured by the Squire index (discussed below). While some states only have part-time legislators with meager staffs, other states have full-time legislators whose staffs rival those in the House of Representatives. Despite this variation, the Federal Government treats each of the states as equals when creating requirements for expending grant money.

This paper will examine historical expenditure data to observe the effect that legislative professionalism has on grant expenditures. First, it gives an overview of election security issues posed after the 2000 Presidential Election. Next, it outlines the HAVA with emphasis on the differences in funding from Sections 101 and 251. Following this section, it introduces the public demand and partisanship models of election expenditures and discuss relevant research supporting each model. It then surveys the current literature on state capacity and legislative professionalism before discussing the data and findings. This study finds that professionalism has a positive relationship with expenditures, especially when federal restrictions on funding require cooperation between election officials and state legislatures. The paper concludes with a recommendation that Congress account for the large differences in state legislative capacity when structuring future federal grants.

## **The Help America Vote Act**

HAVA was born out of the controversial 2000 Presidential Election. HAVA set basic guidelines for election practices, made new funding available to states, and created the EAC to help oversee these reforms following the election controversies in 2000. The Federal Government provides grants in two formats: categorical grants and block grants. Categorical grants provide funding for specific purposes or projects. Examples of these are the Special Supplemental Nutrition Program for Women, Infants, and Children or highway construction projects.<sup>5</sup> Block grants are more general and provide states with more options on how to spend the funds. HAVA funding falls under the latter category.

Federal grants have increased over the last two decades to account for over a third of a state's government funding.<sup>6</sup> Many of these grants supported initiatives created by the Bush

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<sup>4</sup> J. Marks, "Analysis | The Cybersecurity 202: States spent just a fraction of \$380 million in election security money before midterms." *The Washington Post*, April 5, 2019, <https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2019/04/05/the-cybersecurity-202-states-spent-just-a-fraction-of-380-million-in-election-security-money-before-midterms/5ca697b81b326b0f7f38f32b/>.

<sup>5</sup> Tax Policy Center, *The Tax Policy Center's Briefing Book: A Citizen's Guide to the Fascinating (Though Often Complex) Elements of the Federal Tax System* (Washington, DC: Brookings Institution, 2020).

<sup>6</sup> Julie Lawthorn, *Federal Grants to State and Local Governments: A Historical Perspective on Contemporary Issues* (Washington, DC: Congressional Research Service, 2019).

Administration and Obama Administration such as the No Child Left Behind or the Energy Efficiency and Conservation Block Grant.<sup>7</sup> Federal aid programs stagnated under the Trump administration until the pandemic forced an injection of money into the states to deal with the economic fallout of lockdowns. Funds can be awarded differently under both categories. Formula grants allocate federal dollars to states based on rules set in law. Competitive grants can tie funding to performance criteria. All of these may require states to match federal funding to a certain extent.<sup>8</sup> Despite these different options, there are not currently any grant awards that consider a state's ability to comply with the regulations put forth by law.

Variation in the distribution of HAVA funds over the last 16 years presents an opportunity to study how different regulations affect state legislatures' ability to spend federal grant money. Sections 101 and 251 of HAVA made election technology funding available to all fifty states.<sup>9</sup> Yet nearly two decades later, many states have not spent all their original funding. As of 2018, 11 states still had over 10% of their original funds remaining from 2002.<sup>10</sup>

Section 101 sets aside funding to improve their election processes and imposes very few restrictions on how states can spend this money. For this reason, Congress authorized \$380 million in new funding under Section 101. These funds are updated as formula, non-competitive grants. Section 101 calculates payments to each state by setting a minimum amount for each state, and then dividing the rest of the money by the proportion of the voting-age population. This section placed these funds under the control of the governor or chief executive officer of the state.

States use Section 251 funds to purchase voting systems and are more restrictive than Section 101 funds. States must make a state plan for the use of the funds which sometimes requires public input. The largest restriction, however, is that states must appropriate funds to match 5% of the total grant money allocated under Section 251. This requires coordination between the executive and legislative branches which can lead to a delay in receiving funds. In 2008, many states missed the deadline for requesting state-appropriated funds and were thus not able to match the HAVA funds given to them.<sup>11</sup> In this way, Section 251 funds impose greater barriers to states whose legislatures meet infrequently.

States must also make a state plan for use of the funds, which sometimes requires public input. Getting public input can cause states to be unable to update their state plans in time to use the funding. The procurement process in many states also causes issues as some states have extensive approval processes that make it difficult to purchase equipment.<sup>12</sup> These factors offer challenges to states that do not have the professional capacity to perform the duties mandated under Section 251.

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<sup>7</sup> Lawthorn, *Federal Grants*.

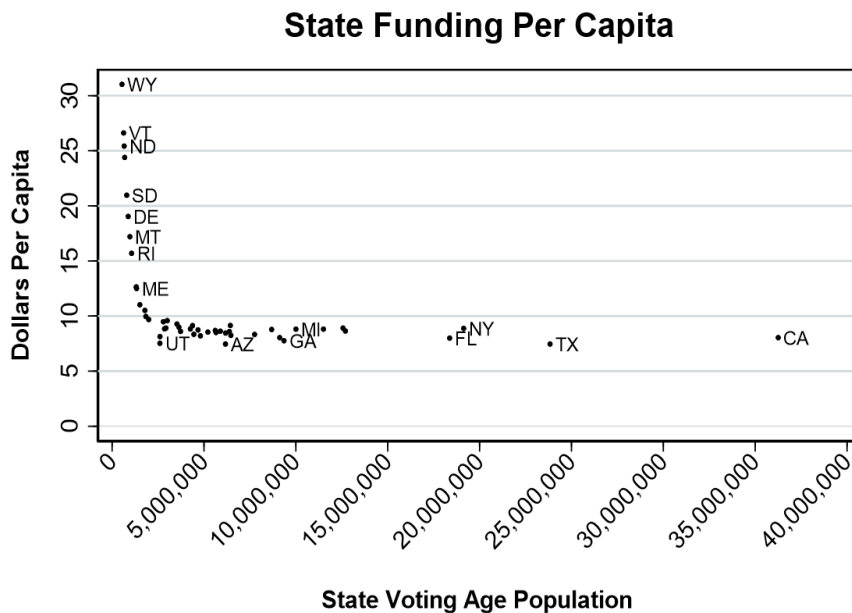
<sup>8</sup> Tax Policy Center, *Briefing Book*.

<sup>9</sup> HAVA also includes additional funding under Section 102, but these funds are limited as they are solely for the replacement of punch card and lever voting machines. For this reason, I do not include them in this analysis.

<sup>10</sup> U.S. Election Assistance Commission, *Reports on State Expenditures – Payment & Grants* (Washington, DC: U.S. Election Assistance Commission, 2019), 9.

<sup>11</sup> U.S. Election Assistance Commission, *Reports on State Expenditures – Payment & Grants* (Washington, DC: U.S. Election Assistance Commission, 2009), 6.

<sup>12</sup> U.S. Election Assistance Commission, *Strengthening the Electoral System One Grant at a Time: A Retrospective of Grants Awarded by EAC April 2003 – December 2010* (Washington, DC: U.S. Election Assistance Commission, 2011).

**Figure 1: Scatter Plot of State Funding by State Population<sup>13</sup>**

States with smaller populations receive more funding per capita which may pose a problem as state professionalism is highly correlated with population. Figure 1 shows that states with less than five million people see a dramatic increase in dollars per capita. Wyoming, the state with the smallest population, can spend over three times the amount that California,

the largest state, can spend per person on election security. While this may seem to give Wyoming an advantage, their state officials do not have the same capacity as their counterparts in California, which may hinder the ability to spend this money.

### Issues with Election Security

Technical issues have stood in the way of achieving accurate and fair election processes. After the recount in Florida during the 2000 Presidential Election, states sought to switch to electronic ballot systems in hopes of increasing the ease of voting for citizens. This switch made states dependent on electronic systems to administer their elections which has created a new set of problems. Electronic ballot systems may be more efficient, but many of these systems have not been upgraded to keep up with modern cybersecurity risks.<sup>14</sup>

Moreover, ballot verifiability is important to ballot integrity and requires a system of accountability that will ensure elections are free of interference. A Senate Intelligence Committee's report on Russian interference in the 2016 election found that the Russian Government-directed activity against state and local election infrastructure threatened these aspects of verifiability.<sup>15</sup> The Committee stated that state and local election infrastructure was vulnerable to cyber-attacks due to aging voting equipment that did not have paper backups of ballots.<sup>16</sup>

Because of these failures, there has been increased interest in election security. Yet despite this

<sup>13</sup> U.S. Election Assistance Commission, *Reports on State Expenditures – Payment & Grants* (Washington, DC: U.S. Election Assistance Commission, November 26, 2019), 9.

<sup>14</sup> Danielle Root et al., *Election Security in All 50 States: Defending America's Elections* (Washington, DC: Center for American Progress, 2018).

<sup>15</sup> Select Committee on Intelligence, "Russian Efforts Against Election Infrastructure" in *Russian Active Measures Campaigns and Interference in the 2016 U.S. Election*, (Washington, DC: United States Senate, 2019), 3, [https://www.intelligence.senate.gov/sites/default/files/documents/Report\\_Volume1.pdf](https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume1.pdf).

<sup>16</sup> Select Committee, "Russian Efforts", 4.

new focus, many of the vulnerabilities that plagued elections in 2016 remain.<sup>17</sup> In 2018, Congress authorized new HAVA grants for the first time since 2010 with EAC Chairman Thomas Hicks emphasizing their importance for securing election systems.<sup>18</sup> The continuation of HAVA funding is a crucial step in addressing these problems. Understanding how and why states spend this funding will allow decision-makers to better structure it in the future.

### **Models of Public Sector Demand and Partisanship**

State election officials have a common goal: to secure their elections. Despite having similar access to funding, there is a large variation in state spending on election infrastructure upgrades. Researchers have attempted to explain differences in state election administration using models for supply and demand, partisanship, and state professionalism. While these models provide important insights into state behavior regarding election administration, they do not account for the different professional capacities of state governments.

In a rational system of supply and demand, states would upgrade their equipment and processes until they reached an optimum level of security. Research into election expenditures in California finds that there is a significant relationship between election infrastructure cost and election spending.<sup>19</sup> Sarah Hill's model assumes that states have different levels of demand for new voter technology systems that are tied to their level of vulnerability. Ahead of the 2018 midterm election, a report from the Center for American Progress (CAP) outlined election security vulnerabilities for each state to include the security of the systems used and the procedures for auditing ballots.<sup>20</sup> This model would propose that states with more election vulnerabilities would spend more on election security.

The second model proposes that partisanship is the key factor in election spending. Zachary Mohr and his colleagues study county-level spending in North Carolina to determine if partisan factors contributed to election spending.<sup>21</sup> In studying these mechanisms, they found that Republican County commissioners tended to spend less than their non-Republican counterparts once their county achieved a Republican majority.<sup>22</sup> Based on this model, partisanship affects spending as officials attempt to solidify party control through deliberate election technology upgrades.

The idea that election administration can lend itself to partisan influence is not new. In 2006, researchers examined the impact that partisanship had on provisional ballots in the 2004 election and found that each state's ruling party set rules favorable to themselves.<sup>23</sup> In the case

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<sup>17</sup> Select Committee, "Russian Efforts", 4.

<sup>18</sup> U.S. Election Assistance Commission, "Grants Frequently Asked Questions (FAQs) – Payment & Grants", (Washington, DC: U.S. Election Assistance Commission, March 30, 2018), <https://www.eac.gov/payments-and-grants/frequently-asked-questions-for-grants/>.

<sup>19</sup> Sarah Hill, "Election Administration Finance in California Counties", *The American Review of Public Administration* 42, no. 5 (2012): 618.

<sup>20</sup> Root et al., *Election Security*.

<sup>21</sup> Zachary Mohr et al., "Strategic Spending: Does Politics Influence Election Administration Expenditure?", *American Journal of Political Science* 63, no. 2 (2019): 429.

<sup>22</sup> Mohr et al., "Strategic Spending", 434.

<sup>23</sup> David Kimball et al., "Helping America Vote? Election Administration, Partisanship, and Provisional Voting in the 2004 Election", *Election Law Journal: Rules, Politics, and Policy* 5, no. 4 (2006): 460. A provisional ballot records the vote of a citizen if there are questions about the eligibility of the voter. Election officials can later decide to accept or reject this ballot

of the 2004 election, state authorities governed by Democrats were more likely to accept provisional ballots for Senator John Kerry, while those governed by Republicans were more likely to count provisional votes cast for President George W. Bush.<sup>24</sup> These results show that political bias can affect non-partisan institutions.

A recent field experiment testing bureaucratic responsiveness supports this theory of partisan influence on local election bureaucrats. Using a methodology established for studying racial bias in bureaucratic responsiveness, Ethan Porter and Jon Rogowski emailed local election officials using both partisan and nonpartisan language.<sup>25</sup> They found that there is evidence of partisan bias among election administrators, with much of this bias concentrated among Republicans.<sup>26</sup> These studies support the idea that bias can affect local-level decisions on election administration. The mechanisms that allow political bias to affect election expenditures, partisan political advantage, and partisan policy preferences also exist at the state level.<sup>27</sup>

### **Theories of State Professionalism**

State professionalism may be a more salient factor than partisanship in determining how states operate. In the past, studies on professionalism within the government have focused on the rise of expert bureaucrats. While bureaucrats are often blamed for ballooning expenditures, research has shown the internal organization of legislatures plays a larger role in government expansion.<sup>28</sup> Graeme Boushey and Robert McGrath argue that as the pay gap between professionalized executives and amateur legislatures increases, bureaucracies take on more policy-making responsibility.<sup>29</sup> Conversely, a more professional state legislature is more likely to make active policy decisions. Based on this research, legislative professionalism may drive state expenditures more than expert bureaucrats.

Legislative professionalism may also be a more important factor than partisanship in-state expenditures as well. David Kimball and his fellow researchers theorized that state professionalism could overcome the effects of partisanship in their experiment.<sup>30</sup> Research by Christopher Daniel and Bruce Rose supports this claim as they find a weak but positive relationship between public managers and political acuity, showing that professionalism and political acuity can coexist.<sup>31</sup> Findings from Daniel Carpenter and George Krause also state that public administrators tend to check their own political biases to maintain their professional

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based on their election procedures. This process was mandated by HAVA to increase voter turnout among voters who may have a difficult time proving their eligibility.

<sup>24</sup> Kimball et al., "Helping America Vote?", 457.

<sup>25</sup> Ethan Porter and Jon Rogowski, "Partisanship, Bureaucratic Responsiveness, and Election Administration: Evidence from a Field Experiment." *Journal of Public Administration Research and Theory* 28, no. 4 (2018): 603.

<sup>26</sup> Porter and Rogowski, "Partisanship, Bureaucratic Responsiveness, and Election Administration", 41.

<sup>27</sup> Mohr et al., "Strategic Spending", 430-431.

<sup>28</sup> Gary Miller and Terry Moe, "Bureaucrats, legislators, and the size of government", *The American Political Science Review* 77, no. 2 (1983).

<sup>29</sup> Graeme Boushey and Robert McGrath, "Experts, Amateurs, and Bureaucratic Influence in the American States", *Journal of Public Administration Research and Theory* 27, no. 1 (2015): 23, <https://doi.org/10.1093/jopart/muw038>.

<sup>30</sup> Kimball et al., "Helping America Vote?", 457.

<sup>31</sup> Christopher Daniel and Bruce Rose, "Blending Professionalism and Political Acuity: Empirical Support for an Emerging Ideal", *Public Administration Review* 51, no. 5 (1991): 438, <https://doi.org/10.2307/976413>.

reputations.<sup>32</sup> A recent study by Martha Kropf and her colleagues finds that high-quality management has a strong impact on positive election administration, more so than financial resources available.<sup>33</sup> The evidence that these researchers found on the effects of professionalism on election outcomes did not make its way into the studies on election expenditures in the models proposed by Hill and Mohr et al.

State capacity is an important aspect of professionalism. Robert Dilger and his colleagues found that professionalism within legislatures tended to increase the effectiveness of the executive government.<sup>34</sup> Their research found that more professional state legislatures took an active role in the policy-making process which allowed governors to achieve their policy aims. In a study on professionalism and diversity in state legislatures, Peverill Squire measures the professionalism of a state legislature by adopting the standards of the United States Congress as the benchmark for professionalism.<sup>35</sup> These standards include member pay, staff members per legislature, and total days in session.<sup>36</sup> In looking at the HAVA requirements imposed by Congress, more professional state legislatures will have an easier time processing funds.

## **Data**

This study uses public data provided by the Election Assistance Commission for state expenditures from 2002 to 2018. In 2002, a total of \$349,182,267 was disbursed to states under Sections 101 and 251 of HAVA.<sup>37</sup> Since then, the EAC has released reports to Congress detailing state expenditures of HAVA funds. The report for the fiscal year 2015 offers a snapshot of how states spent before the 2016 election and the report for the fiscal year 2018 shows how states reacted to allegations of election hacking ahead of the 2018 midterm election. Both reports outline state expenditures up until September of their respective fiscal years, which generates the outcome variable of state expenditures. It is then possible to break down the outcome variable into total spending, Section 101 spending, and Section 251 spending, as shown in Table 1, below. Colorado did not report Section 251 spending in 2010 which accounts for the dropped observation. US Census Data is available to measure the voting-age population. Louisiana, Mississippi, New Jersey, and Virginia did not have data on the voting-age population for 2015 or 2018 which accounts for the missing observations.

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<sup>32</sup> Daniel Carpenter and George Krause, "Reputation and Public Administration", *Public Administration Review* 72, no. 1 (2015): 16, <https://doi.org/10.1111/j.1540-6210.2011.02506.x>.

<sup>33</sup> Martha Kropf et al., "Making every vote count: The important role of managerial capacity in achieving better election administration outcomes", *Public Administration Review* 80, no. 5 (2020): 5.

<sup>34</sup> Robert Dilger et al., "State legislative professionalism and gubernatorial effectiveness, 1978-1991." *Legislative Studies Quarterly* 20, no. 1 (1995): 564.

<sup>35</sup> Peverill Squire, "Legislative Professionalization and Membership Diversity in State Legislatures", *Legislative Studies Quarterly* 17, no. 1 (1992): 70, <https://www.jstor.org/stable/440081>.

<sup>36</sup> Squire, "Legislative Professionalization and Membership Diversity", 70.

<sup>37</sup> U.S. Election Assistance Commission, *Annual Grant Expenditure Report: Fiscal Year 2015* (p. 2), (Washington, DC: U.S. Election Assistance Commission, 2016), [https://www.eac.gov/sites/default/files/eac\\_assets/1/28/Final%20FY%202015%20Grants%20Report.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/Final%20FY%202015%20Grants%20Report.pdf).

**Table 1: Summary Statistics of Key Variables**

Summary Statistics						
	Mean	Standard Deviation	Minimum	Maximum	Median	N
Total Spending (Hundred Thousand)	447.44	520.39	0	3307.05	277.07	341
Section 101 Spending (Hundred Thousand)	52.15	43.78	0	272.8227	48.02	342
Section 251 Spending (Hundred Thousand)	395.23	482.21	0	3034.228	223.44	341
Squire Score	.20	.12	.027	.63	.17	342
Population (Millions)	4.79	5.35	.397465	30.57	3.34	342
Partisan	2.81	10.04	-19.74	26.82	1.52	342
Grade	2.80	.91	1	4	3	46
Appointed	.36					46
Board	.37					46
Head Official	.74					46

This study measures professionalism using data from the 2003, 2009, and 2015 Squire Indices.<sup>38</sup> This index measures the professionalism of state legislatures by accounting for legislator pay, average days in session, and average staff per legislator.<sup>39</sup> Due to the need for coordination between state executive and legislative branches throughout the HAVA process, this index is an appropriate way to measure professionalism in this context. Furthermore, the variability in the professionalism between states makes it possible to study the differences in HAVA expenditures. In theory, professionalism would increase state expenditures, as more professional governments would be able to act on election infrastructure issues quicker because they meet more often and have more staffing resources to devote to the issue.

For partisanship, each state is coded as Democratic or Republican based on the Cook Partisan Voting Index.<sup>40</sup> This report measures the partisanship of each state by comparing the average Democratic or Republican vote share in the last two presidential elections to the national average of those elections.<sup>41</sup> In this data set, negative values indicate Democratic-leaning states and positive values indicate Republican-leaning states. Efforts to map the ideologies of state legislatures support the use of the Cook score to estimate government partisanship as researchers found that legislatures are highly responsive to voter ideology<sup>42</sup> and national

<sup>38</sup> Peverill Squire, "A Squire Index Update", *State Politics and Policy Quarterly* 17, no. 4 (2017): 361.

<sup>39</sup> Peverill Squire, "Measuring state legislative professionalism: The Squire index revisited." *State Politics & Policy Quarterly* 7, no. 2 (2007): 212.

<sup>40</sup> "Partisan Voter Index", *The Cook Political Report*, 2018, <https://cookpolitical.com/pvi-0>.

<sup>41</sup> "Partisan Voter Index."

<sup>42</sup> Boris Shor and Nolan McCarty, "The ideological mapping of American legislatures", *American Political Science Review* 105, no. 3 (2011): 549.

politics.<sup>43</sup>

Due to the polarized nature of elections, both parties have different interests when it comes to election security. In their research into party differences, Matt Grossmann and David Hopkins state that Republicans tend to pursue ideological goals while Democrats tend to advocate for specific domestic policy changes.<sup>44</sup> These findings, combined with the research from Porter and Rogowski on party behavior, lead me to expect that states that are more Republican will spend less on election security than their Democratic counterparts.<sup>45</sup>

A report on election security by CAP makes it possible to account for the varying levels of demand. CAP evaluated each state's election policies to create a grading scheme for election security posture.<sup>46</sup> These letter grades correlate to the level of need for each state. There are two ways to interpret the expected effect of these grades on security spending. One could expect states with lower grades to spend at a higher rate in the 2018 election to address security gaps that became apparent in the 2016 election. On the contrary, lower grades may indicate that states care less about election security, and thus, will continue to spend less in the future.

Elected and unelected officials play a key role in expending funds for election security. Because there is significant variability in who oversees elections in each state, this study includes an indicator if the Secretary of State is the head election official. It also includes indicators showing if the head election official was appointed, elected, or held by a board. Research on the Bush Administration's Program Assessment Rating Tool indicates that politically appointed bureaucrats perform worse than those drawn from civil service.<sup>47</sup>

## Controls

Because HAVA funds include formulas for population size, this study includes a control for the population. This includes the interaction between population and Squire score because larger states tend to be more professional than smaller states and the relationship might be conditional upon the levels of the other. Taking of both expenditures and Squire score (due to the nonlinear nature of both terms) results in more interpretable coefficients as it accounts for the large difference in magnitude within each variable. To test the robustness of this model, the author ran a second set of regressions with additional variables related to professionalism and election security. This regression includes more aspects of state governance and demand to better understand the findings in the main model.

## Findings

All three tests show that state professionalism has a significant effect on a state's ability to spend HAVA funds. Starting with the pairwise tests, I show that both professionalism and partisanship have some correlation with expenditures. Table 2 displays the results of these tests:

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<sup>43</sup> Steven Rogers, "Electoral Accountability for State Legislative Roll Calls and Ideological Representation", *American Political Science Review* 111, no. 3 (2017).

<sup>44</sup> Matt Grossmann and David Hopkins, *Asymmetric politics: Ideological Republicans and group interest Democrats* (Oxford, UK: Oxford University Press, 2016), 11.

<sup>45</sup> Porter and Rogowski, "Partisanship, Bureaucratic Responsiveness, and Election Administration", 41.

<sup>46</sup> Root et al., *Election Security*, 28.

<sup>47</sup> David Lewis, "Testing Pendleton's Premise: Do Political Appointees Make Worse Bureaucrats?", *The Journal of Politics* 69, no. 4 (2007): 1073, <https://doi.org/10.1111/j.1468-2508.2007.00608.x>.

**Table 2: Correlation Matrix of Expenditures and Key Independent Variables**

Correlation Matrix			
	Total Expenditures	Section 101 Expenditures	Section 251 Expenditures
Squire Score	0.6435***	.5503***	.6442***
Cook Score	-0.217***	-.2337***	-0.2126***

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

The positive correlation on Squire score indicates that more professional states tend to spend more on election security. The negative correlation on Cook score indicates that states with strong support for Democrats tend to spend more on elections, although this effect is smaller in magnitude than professionalism. These correlations are consistent no matter how expenditures are broken down.

This pairwise correlation does not control for any other rival explanation that might explain variation in expenditures. To explore this relationship further, the author added a control for population and an interaction variable between the Squire score and population. Table 3 presents the results of six regressions. It changes the dependent variable in each to estimate models for total spending, Section 101 spending, and Section 251 spending. The first set of regressions (columns one through three) does not include state effects. Here, professionalism has a significant effect on total expenditures, likely due to Section 251 expenditures. For total expenditures, a one percent increase in the effect of professionalism results in a 0.87 percent increase while Section 251 expenditures increase by 0.97. Partisanship has a small significant effect on Section 101 expenditures but does not affect overall expenditures.

**Table 3: OLS Estimations of Log of HAVA Expenditures by State, 2006 – 2018 with State Effects**

	(1) Log Total Expenditures	(2) Log Section 101 Expenditures	(3) Log Section 251 Expenditures	(4) Log Total Expenditures	(5) Log Section 101 Expenditures	(6) Log Section 251 Expenditures
Log of Squire Score	0.867*** (0.133)	0.219 (0.131)	0.969*** (0.143)	2.253*** (0.451)	1.690*** (0.422)	2.463*** (0.478)
Cook Score	0.0394 (0.0212)	0.0653** (0.0204)	0.0371 (0.0228)	0.674*** (0.182)	0.640*** (0.170)	0.666*** (0.193)
Population (Millions)	-0.0593*** (0.0175)	0.000968 (0.0167)	-0.0722*** (0.0187)	-0.260* (0.110)	-0.193 (0.103)	-0.285* (0.116)
Interaction Squire and Population	0.0155* (0.00606)	0.00162 (0.00582)	0.0189** (0.00655)	0.0134 (0.0253)	0.0384 (0.0236)	0.00502 (0.0268)
State Effects	No	No	No	Yes	Yes	Yes
_Constant	17.91*** (0.268)	15.16*** (0.261)	17.79*** (0.288)	15.98*** (1.108)	13.59*** (1.035)	16.02*** (1.175)
<i>N</i>	340	340	339	340	340	339

Standard errors in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

The second set of regressions (columns four through six) takes state effects into account. In

these models, professionalism and partisanship have a significant effect on expenditures of all types; however, the magnitude of the effect is smaller for partisanship. Population is significant for all three regressions, but this effect diminishes when it interacts with professionalism. As in the first set of regressions, professionalism has the largest effect on Section 251 expenditures where a one percent increase in state professionalism increases expenditures by 2.5 percent. This translates to an increase of \$869,506 for Section 251 expenditures for every percent increase in professionalism.

Using data from the 2018 Midterm election, Table 4 includes four more models that account for more specific attributes of professionalism and election security postures. Column 1 provides a baseline that includes the same four variables from the previous models. In the subsequent models, the table adds variables measuring security scores and professionalism. These findings show that a state's security grade did not have a significant effect on expenditures. Adding an indicator for the type of head election official—appointed or controlled by a board—did not yield significant results either. This remains true of the final indicator which measures whether the Secretary of State is the head election official.

**Table 4: OLS Estimations of Log of HAVA Expenditures with Additional Controls**

	Log of Total Expenditures for the 2018 Midterm			
	(1)	(2)	(3)	(4)
Log of Squire Score	0.619*** (4.75)	0.620*** (4.76)	0.642*** (4.93)	0.654*** (4.84)
Cook Score	0.00802 (1.73)	0.00944 (1.95)	0.00945 (1.91)	0.00952 (1.91)
Population (Millions)	0.0519** (3.18)	0.0503** (3.07)	0.0496** (3.00)	0.0489** (2.90)
Interaction Squire and Population	-0.0576*** (-4.08)	-0.0618*** (-4.20)	-0.0664*** (-4.18)	-0.0665*** (-4.13)
Security Grade		0.0550 (1.02)	0.0419 (0.73)	0.0463 (0.79)
Appointed			-0.223 (-1.11)	-0.206 (-1.00)
Board			0.0676 (0.68)	0.0923 (0.78)
Secretary of State is Head Official				0.0472 (0.40)
Constant	17.85*** (79.74)	17.67*** (62.37)	17.71*** (61.22)	17.68*** (57.77)
N	46	46	46	46

t statistics in parentheses

\*  $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

## **Discussion**

These findings show that professionalism within states is correlated with increased election security spending. HAVA has many reporting requirements and less professional states may have a difficult time adhering to these with their more limited staff and resources. HAVA also requires coordination between members of a state's executive branch and the state legislature. Less professional states tend to have less staff, fewer resources, and less time to spend on issues.

This can make it difficult for them to spend funding from the Federal Government, even if everyone agrees that the money would address an important issue.

The correlation between professionalism and expenditures is stronger for Section 251 expenditures than for Section 101 expenditures. Section 251 funds are set up to be more restrictive than Section 101 funds and are meant to be spent on upgrades to election administration. Officials must comply with non-discrimination laws and must match 5% of their request to use these funds. The matching program ensures that states share a portion of the cost of their election security. These requirements put added strain on the limited time and resources of officials in the executive branch and lawmakers in the state legislature. The study attempted to analyze the components of professionalism by using data from Daniel Bowen and Zachary Greene, however; the results were inconclusive.<sup>48</sup>

In 2018, Congress appropriated \$380 million in new funding for election security under Section 101.<sup>49</sup> Appropriating this funding under Section 101 rather than Section 251 decreases the difficulty that some state governments may have in spending these funds. While this reduced the effect that disparities in professionalism have on future election security expenditures, Congress should still expect to see more professional states spend these funds at a higher rate. For example, Kansas and Missouri border each other and share many similar characteristics. However, Kansas has a Squire score of 0.181 while Missouri has a Squire score of .243. Based on my findings, if Kansas can spend \$1 million ahead of the 2020 election, then Missouri will be able to spend over \$1.5 million.

In contrast to Mohr's findings that partisanship affected expenditures at the county level in North Carolina, this study does not find a significant relationship between partisanship and election expenditures. In every model, professionalism, and population were significant while partisanship was not. While this model does not address the production model of election expenditure in full, finding that a state's election security grade did not affect total expenditures in 2018 provides further evidence that demand is not a factor in state expenditures on election security. Further research into this topic is necessary to confirm this finding.

## **Policy Relevance**

This study indicates that a "one-size fits all" approach to grant funding is not an effective way to ensure states spend funds on nationally important initiatives. Based on these findings, Congress should account for differing levels of professionalism when writing grant requirements, or simply lower the requirements overall. While Congress has taken important steps to ensure that all states have access to funding to improve their election security infrastructure, this funding is useless if some states cannot spend it. The Brennan Center estimated that it would cost \$2.2 billion to fix our elections over the next five years.<sup>50</sup> This is a significant amount, but even if Congress could produce the funding, many states would be unable to spend it all. Creating future guidelines or programs to assist states in spending this funding may be necessary. Additionally, decreasing the number of restrictions on this funding

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<sup>48</sup> Daniel Bowen and Zachary Greene, "Legislative professionalism component scores, v1.1", *Harvard Dataverse v3*, <https://doi.org/10.7910/DVN/27595>.

<sup>49</sup> U.S. Election Assistance Commission, "HAVA Funds State Chart View", (Washington, DC: U.S. Election Assistance Commission, March 30, 2018), [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/HAVA\\_Election\\_Security\\_Final\\_Award\\_Packet\\_041718.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/HAVA_Election_Security_Final_Award_Packet_041718.pdf).

<sup>50</sup> Norden and Cortes, "What Does Election Security Cost?"

may make it easier for states to spend it on election upgrades.

### **Conclusion**

While HAVA provides a vehicle for the Federal Government to support states in mitigating threats to their elections, funding is not spent uniformly among the states. More professional states tend to spend more on elections than less professional states. These states have full-time legislatures, larger staffs, and greater access to resources which makes it easier for them to comply with federal requirements.

Each state faces a different set of problems in designing an efficient and secure election security plan. Federal grants give states the funding to pay for this plan, but smaller states may struggle to spend this money due to the restrictions placed on them by HAVA. When designing grant systems in the future, Congress must consider how the restrictions they place on these grants affect the state's ability to use these funds toward their intended purpose. Considering the various levels of professionalism within states may allow Congress to better design a grant program that ensures each state can address its unique election security issues.

# Modeling Majoritarian Congressional Rule Changes in a Polarized Environment

Seth Benson

*Legislative rules can have a profound impact on the legislative process. However, amid record levels of congressional polarization, little work has been done to project polarization's impact on congressional development through rule changes. This study theorizes that, in a polarized environment, Congress will act in accordance with a proposed Partisan Distributive Game, in which increased minority obstruction is met with majoritarian rule changes. This theory is applied to three case studies: the removal of the filibuster for Federal Judicial appointments, the enactment of Reed's rules in the late 19<sup>th</sup> Century, and the passage of the 1946 Legislative Reorganization Act. The study analysis of all three cases affirms the conclusion that congressional polarization is tied to majoritarian rule changes.*

## Introduction

Legislative rule making can have a profound effect on how the US Congress operates. Throughout American history, periods of legislative rule changes drastically altered the balance of power among parties, committees, and positions of leadership. These rules are often challenged by periods of high partisanship. The contemporary growing polarization of Congress has significant potential to impact its operations.<sup>1</sup> Proposals to end the Senate filibuster are gaining support. Bipartisan voting has continued to decrease. Cloture has been invoked at a rate that would have been almost unimaginable thirty years ago. Partisan contention has clearly made passing legislation much more difficult across both chambers, so it is fair to ask if more innovative rule changes may be enacted to prevent increasingly high levels of gridlock.

Examining the historical progression of American legislative rules offers clues on how high levels of partisan polarization could drive institutional change in the House and Senate. This paper examines the literature on congressional decision-making, polarization, and congressional development to theorize how high periods of polarization may affect congressional rules and norms. It then ties this theory to a case study of recent changes in Senate behavior around Federal Judiciary appointments by Keith Whittington. It also evaluates how polarization shaped the immense rule changes carried out by Speaker Thomas Reed in the late 19<sup>th</sup> century House of Representatives. As a contrast, the paper assesses changes evolved in the absence of polarization via the 1946 Legislative Reorganization Act. Each case study reinforces the same process-based theory. The study finds that high periods of congressional party polarization drive minority parties to break norms of behavior, weaponize congressional rules to obstruct voting, and act to deny the majority's agenda. In retaliation, the majority eventually removes these obstructive abilities, resulting in a majoritarian set of institutional rules. This behavior is not followed in a period of low party polarization, leading to the conclusion that these changes are specific to polarized conditions.

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<sup>1</sup> Jeff Lewis, "Polarization in Congress," *VoteView*, June 4, 2020, [https://www.voteview.com/articles/party\\_polarization](https://www.voteview.com/articles/party_polarization).

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## **Establishing Predicted Behavior**

Disjointed pluralism is a useful lens to predict how polarization might alter the development of congressional rules and norms. This lens suggests motivations of Congressmembers in a polarized environment and forecasts congressional behavior during periods of high partisan conflict and ideological separation. Eric Schickler introduces disjointed pluralism as a model of competing interests that Congressmembers abide by when making legislative decisions. Specifically, he provides five factors that drive congressional decision-making: re-election interests, the interests' congressional capacity and power, interests in institutional power bases, party-based interests, and policy-based interests.<sup>2</sup> The orientation of these interests are responsible for both policy and procedural changes in Congress. Schickler claims that these interests collectively shape most changes in congressional institutions and that large changes cause reactionary counter-changes led by the disadvantaged interests.<sup>3</sup> Schickler's model suggests which interests might be most important under high levels of partisan polarization to determine how they might shape congressional behavior and legislative development.

Cynthia Farina presents one potential explanation of member priorities under polarization. She examines the literature on the causes of legislative polarization, finding evidence for three broad factors that have been linked to increased polarization.<sup>4</sup> None of the factors are shown to be the main cause of legislative polarization, but all three play a role and each connects to one of Schickler's congressional interests. Increasing polarization in the electorate ties closely to congressmembers' re-election interests, as a polarized electorate permits and rewards congressmembers for voting on party lines. An increase in partisan group strategy implies a strong partisan-based interest to vote down the party line. Finally, an increased salience of polarizing issues due to demographic changes results in congressmembers making polarizing votes to advance their policy interests. Overall, in periods of high polarization, acting in a partisan matter benefits a member's electoral odds, party, and preferred policies.

Hahrie Han and David Brady come to a similar conclusion when examining polarization from a historical development standpoint. They look at the relatively de-polarized environment in the 1950s and 60s to examine changes in levels of polarization. They find that polarization increases as members in competitive or opposing-party districts become less common, determining that legislative polarization increases when a congressmember's partisan and electoral interests align.<sup>5</sup> Like Farina, they assess that in a polarized environment, members are able to act in the interest of both their electoral and partisan needs. Reaffirming the issue-based element of polarization, Matthew Levandusky ties polarization to partisan issue-alignment. He argues that, in a polarized environment, more and more issues become separated along partisan lines. Voters and members take cues from parties that stake out opposing claims along almost every issue.<sup>6</sup> This analysis reaffirms the conclusion that periods of high polarization can

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<sup>2</sup> Eric Schickler, "Disjointed Pluralism and Institutional Change," *Disjointed Pluralism* (Princeton, NJ: Princeton University Press, 2001), 5.

<sup>3</sup> Schickler, "Disjointed Pluralism", 12-18.

<sup>4</sup> Cynthia Farina, "Congressional Polarization: Terminal Constitutional Dysfunction?," *Columbia Law Review* 115 (2015): 1690-1738.

<sup>5</sup> Hahrie Han and David Brady, "A Delayed Return to Historical Norms: Congressional Party Polarization after the Second World War," *British Journal of Political Science* 37, no. 3 (2007): 505-31.

<sup>6</sup> Mathew Levandusky, *The Partisan Sort: How Liberals Became Democrats and Conservatives Became Republicans* (Chicago, IL: University of Chicago Press, 2009).

tie together congressional interests along the electoral, partisan, and ideological dimensions.

How polarization affects congressional rules and norms naturally follows identifying the interests that congressmembers prioritize in periods of high polarization. Barry Weingast breaks down congressional development into a rational choice model consisting of two opposing “games.”<sup>7</sup> The Distributive Legislative Game posits a congressional strategy of achieving their preferred policy by forming the smallest winning coalition of fellow members who are adjacent in policy preferences.<sup>8</sup> In opposition is the Universalism Legislative Game, where members form unanimous coalitions because of the greater ease and electoral rewards of group policymaking.<sup>9</sup> Under periods of high polarization, members will best represent their ideological and electoral interests when following their party. Thus, the electoral reward that Weingast attributes to group policymaking is minimal in a polarized environment, while the policy-interest cost of compromising with the opposed party is much larger. This means that members will be less eager to play the Universalism Legislative Game in periods of high polarization. They will instead show a preference for playing the Distributive Legislative Game and forming the smallest winning coalition. Because ideological interests are typically aligned with partisan ones in a polarized environment, the game transforms into one where the majority party will attempt to pass legislation without support from the ideologically distant minority party members. Under such a game, it is likely that the minority (without any ability to advance legislation itself) will be relegated to doing whatever it can to oppose the interests of the majority. The majority, in turn, will focus on increasing its ability to legislate without support from the other party. Because this is a party-centric interpretation of Weingast’s Distributive Legislative Game, it can be called the Partisan Distributive Game.

This game largely results in continued majoritarian rule changes in legislative institutions. But, like the periodization approach taken by Stephen Skowronek to evaluate the Presidency, it seems likely that political conditions shape whether majoritarian rule changes are made rather than thinking of a continuous change over secular time.<sup>10</sup> According to the game, it is the presence of high polarization and the interest alignment it causes that drives majoritarian institution changes. Therefore, institutions should become more or less majoritarian as polarization increases and decreases.

### **Application 1: Whittington’s Analysis of Federal Judicial Appointments**

The Partisan Distributive Game plays out in the evolution of Senate rules around Judicial appointments. Keith Whittington outlines how, while “nominations to seats on the lower federal courts were once routinely confirmed with little controversy,” lower court nominations have become “hotly contested” since the Clinton administration.<sup>11</sup> In the Clinton administration, parties showed increasing interest in advancing ideological agendas through the courts. Due to diverging perspectives between the parties on what makes a candidate

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<sup>7</sup> Barry Weingast, “A Rational Choice Perspective on Congressional Norms,” *American Journal of Political Science* 23, no. 2 (1979): 245–62, <https://doi.org/10.2307/2111001>.

<sup>8</sup> Weingast, “A Rational Choice Perspective”, 3.

<sup>9</sup> Weingast, “A Rational Choice Perspective”, 8.

<sup>10</sup> Stephen Skowronek, *Presidential Leadership in Political Time: Reprise and Reappraisal*, 3rd ed., rev.expanded (Lawrence, KS: University Press of Kansas, 2020).

<sup>11</sup> Keith Whittington, “Partisanship, Norms, and Federal Judicial Appointments,” *Georgetown Journal of Law & Public Policy* 16, no. 2 (2018): 521.

ideologically acceptable, the Senate began to “[obstruct] circuit-court nominations at a historically unprecedented rate.”<sup>12</sup> The opposition party in the Senate found that, because of stark partisan and ideological separation from the President, it preferred to wait to confirm justices until they had the power to make the choice rather than compromise with the President. Although this contestation broke norms of expected behavior, it was permissible by current legislative rules. Whittington argues that, because of the modern ideological separation in the polarized Senate, presidents were no longer able to find “compromise candidates” that could gain sufficient votes from the opposite party to invoke cloture and be nominated.<sup>13</sup> Because of this increasing resistance to a formerly uncontested set of votes, the Democratic Senate majority during the Obama administration responded by taking the so-called nuclear option. This rule change removed the filibuster for judicial nominees and allowed the Senate to confirm as many nominees as possible when the Senate and the presidency were controlled by the same party.<sup>14</sup> Whittington adds that this was only possible because Senators believed they were not electorally damaged by the obstruction of nominees and may have even benefited from it.

Whittington’s example shows how high levels of polarization led both sides to play the Partisan Distributive Game. The opposition party did not have enough ideological overlap with the President’s party to find candidates that were acceptable to both sides, or even to get to 60 votes when the President’s party held the Senate majority. There was also no electoral incentive for opposition Senators to vote for the president’s nominees. Instead, the opposition party did what was in their best interest: breaking norms by voting down nominations when they had the majority and obstructing nominations through the filibuster when they were in the minority. As predicted by our Partisan Distributive Game, the president’s party eventually adjusted the Senate rules to allowing confirmation of justices with just majority party support.

### **Application 2: The Gilded Age and Reed’s Rules**

As a highly polarized period with massive shifts in congressional rules, the late 19<sup>th</sup> century House of Representatives is another opportunity to assess the Partisan Distributive Game. DW-NOMINATE spatial analysis places the 1880s and 90s among the most polarized periods since the Civil War and analysis of voting constituencies shows both parties having clearly polarized voting bases.<sup>15</sup> Then-Speaker of the House Thomas Reed implemented a set of rules that drastically changed the operation of Congress by reducing the obstructive ability of the minority party and increasing the strength of the Speaker. These changes resulted in a much more majoritarian system. Since this period had both a highly polarized environment and majoritarian rule change, it should follow the rules of the Partisan Distributive Game. A deeper qualitative assessment of the congressional procedures at the time and why the change took place can reveal whether this was the case.

The conditions which spurred Reed to propose such bold institutional change are important to understand. After Reconstruction, the minority party increasingly exploited rulebook

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<sup>12</sup> Whittington, "Partisanship", 525.

<sup>13</sup> Whittington, "Partisanship", 531.

<sup>14</sup> Whittington, "Partisanship", 532.

<sup>15</sup> Lewis, "Polarization in Congress"; Richard G. Forgette, "Reed's Rules and the Partisan Theory of Legislative Organization," *Polity* 29, no. 3 (1997): 375–96, <https://doi.org/10.2307/3235312>.

opportunities to obstruct House order. They turned to the frequent use of dilatory tactics and motions such as the disappearing quorum, in which members of the minority would call for a vote to verify the presence of a quorum and not answer when their names were called. This meant that a quorum could not be established and votes to pass legislation could not be held unless the entire majority party was present.<sup>16</sup> As a result, the majority party was “at a local nadir of relative agenda power” and the House “found it exceedingly difficult, if not impossible, to act when a determined minority opposed action.”<sup>17</sup> Reed himself recognized this growing obstruction, speaking against it several times even while in the minority. Writing during his time as Speaker, he noted “for the last dozen years there has been a steady determination on the part of powerful men to reduce the business of [the House] to a minimum.”<sup>18</sup>

The Partisan Distributive Game expects obstruction to stem from the minority party’s greater partisan motivations and decreased incentives to compromise with the majority. Congressional speeches made in favor of the obstruction-enabling rules certainly indicate that this was the case. In 1880, speaking against an amendment that would prohibit the ‘revolutionary’ disappearing quorum, Representative McLane, a member of the Republican minority, spoke that he would rather “resort to a revolutionary proceeding than submit to the arbitrary and tyrannical conduct of a majority.”<sup>19</sup> This statement was met with cheers from the Republican side of the chamber, indicating that the debate over these rules was related to party conflict. McLane and his Republican peers believed that continued obstruction was in their best interest as a party, leading to the strong approval for continuing the procedural status quo.

In 1890, when Democrats were in the minority and Reed had begun implementing his new set of majoritarian rules, Representative Homan also spoke in favor of obstruction, calling the proposed changes partisan and unconstitutional while praising past examples of members spearheading efforts to deny legislation. Upon close examination, we can see that Homan’s appeal was also laced with his own partisan interests. In defense of minority obstruction, he lamented rising spending and lawmaking and objected to potential increases in both under Reed’s majoritarian rule, saying that “many very sensible men believe that the curse of our age is too much legislation, not too little.”<sup>20</sup> With this argument, Homan reveals the partisan motivation behind his support for continued obstruction. The Democratic party at the time broadly supported decreased federal involvement, and Homan believed continued obstruction would help maintain this goal.<sup>21</sup>

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<sup>16</sup> Gary Cox and Mathew McCubbins, “Chapter 4: The Primacy of Reed’s Rules in House Organization,” in *Legislative Leviathan Revisited*, n.d., 14, <https://law.yale.edu/sites/default/files/documents/pdf/mccubbins.pdf>.

<sup>17</sup> Cox and McCubbins, “Primacy of Reed’s Rules” 14; Joseph Cooper and Cheryl D. Young, “Bill Introduction in the Nineteenth Century: A Study of Institutional Change”, *Legislative Studies Quarterly* 14, no. 1 (1989): 95, <https://doi.org/10.2307/440092>.

<sup>18</sup> Thomas Reed, “Rules of the House of Representatives”, *Teaching American History* (blog), March 31, 1889, <https://teachingamericanhistory.org/document/rules-of-the-house-of-representatives/>; *Congressional Record*, vol. 15 (Washington, DC: Library of Congress, 1884), 868; *Congressional Record*, vol. 10 (Washington, DC: Library of Congress, 1880), 578-579.

<sup>19</sup> *Congressional Record*, 1880, 579.

<sup>20</sup> *Congressional Record*, vol. 21 (Washington, DC: Library of Congress, 1890).

<sup>21</sup> “Joan Waugh’s Gilded Age Homepage”, accessed April 11, 2022, [http://www.sscnet.ucla.edu/history/waughj/classes/gildedage/private/gilded\\_age\\_politics/history/political\\_culture.html](http://www.sscnet.ucla.edu/history/waughj/classes/gildedage/private/gilded_age_politics/history/political_culture.html).

However, despite Homan's assertions that the House was doing "too much legislating," the increasing rate of both obstruction and bill introduction meant that the House was able to take on just a small amount of the bills it had to consider. Reed certainly agreed with this claim, saying in 1889 that "the House does but eight percent of its business."<sup>22</sup> The inefficiencies were also recognized a decade earlier in 1880 when the House made a comprehensive change to the rules of bill introduction and consideration. These changes were "not radical" and focused on increasing efficiency and organization.<sup>23</sup> However, these changes proved to be rather ineffective, failing to "establish an order of business that was both efficient and fair."<sup>24</sup> This environment of high obstruction and business completion set the stage for Reed to implement new majoritarian rules as the Speaker.

Taking power in 1889, Reed was determined to purge means of obstruction from the House rules. His primary motivation appears to have been non-partisan, as he viewed his proposed rules as a "consistent system, founded on common sense, and sanctioned by the experience of mankind." As mentioned, he spoke against obstruction even while in the minority.<sup>25</sup> However, his fellow party members did not hold such definite beliefs against obstruction. While in the minority for eight years during the 1880s, most of the Republican party took part in legislative obstruction and opposed efforts to change the House rules.<sup>26</sup> Yet, once in the majority in 1889 and 1890, they threw their support behind the Speaker's overhaul of the rules. Therefore, the Republican majority followed the Partisan Distribution Game by reforming rules to create a more majoritarian system when it served their partisan, ideological, and electoral interests. How the changes served their partisan interests was clear: removing obstruction allowed for the Republicans to seize more procedural control over the House as the majority.

Their ideological interest was also best served by overhauling the House rules. Not only did the Republicans have the House majority, but they held united government across the House, Senate, and Presidency for the first time in 14 years.<sup>27</sup> This rare window increased the urgency to pass policies that the members of the party ideologically agreed with. The most notable of these policy proposals was the McKinley tariff. Tariffs were perhaps the most polarizing issue of the period: efforts to reform the tariff system failed in the previous two congresses and tariffs became the leading issue in the 1888 congressional campaign.<sup>28</sup> Not only that, but tariffs had been the chief campaign promise of their party's new President, Benjamin Harrison.<sup>29</sup> Rule changes were the only way to get around Democratic obstruction and capitalize on this rare opportunity to pass legislation that was very important ideologically to their party.

Finally, House Republicans' electoral interests were also best served by removing obstruction. The 1888 election further divided Republican and Democratic electoral bases along an agricultural versus industrial split. Passing legislation like the tariff was the best way for

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<sup>22</sup> Forgette, "Reed's Rules", 386.

<sup>23</sup> Cooper and Young, "Bill Introduction in the Nineteenth Century", 22-24.

<sup>24</sup> Cooper and Young, "Bill Introduction in the Nineteenth Century", 91.

<sup>25</sup> Thomas Reed, "Rules of the House of Representatives."

<sup>26</sup> Forgette, "Reed's Rules", 384.

<sup>27</sup> Forgette, "Reed's Rules", 386.

<sup>28</sup> Forgette, "Reed's Rules", 385.

<sup>29</sup> Forgette, "Reed's Rules", 386.

House Republicans to maintain support for the base that had just voted them into the majority. The convergence of these three interests aligns with the game's theoretical predictions. Following the partisan distributive game, House Republicans served their three converging interests by supporting Speaker Reed in passing a set of rules that drastically increased the majority party's hold on House procedures.

### **Application 3: The 1946 Legislative Reorganization Act**

In contrast to the previous two applications, the 1940s were a period of comparatively low polarization. Within both the House and Senate, parties demonstrated the lowest median ideological gap recorded by DW-NOMINATE.<sup>30</sup> This period also saw the highest overlap between Democratic and Republican members, marked by "low levels of internal [party] cohesion and high levels of intra-party overlap."<sup>31</sup> This lessened partisan behavior was in part due to the unique congressional voting bases in the period, which featured a high amount of cross-pressured legislators (e.g., a Republican elected by a liberal-leaning district.)<sup>32</sup> In this period, neither members' ideological nor electoral interests are strongly aligned with their partisan interests, so it does not fit the conditions of the Partisan Distributive Game. Rather than minority obstruction followed by majoritarian rule changes, Congress at this time conducted bipartisan rule reform meant to increase overall institutional strength by passing the 1946 Legislative Reorganization Act (LRA).

From its onset, the development of the LRA strayed from the partisan focus that both the filibuster repeal and the enactment of Reed's rules were tied to. After a committee of political scientists urged Congress to modernize to better manage the rapidly growing federal bureaucracy, the Joint Committee on the Organization of Congress<sup>33</sup> delivered a unanimous report of suggested changes.<sup>34</sup> The report's suggestions, including streamlining the committee system, increasing staff resources and expertise, and increasing committee supervision of the executive branch, formed the basis of the successfully passed LRA.<sup>35</sup>

Additionally, while the Joint Committee's report recommended centralized party policy committees, the House removed this provision, instead leaving more power distributed amongst the committee chairs.<sup>36</sup> In fact, this decision was made precisely because members lacked the strong party ties of a polarized Congress. Speaker of the House Sam Rayburn led the effort against the party policy committees due to the belief that his thinly held together party coalition was threatened by imposing a centralized policy agenda.<sup>37</sup>

The lack of congressman interest convergence and associated low polarization of the 1940s resulted in a pivot away from the Partisan Distributive Game, exactly as predicted. The rule

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<sup>30</sup> Han and Brady, "A Delayed Return to Historical Norms", 509.

<sup>31</sup> Han and Brady, "A Delayed Return to Historical Norms", 509.

<sup>32</sup> Han and Brady, "A Delayed Return to Historical Norms", 517-521.

<sup>33</sup> The Committee was formed with six Democrats, five Republicans, and one Independent.

<sup>34</sup> Joseph Postell, "The Decision of 1946: The Legislative Reorganization Act and the Administrative Procedure Act Symposium", *George Mason Law Review* 28, no. 2 (2021): 619-22.

<sup>35</sup> Postell, "The Decision of 1946", 622-632.

<sup>36</sup> Postell, "The Decision of 1946", 630-32.

<sup>37</sup> Postell, "The Decision of 1946", 630-632.

changes adopted in the LRA focused on increased institutional strength rather than party or policy interests. The rejection of party policy committees demonstrated a rejection of centralized majority power.

### **Key Findings And Significance**

Overall, the historical case studies in this paper affirm the proposed model. Increased polarization generally leads to an alignment of three congressional interests: the success of their party, ideological preferences, and reelection campaigns. Following these interests, the minority party is often led to leverage any powers they might have to restrict the majority's ability to pass legislation. In response, the majority will increase its ability to handle legislative tasks without bending to the minority's interests, generally by enacting rule changes that restrict minority rights and increase majoritarian power.

The effects of the Partisan Distributive Game might not be beneficial from a congressional effectiveness standpoint. Although majoritarian changes might make individual legislative institutions more effective at passing legislation, individual chambers of the legislature are unable to enact legislation alone. As exhibited in the case of both the removal of the filibuster for Judicial nominees and the enactment of Reed's rules, these changes can only effectively contribute to lawmaking when a party holds united government.

In contrast, the analysis of the 1946 Legislative Reduction Act affirms the flip side of the model. In a period of low polarization, Congress pivoted away from majoritarian rule changes and enacted bipartisan reform focused on increasing institutional strength.

In current times, with no indication of polarization slowing down, Congress will continue to follow the Partisan Distributive Game. Continued or increased use of minority obstruction in the House and Senate will likely be met by more majoritarian rule changes, likely including at some point the complete removal of the filibuster in the Senate. But these rules will not be beneficial for enacting new laws in times of divided government, which is the predominant governing environment.

### **Conclusion**

This paper combined literature on Congressional decision-making, polarized environments, and legislative rule changes to develop a theory of how periods of high polarization affect Congressional procedure. Based on the aligned interests that occur during periods of partisan polarization, the theory projects that high polarization will result in the minority being increasingly obstructive. The majority reacts to this obstruction by making Congressional rules increasingly majoritarian. Both recent and historical examples support this Partisan Distributive Game as a valid explanation for congressional rule changes in a polarized environment. However, a more thorough examination of historical evidence is necessary to confirm the model's accuracy. The era of America's founding could be particularly interesting to explore, as it contained varying levels of party conflict while setting many of the congressional rules and norms that remain today. Additionally, further research should explore how Congressional rule changes might differ under different forms of polarization, such as the geographical polarization that spanned parties in the pre-Civil War Era.

# Revising DoD Directive 1344.10 to Enforce Nonpartisanship in the Military

Julia Franzoni, Olivia Omev, Caleb Richardson, and Edwin West

*Civilian trust in the military in the 21st century is nearing a record low, while the perception that the military is partisan is reaching a new high. DoD Directive (DoDD) 1344.10, which addresses the permissible and impermissible partisan activities of military members, was last updated in 2008 and needs an incremental revision. The revision proposes adding a ‘reasonable person test’ (mirroring current equal opportunity regulations) for acts with any appearance of partisanship and establishing a minimum punishment standard for violations of the directive. Since the appearance that the military is partisan is a likely contributor to distrust in the military, soldiers should be incentivized to refrain from activities that could be perceived as partisan. Attacking the perception of partisanship in the military will reinforce the norm of nonpartisanship needed for high levels of trust. Through the use of a punitive-based incentive structure as opposed to a reward-based structure, our policy proposal will punish impermissible behavior and more effectively inculcate the norm of nonpartisanship in the Armed Forces.*

## Introduction

Department of Defense Directive (DoDD) 1344.10 (hereafter referenced as DoDD 1344.10) sets the standards for political activity for members of the US Armed Forces. The current directive does not fully foster the level of nonpartisanship in the military required for sustained civilian trust in the military.<sup>1</sup> A revision of the directive is necessary to even incrementally slow the current decline of civilian trust in the military.

The 2008 introduction of DoDD 1344.10 did not decrease the number of service members who identify as partisan and political activism in the Armed Forces remains high.<sup>2</sup> Trent Lythgoe defines political activism as “the count of political activities the respondent participated in during the year before the election.”<sup>3</sup> Respondents in Lythgoe’s study selected all political activities they participated in during the past year: attended political meetings, put up a political sign, worked for a candidate or campaign, and/or donated money to a candidate, campaign, or political organization. The “yes” responses were then totaled, which created a count measure ranging from 0 to 4. The data provided a mean of 0.68 and a standard deviation of 1.04.<sup>4</sup> The data collected on the mean number of political activities by servicemembers is

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<sup>1</sup> Department of Defense, “Political Activities by Members of the Armed Forces”, *DoD Directive 1344.10* (Washington, DC: Department of Defense, February 19, 2008), 3-5, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/DoDD/134410p.pdf>.

<sup>2</sup> Trent Lythgoe, “Are the U.S. Military’s Nonpartisan Norms Eroding?,” *Armed Forces & Society* 49, no. 2 (2022), <https://doi.org/10.1177/0095327x211072892>. Political activism data for service members prior to 2008 was not available.

<sup>3</sup> Lythgoe, “Nonpartisan Norms Eroding?”

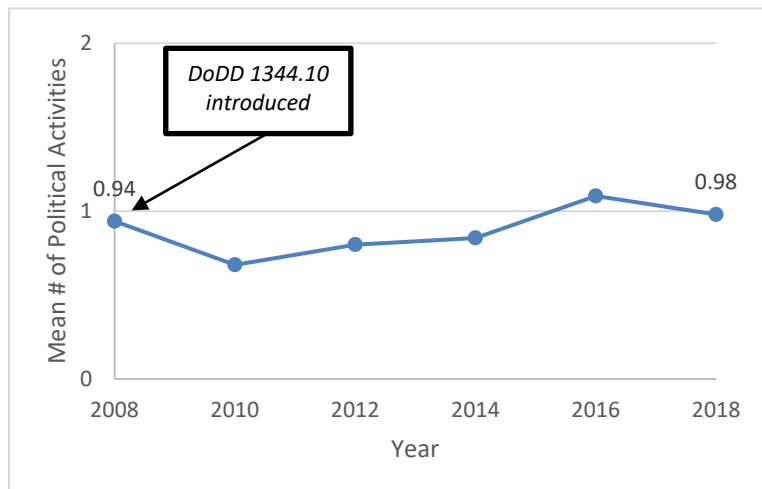
<sup>4</sup> Lythgoe, “Nonpartisan Norms Eroding?”

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displayed on the y-axis of the graph shown in Figure 1, while the year, ranging from 2008 to 2018 every two years, is shown on the x-axis.

**Figure 1: Mean Political Activism of Servicemembers (2008-2018)<sup>5</sup>**



The proposed revision to the directive incorporates a reasonable person test to existing doctrine. The goal of the revision is the decrease of public perceived partisanship in the military. While the current version of the directive already includes repercussions for those who violate the directive, those punishments need to be more consistently applied. The addition of the reasonable person test will provide commanders a more useful tool to address

partisan activity through non-judicial punishment. This revision is incremental in nature and does not envision actions against retired personnel (including flag officers), which may result in significant public and political pushback.

Norms and rules must be used in tandem to create change in a system.<sup>6</sup> Although a policy option that reinforces the norm of nonpartisanship is needed, this paper will only focus on the rules. Without rules, no enforcement mechanism can be used to punish nonconformers. Without norms, rules exist without the societal motivation needed to effectively enforce them. Therefore, both the rules and norms of military nonpartisanship should be reinforced to address declining civilian trust in the military resulting from rising perceptions of military partisanship.

This study first describes how the perception of partisanship drives the problem of declining trust in the US military. It then presents a proposed policy revision, drawing on Deborah Stone's scholarship on the importance of incentives.<sup>7</sup> After highlighting the current problems of DoDD 1344.10, the paper recommends adding a reasonable person test for partisan conduct and instituting minimum punishment standards for violations. The study evaluates the policy revision through selected criteria and projects the likely outcomes from the change. The study closes by addressing uncertainty and possible sources of error in its projections.

<sup>5</sup> Adapted from Lythgoe, "Nonpartisan Norms Eroding?" Specifically, it is a reproduction of Figure 5, with some data removed to simplify the focus on political activism among service members.

<sup>6</sup> Deborah Stone, *Policy Paradox: The Art of Political Decision Making*, 3rd ed, (New York: W.W. Norton and Company, 2012), 206-247; Adam Barsuhn, Interview with Caleb Richardson, November 8, 2022; Heidi Urben, Interview with Caleb Richardson, October 21, 2022.

<sup>7</sup> Stone, *Policy Paradox*, 271-288.

## **Declining Trust between Civilians and the Military**

Low levels of trust in the military have negative implications for the All-Volunteer Force (AVF). The most glaring is the increased likelihood that the military will have more difficulty in recruiting servicemembers needed to sustain the force. A military not trusted by the public is unlikely to appeal to prospective recruits. Secretary of the Army Christine Wormuth has characterized this as the “trust gap” when explaining the challenges in the current recruiting environment.<sup>8</sup> Low public trust in the military poses a significant threat to the viability of the AVF.

Trust in the US military has already declined to a point of potential consequences for the AVF. Americans who report high confidence and trust in the military dropped from 70 to 45 percent in the past three years.<sup>9</sup> Republicans have a more notable decline in high confidence in the military, dropping from 87 percent in 2018 to 53 percent in 2021. Democrats’ confidence dropped as well (albeit less), from 59 percent to 42 percent.<sup>10</sup> Republican support for “military policy advocacy” (defined as military promotion of their policy initiatives to the general populace) dropped from 90 percent in 2018 to 69 percent in 2021.<sup>11</sup> The specific policies included COVID-19 vaccination rules and a view that the military is “espousing Critical Race Theory.”<sup>12</sup>

The larger Republican drops noted above suggest that Republicans increasingly view the military as a left-of-center institution. The differences in the confidence drop between Democrats and Republicans point to a rise in Americans perceiving the military as favoring one political party over the other. In other words, data suggests that Americans view the military as becoming more partisan.

The perception of increasing military partisanship is a key factor that contributes to the decreased level of trust observed today. The US Supreme Court, another institution that traditionally relies on nonpartisanship to maintain public confidence, recently experienced a rise in perceived partisanship and a decline in public trust. Public trust in the Supreme Court began to decline in 1995 when several highly political cases were decided.<sup>13</sup> The annual Annenberg Constitution Day Civics Survey, conducted three months after the *Dobbs v. Jackson* decision that overturned *Roe v. Wade*, identified a rising number of citizens who feel SCOTUS

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<sup>8</sup> Christine Wormuth, “A Call to Service to Overcome Recruiting and Retention Challenges,” Department of the Army, July 20, 2022, <https://api.army.mil/e2/c/downloads/2022/07/20/69722edb/sa-csa-memo-a-call-to-service-to-overcome-recruiting-and-retention-challenges.pdf>.

<sup>9</sup> Jeff Schogol, “Americans Used to Trust the Military More than the Rest of the Government, but Now Even That’s Fading,” *Task & Purpose*, December 3, 2021, <https://taskandpurpose.com/news/military-americans-losing-trust/>.

<sup>10</sup> Schogol, “Americans Used to Trust the Military More.”

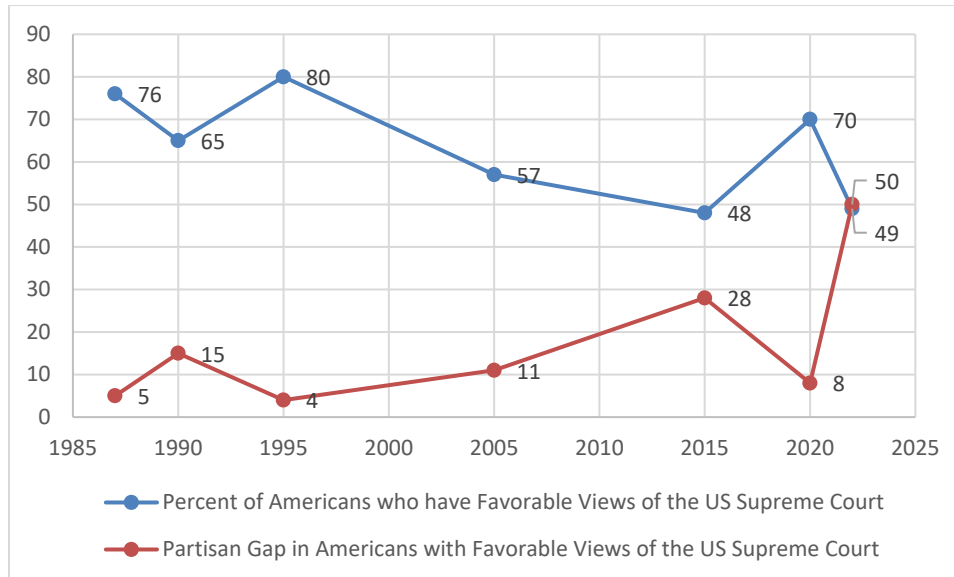
<sup>11</sup> Ronald Krebs and Robert Ralston, “More Deferential but Also More Political: How Americans’ Views of the Military Have Changed over 20 Years,” *War on the Rocks*, November 17, 2021, <https://warontherocks.com/2021/11/more-deferential-but-also-more-political-how-americans-views-of-the-military-have-changed-over-20-years/>.

<sup>12</sup> Krebs and Ralston, “More Deferential but Also More Political”.

<sup>13</sup> Jeffrey Jones, “Confidence in U.S. Supreme Court Sinks to Historic Low,” Gallup, Inc., June 23, 2022, <https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx>. “Public confidence in the Supreme Court has been lower over the past 16 years than it was before. Between 1973 and 2006, an average of 47% of U.S. adults were confident in the court. During this 33-year period, no fewer than four in 10 Americans expressed high confidence in the court in any survey, apart from a 39% reading in October 1991 taken during the Clarence Thomas confirmation hearings. Since 2006, confidence has averaged 35% and has not exceeded 40% in any survey.”

judges are behaving in a partisan manner. The survey also found that trust dramatically declined in the institution.<sup>14</sup> Figure 2, using data from the Pew Research Center on the Supreme Court, highlights that as favorable opinions of the Supreme Court decrease, there is an increase in the partisan gap of those with favorable views.

**Figure 2: US Supreme Court Favorability (1987-2022)<sup>15</sup>**



This analysis of the Supreme Court suggests that as previously nonpartisan entities become perceived as partisan, public confidence in the institution drops. Should the military fail to address the perception of partisanship, the likelihood that the military will suffer a similar drop in trust is high.

### **Creating Incremental Change for Compliance to Nonpartisanship**

Revision of DoDD 1344.10 via incremental change is needed to reaffirm the military's commitment to nonpartisanship. The current version of DoDD 1344.10 outlines the rules and regulations for political activity for current Armed Forces members. It has multiple shortcomings and fails to create the standard of nonpartisanship within the military needed for the high levels of civilian trust. Specifically, it lacks the incentive structure needed to enforce compliance.

Deborah Stone's *Policy Paradox* explains that incentives, formed as a reward or punishment, can be used as an effective policy tool.<sup>16</sup> The choice between a reward-based or punishment-

<sup>14</sup> Michael Rozansky-Penn, "Public Trust in the Supreme Court has Fallen," *Futurity*, October 10, 2022, <https://www.futurity.org/supreme-court-partisan-2811712-2/>. "Only 46% of US adults have a great deal/fair amount of trust in the Supreme Court to operate in the best interests of the American people, down from 68% in 2019, when we last asked this question. In APPC surveys since 2005, this is only the second time trust has dropped below 60% ... Half of US adults (50%, up from 35% in 2019) feel that Supreme Court justices 'are just like any other politicians' ... Nearly 7 in 10 people (69%) feel the court gets too mixed up in politics, an increase of 12 percentage points since 2019."

<sup>15</sup> "Positive Views of Supreme Court Decline Sharply Following Abortion Ruling," Pew Research Center - U.S. Politics & Policy, September 1, 2022, <https://www.pewresearch.org/politics/2022/09/01/positive-views-of-supreme-court-decline-sharply-following-abortion-ruling/>.

<sup>16</sup> Stone, *Policy Paradox*, 271-288.

based incentive structure is an important one for policy formulation. Stone notes that rewards will not have a significant impact when their response to a social problem is “rooted in institutional patterns and practices, or a long-standing historical pattern of social and political relationships.”<sup>17</sup> Nonpartisanship in the military qualifies as a long-standing institutional norm. Therefore, rewards promoting a norm already a part of the military would be ineffective. Furthermore, rewards have the potential for collusion through targets gaming the reward structure to maximize benefits.<sup>18</sup> Finally, rewarding service members for meeting the directive’s standards gives the appearance that nonpartisanship is only encouraged, not mandated. Thus, adding penalties for partisan activity is the superior policy option, reinforcing standards and limiting the high propensity for collusion by the target population.<sup>19</sup>

As this policy option involves punitive action or deterrence, it must define the target population. The proposed revision of DoDD 1344.10 would direct punitive action in response to impermissible political activities already outlined in the directive. Individuals respond to policy issues “according to whether they perceive impacts to costs and benefits” and “whether they think that the policy affects them very strongly or only weakly.”<sup>20</sup> James Q. Wilson’s typology “relates political mobilization to these two dimensions of policy effects”, which makes them relevant to the proposed revision.<sup>21</sup> The policy revision concentrates costs and diffuses benefits.

The revision’s target population is service members who participate in the impermissible political activities outlined in DoD Directive 1344.10. Costs will be concentrated on service members who partake in the impermissible partisan activity and those who handle the punitive actions. In addition, interest groups that support the individual rights of veterans, specifically veteran service organizations, may perceive costs and push back against this policy revision. Benefits will be diffused force-wide; positive public perception of the military will increase as partisan activity decreases.<sup>22</sup>

As scholars suggest, and several interviews reinforce, norms and rules must be used in tandem to create change in a system.<sup>23</sup> While policy options that reinforce the norm of nonpartisanship should be created, this paper will only focus on one half of that puzzle, the rules portion.

### **Revision to the Current Version of DoDD 1344.10**

The current DoDD 1344.10 states that violations of the directive are punishable under the Uniformed Code of Military Justice (UCMJ) Article 92, “Failure to Obey Order or Regulation.”<sup>24</sup> Punitive action can include a negative counseling, company-grade non-judicial

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<sup>17</sup> Stone, *Policy Paradox*, 271-288

<sup>18</sup> Stone, *Policy Paradox*, 271-288.

<sup>19</sup> Urben, interview. Dr. Urben noted that without a way to punish nonconformers, norms are useless. Incentives must be used alongside norms for effective change.

<sup>20</sup> Stone, *Policy Paradox*, 238.

<sup>21</sup> This framing is borrowed from James Wilson’s typology that Stone utilizes in *Policy Paradox*, 238-239.

<sup>22</sup> Stone, *Policy Paradox*, 229-247.

<sup>23</sup> Stone, *Policy Paradox*, 271-288; Urben, interview; Barsuhn, interview.

<sup>24</sup> DoD Directive 1344.10, 3-5.

punishment under Article 134 of UCMJ, or a General Officer Memorandum of Reprimand (GOMOR) for major offenses. Punitive action can be applied to impermissible political activities already outlined in DoDD 1344.10 such as: endorsing candidates, attending campaign rallies in military uniform, posting campaign signs on federal property, and organizing, leading, sponsoring, or speaking at partisan political events.<sup>25</sup>

Unfortunately, these punishments often are not administered when they are warranted and the violations frequently do not carry the necessary weight. Increasing the scope of what is punishable under DoDD 1344.10 will further incentivize service members to avoid potentially partisan acts. The addition of a reasonable person test for acts with the appearance of partisanship is an appropriate increase in scope. This test would mirror current equal opportunity regulations, which state that the standard of offensiveness is if a reasonable, objective person would find it offensive.<sup>26</sup> Partisanship should be viewed in the same manner. Due to the negative correlation of public trust with citizen perceptions of military partisanship, the military should avoid acts that appear partisan to either side of the political aisle. Put another way, servicemembers should seek to be as far back from the line of partisanship as possible.

The following language should be added to DoDD 1344.10:

Should actions by a service member in uniform or in an official capacity be such that a reasonable person would perceive it as partisan, it qualifies as impermissible partisan activity. Commanders will have full authority to adjudicate and impose punishments on a case-by-case basis in accordance with Paragraph 4.6.4.

The addition of the reasonable person test for partisanship will permit the punishment of partisan activity that was previously not an explicit violation. Service members will no longer operate in a gray area when it comes to political activity. As currently written, some parts of the directive are unclear. The endorsement or placement of candidate signs is clearly prohibited in current regulations, but hanging flags, displaying signs with politically charged phrases, or reposting a social movement's post online is less clear.<sup>27</sup> The addition of the reasonable person test for partisanship eliminates this ambiguity through objective standards, giving commanders tools they need to enforce the directive.

The minimum punishment standards for violations should also be included in the revision. Minimum punishment standards are unprecedented, but needed in this specific instance as an increased incentive for servicemembers to abstain from partisan activity in uniform. Current punishments do not adequately deter servicemembers; adding minimum punishment standards for DoDD 1344.10 violations is an incremental policy initiative designed to do so. For example, servicemembers who violate paragraph 4.1.2.2. and "use official authority or influence to interfere with an election" should at minimum be reprimanded with company-grade non-judicial punishment.<sup>28</sup> Similar minimum standards, depending on the severity of

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<sup>25</sup> DoD Directive 1344.10, 3-5.

<sup>26</sup> Barsuhn, interview.

<sup>27</sup> Section 4.1.2.12. of DoDD 1344.10 states: "Display a partisan political sign, poster, banner, or similar device visible to the public at one's residence on a military installation, even if that residence is part of a privatized housing development." The language does not clarify what is considered partisan. For example, it is unclear whether a flag that says "Blue Lives Matter" (a contemporary right-wing slogan responding to the left -wing "Black Lives Matter") qualifies as partisan.

<sup>28</sup> DoD Directive 1344.10, 3-5.

the offense, should be applied to all conduct designated as impermissible by the directive. Each violation should be evaluated on a case-by-case basis using consideration for the authority level of the servicemember. A junior enlisted servicemember should be evaluated differently than a senior field grade officer, since the latter's behavior will have a larger impact on public perception. Should servicemembers violate the directive multiple times, increased punishment should be instituted. In total, the proposed revisions are an incremental step designed to help restore the concept of military nonpartisanship by attacking the appearance that servicemembers are partisan actors.

Stone highlights the importance of framing causal stories to induce mobilization around a problem definition.<sup>29</sup> Framing the decline in trust of the military around partisanship offers benefits when it comes to applying causal theories. Specifically, the problem of partisanship allows for the issue to be characterized as an intentional causal theory. Characterizing service members performing partisan activities as an intentional causal story with guided actions and intended consequences creates a story of oppressors and victims, which in turn is a powerful mobilization tool.

The appearance of DoD involvement with the political activity of service members could be viewed by some Americans as inherently political. It could appear the DoD is punishing its members for having a political opinion and therefore infringing on a servicemember's constitutional rights. As such, it will be important for DoD to emphasize this policy revision as a method to promote nonpartisanship and applicable only to current standards already within the directive concerning activities in uniform or in an official capacity. It is important to distinguish between in-uniform and out-of-uniform actions to not infringe against First Amendment protections.

Costs will be concentrated on service members who partake in the partisan activity and those who handle the punitive actions. Benefits will be diffused force-wide; positive public perception of the military should increase as partisan activity decreases. However, the military is historically a more conservative institution when compared to the general population; service members are more likely to identify as Republican. Specifically, "50 percent of military servicemembers identify as Republican, while 41 percent identify as Democrat."<sup>30</sup> As such, partisans may frame the proposed revision as an attempt to concentrate costs specifically on Republicans in the military. The additional potential for conservative commanders to single out and punish liberal service members, or vice-versa, could promote exactly the partisan activity targeted by the revision.

The revision to DoDD 1344.10 will apply to current active-duty members of the Armed Forces. While the DoD does have legal jurisdiction over those who retire and receive retirement benefits from their service, prosecution of these individuals is rare.<sup>31</sup> Prosecuting violations of DoDD 1344.10 by retired military members would likely be met with stiff political and public backlash. Punishing persons perceived by the public as private citizens could lead to large legal and political pushback, a cost that the military likely sees as too large to pay. Holding active-duty members accountable for their actions and reinforcing military professionalism through nonpartisanship creates both a rule and a norm that is far less costly for the DoD to

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<sup>29</sup> Stone, *Policy Paradox*, 206-228.

<sup>30</sup> Lythgoe, "Nonpartisan Norms Eroding?"

<sup>31</sup> Marshall Greenberg, Interview with Julia Franzoni, October 24, 2022.

implement.<sup>32</sup>

### **Expected Outcomes for DoDD Revision**

Both trust and partisanship will determine the effectiveness of a revision to the DoDD. An effective policy revision would result in an increase in trust and a decrease in partisanship. Over a fifty-year period, average confidence in the military is about 68%.<sup>33</sup> Five years after implementation, public trust in the military should remain close to the mean.<sup>34</sup> However, trust will be on the lower end of the standard deviation due to lower barriers for service members to partake in impermissible partisan activity using social media.<sup>35</sup> As such, the percent change in trust in the military over the five years should be between +4% to -7%.<sup>36</sup> The percentage of service members who identify as partisan rose 7% between 2008 and 2018.<sup>37</sup> Should this trend continue, partisanship will rise another 3.5% in the next five years.

Examining the DoD's experience with a similar policy helps project the effects of the proposed revision on the outcomes of interest. In 1995, the DoD instituted a major update in its Equal Opportunity Policy, which included the addition of the reasonable person test. Conduct qualified as harassment if "a reasonable person would perceive, and the victim does perceive, the work environment as a hostile or offensive reasonable person would perceive."<sup>38</sup> Since 1995, reenlistment rates for African American enlisted servicemembers and officers has increased.<sup>39</sup> While this increase is undoubtedly due to a multitude of factors, the addition of the reasonable person test in 1995 positively impacted this phenomenon. The inclusion of the reasonable person test in the revised DoDD will have similar effects. Trust in the military will increase by 1-2% and the percent change in partisanship will range from by +1 to -2%. To strengthen these predictions, better measures of impermissible partisan activities from servicemembers or partisan perception of the military by the public are needed. The implementation of the reasonable person test should drive a decrease in impermissible partisan activity, resulting in a perception from the public that the military is less partisan. Current

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<sup>32</sup> Urben, interview.

<sup>33</sup> Statista Research Department, "Public Confidence Levels in the United States Military from 1975 to 2022," *Statista*, July 31, 2023, <https://www.statista.com/statistics/239149/confidence-in-the-us-armed-forces/>.

<sup>34</sup> Adrian Barnett, "Regression to the Mean: What It Is and How to Deal with It," *International Journal of Epidemiology* 34, no.1 (2004): 215-20, <https://doi.org/10.1093/ije/dyh299>. Public confidence in the military should remain close to the mean. Variation in the mean can best be explained by natural variation in the data.

<sup>35</sup> Helen Margetts, Scott Hale, and Peter John, "Political Turbulence: How Social Media Shapes Political Participation and the Democratic Landscape," in Mark Graham and William Dutton, *Society and the Internet* (Oxford, UK: Oxford University Press, 2019), 197-211, <https://doi.org/10.1093/oso/9780198843498.003.0012>.

<sup>36</sup> Statista, "Public Confidence Levels." The fifty-year average for public trust in the military is about 68% with a 7.69 standard deviation. Because trust should remain close to the average but on the lower end of the standard deviation, expected trust values are to fall between 61% to 72%. Therefore, the expected percent change in trust is between +4% to -7% in the next five years.

<sup>37</sup> Lythgoe, "Nonpartisan Norms Eroding?" The number of service members who identified as partisan rose 7% with a standard deviation of 2.8. Applying these numbers to the next five years, using the standard deviation as a range of outcomes, predicts a 3.5% increase partisanship. Therefore, the percent change in partisanship will be between +0.7 to +6.3%.

<sup>38</sup> Department of Defense, "Department of Defense Military Equal Opportunity (MEO) Program", *DoD Directive 1350.2* (Washington, DC: Department of Defense, 1995.)

<sup>39</sup> Jay Teachman and Lucky Tedrow, "Divorce, Race, and Military Service: More than Equal Pay and Equal Opportunity," *Journal of Marriage and Family* 70, no. 4 (2008): 1030-44, <https://www.jstor.org/stable/40056316>.

scholarship lacks adequate data to measure both impermissible partisan activity of service members and public perception of partisanship in the military. In sum, adequate data for both measures is needed to improve projections for the revision to the directive.

Thresholds for calculating the cost of policy implementation for the revision (none, low, medium, high) are based on the additional burden to commanders and their units as a result of an increased number of UCMJ offenses. Implementing this policy will likely increase UCMJ offenses, costing time and resources for commanders and those involved in the punishment process. Although it is difficult to estimate exactly how many more UCMJ offenses will come from the implementation of this policy, the number of cases should be minimal. Motivating commanders to elevate partisan violations to UCMJ worthy offenses is another potential problem. While commanders can manage a modest increase in additional UCMJ cases, it will require more work. Commanders devoting extra time on the front end, creating a culture of nonpartisanship in their respective units, will benefit from decreased violations down the road. Overall, the cost of adjudicating new violations will be offset by the culture of nonpartisanship the revision aims to instill. While case load will increase following policy implementation the number of UCMJ cases related to partisanship will decrease as nonpartisan norms are reinvigorated.

Finally, the congressional policy acceptability measure (none, low, medium, high) must be considered.<sup>40</sup> Because a revision of the DoDD does not need to be passed by Congress, the likelihood of policy adoption is high. Rewriting a DoDD does not require Congressional approval, but having the support of Ranking Members of the Senate and House Armed Service Committees would likely smooth over any political backlash. Should members of Congress themselves oppose the revision or be pressured by informal actors (e.g., veteran service organizations), they could stall or stop the proposed revision to the directive. Framing the policy revision as having a concentrated cost on service members who partake in impermissible partisan activity, and a diffused benefit that both the military and civilians enjoy, is crucial to cutting off potential pushback before it occurs. By focusing on costs and benefits, the likelihood for legitimate opposition should decrease.<sup>41</sup> However, if the desires of Congress must be accounted for, the successful enactment of a revision to the directive would be considerably more difficult. Therefore, key stakeholders and policy entrepreneurs should be targeted to build support for this change. Policy entrepreneurs will be able to develop important networks with groups, especially veteran service organizations. Table 1, below, summarizes our projected outcomes for the inclusion of the reasonable person test to the DoDD.

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<sup>40</sup> Stella Theodoulou and C. Kofinis, "The Assessment of Executed Policy Solutions," In Stella Theodoulou and Matthew Cahn, eds., *Public Policy: The Essential Readings* (Boston, MA: Pearson, 2013), 341-348.

<sup>41</sup> Stone, *Policy Paradox*, 238.

**Table 1: Projected outcomes of the “reasonable person” revision to DoDD 1344.10**

	% Change of Trust in Military Over 5 Years	% Change in Partisanship Over 5 Years	Cost of Implementing this Policy	Congressional Policy Acceptability Measure
Base Case	+2 to -7% <sup>42</sup>	+0.7 to +6.3% <sup>43</sup>	None	None
DoDD Revision	+1 to +2% <sup>44</sup>	+1 to -2% <sup>45</sup>	Low	High

### **Lack of Congressional Involvement and Sources of Uncertainty**

A major source of uncertainty for the revision of the DoD Directive will be the presence of confounding variables affecting the measures of trust and partisanship in the military. Many factors affect trust and partisanship in the military: the overall political climate of the country, whether the military is engaged in conflict, and individual public perceptions (particularly those of leaders within the DoD). These are just a few examples of confounding variables that could result in an incorrect interpretation of the revision.

The key to successful implementation of the revision will be commanders’ abilities to impartially render punishments. As highlighted, costs may be perceived as specifically targeting conservatives in the military. Should commanders adjudicate punishments improperly, it will only exacerbate concerns that the policy proposal is actually a partisan attempt at quelling certain political views.

Another key assumption is the impact of veteran service organizations on the policy. These organizations are exceptionally powerful interest groups and have considerable influence in Congress and the Department of Defense. The proposed framing of the causal story (those who partake in partisan activity in uniform or in an official capacity are acting outside of the professional ethic) will help facilitate support from these organizations. However, this is an uncertain prediction. Veterans who perceive an infringement to constitutional rights to free speech will likely react strongly in opposition to the revision and impede policy adoption and implementation.

### **Conclusion**

Trust in the military is near historic lows and levels of partisanship have increased steadily. A proposed revision to DoDD 1344.10 incorporating a reasonable person test and minimum punishment standards for violations is the best means to address this problem. Research suggests that the use of punitive action instead of rewards is more likely to be effective in reducing partisanship among service members. The revised directive will correspond to increased trust and reduced partisanship in the military. Reducing the number of impermissible partisan activities by service members will decrease public perceptions of

<sup>42</sup> Statista, “Public Confidence Levels.”

<sup>43</sup> Lythgoe, “Nonpartisan Norms Eroding?”

<sup>44</sup> Statista, “Public Confidence Levels.”

<sup>45</sup> Lythgoe, “Nonpartisan Norms Eroding?”

military partisanship. This decrease will increase public trust in the military. The costs of implementing the revision are low, although there is uncertainty when considering the potential impact of confounding variables on policy success. In addition, the success of the revision is directly related to how impartially commanders identify, enforce, and punish violators. Commanders' abuse of these powers will reinforce partisan behavior instead of reducing it. Potential areas of policy future research and discussion should focus on how to limit improper enforcement of these rules.

# The Empire Strikes Back from The Air? British Airpower on the Road to Falklands

Deye Li

*This research seeks to fill a gap in the existing scholarly literature concerning overall preparedness of British airpower for the Falklands War. The British defense establishment and airpower-related services fell victim to preparing for war against the Warsaw Pact and were not well-prepared for the Falklands War. However, British combined forces still won the war by a large margin. This paper examines the UK's strategic background, operational contingency planning, force structure, doctrine, training, and posture to assess the RAF and RNFAA in the 1970s and compare them with the actual operational contingency, the required airpower-related military forces, and the performance of the existing RAF and RNFAA forces in the Falklands War. Yet it concludes that the risk of unpreparedness for peripheral contingencies might be warranted because of the imperative of strategic prioritization. The implication of this research suggests that the US, as it faces similarly conflicting demands on its strategic assets, might also have to prioritize and make hard choices on its political commitments.*

The current literature assessing the evolution of the Royal Air Force (RAF) in the post-East-of-Suez period, the rise and fall of British naval aviation in the thermonuclear age, and the air combat in the Falklands War is excellent; however, the coverage of the overall preparedness of British airpower for the Falklands conflict is thin. This paper addresses this vital question, arguing that the British defense establishment and airpower-related services fell victim to preparing for the last war. As a consequence, they were not sufficiently prepared for the Falklands war, though British combined forces still triumphed by slim margins.

The paper examines Britain's strategic direction and operational contingency planning in the era before the Falklands War. It then evaluates the force structure, doctrine, posture, and training of the RAF and Royal Navy Fleet Air Arm (RNFAA) to meet these perceived strategic directions and operational contingencies. As part of that evaluation, it distills the actual strategic direction in the late 1970s and early 1980s and the actual operational contingency requirement in 1982. Finally, this paper assesses the wartime value of the RAF and RNFAA's pre-war force structure, doctrine, posture, and training. The paper finds that British air power was not sufficiently prepared for the Falklands conflict because of imperial retrenchment and North Atlantic Treaty Organization (NATO) priorities. Therefore, Britain prevailed in the Falklands conflict primarily because of Argentine deficiencies and good luck.

## **British Strategy After the Empire**

The United Kingdom's post-WWII economic recession, combined with the Soviet conventional military threat to Northern and Central Europe and nuclear threat to the British Isles, doomed British hard power in the Indo-Pacific.<sup>1</sup> By the late 1960s, Britain was committed to defending East of Suez territories in the Persian Gulf, Southeast Asia, and Oceania. The British

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<sup>1</sup> Piers Brendon, *The Decline and Fall of the British Empire, 1781-1997* (New York, NY: Vintage, 2010), chapters 13-17.

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conventional forces were so overstretched that the iconic Trooping the Color ceremony for the Queen's birthday would be jeopardized by one additional contingency.<sup>2</sup> These trends culminated in the UK's *Healey Review* strategic defense assessment from 1966-1968 and Prime Minister Harold Wilson's 1968 announcement that British troops would be withdrawn in 1971 from major military bases in South East Asia, Indian Ocean islands, and the Persian Gulf.<sup>3</sup> This withdrawal represented a contraction of the UK's global presence that official histories claimed as the eventual end of the British Empire.<sup>4</sup> After the empire, British strategy was laser-focused on NATO commitments, including three divisions of ground force and several hundred tactical aircraft to the Northern Army Group (NORTHAG) of the NATO Central Front. Other vital strategic objectives included countering the Soviet naval threat to NATO's northern flank, helping secure the alliance's sea lines of communication (SLOC) in the northeastern Atlantic and the English Channel, and maintaining tactical and strategic nuclear deterrence against a Soviet attack.<sup>5</sup> The UK's *Mason Review* strategic defense assessment in 1974-1975 reaffirmed the domestic and European orientation of British defense strategy, further bolstered by the 1981 *Nott Review* strategic defense assessment.<sup>6</sup>

### **British Operational Contingency Planning in the 1970s**

The centerpiece of British operational planning in the 1970s was a forward conventional defense with NORTHAG on NATO's Central Front against a massive Soviet ground and air offensive on the North German Plain. America's Vietnam-era European drawdown, the post-Khrushchev Soviet conventional buildup, and the differentiated doctrinal and organizational transformation of the NATO armies contributed to NATO's unfavorable conventional balance in the 1970s. The First British Corps had no common operational concept with the other four NORTHAG corps on the Army Group level and no American mobile reserves. The Corps would be by itself in a shooting war.<sup>7</sup> If the Warsaw Pact broke the defensive West German Hessen-Hoxter Line in the British Army of the Rhine's sector, the British commander would have to deliberately escalate and "use nuclear defense and denial weapons." This response was directed by NATO's overall strategy documents MC-14/3, MC-48/3, and the British Defense Planning Staffs' appreciation.<sup>8</sup> The limited exchanges of tactical nuclear weapons would delay

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<sup>2</sup> William James, "Global Britain's Strategic Problem East of Suez", *European Journal of International Security* 6, no. 2 (2021): 173-80, <https://doi.org/10.1017/eis.2020.24>.

<sup>3</sup> Claire Mills, Louisa Brooke-Holland, and Nigel Walker, "A Brief Guide to Previous British Defence Reviews" (London, UK: House of Commons Library, February 2020), 9-11.

<sup>4</sup> William Roger Louis and SR Ashton, *East of Suez and the Commonwealth 1964-1971: East of Suez* (London, UK: The Stationery Office, 2004), forward.

<sup>5</sup> David French, *Army, Empire, and Cold War: The British Army and Military Policy, 1945-1971* (Oxford, UK: Oxford University Press, 2012), chapter 12.

<sup>6</sup> Mills, Brooke-Holland, and Walker, "Previous British Defence Reviews", 12-13.

<sup>7</sup> Michael Mahler, *Tales from the Cold War: The U.S. Army in West Germany 1960-1975* (Dahlonega, GA: University Press of North Georgia, 2021), chapter 11; Richard Bitzinger, "Assessing the Conventional Balance in Europe, 1945-1975" (Santa Monica, CA: RAND Corp, 1989), 24-32; Helmut Hammerich, "Defense at the Forward Edge of the Battle or Rather in the Depth? Different Approaches to Implement NATO's Operation Plans by the Alliance Partners, 1955-1988", *Journal of Military and Strategic Studies* 15, no. 3 (2014): 169, <https://jmss.org/article/view/58117>.

<sup>8</sup> North Atlantic Military Committee, "Final Decision on MC 14/3" (NATO Strategy Documents 1949-1969, January 1968); North Atlantic Military Committee, "Final Decision on MC 48/3" (NATO Strategy Documents 1949-1969, December 1969). MC 14/3 and MC 48/3 formalized the Allied strategic thinking in the mid-1960s when the NATO forces' conventional combat power peaked. For the development of flexible response and forward defense, and a net assessment of

the enemy's advance across the Weser River by several hours; deep tactical nuclear strikes and strategic counter-value strikes would follow.<sup>9</sup>

On the Northern flank, the Royal Navy (RN) and the RAF were tasked with countering the Soviet maritime interdiction and strategic threats. The RN's anti-submarine warfare (ASW) vessels, with the assistance of ASW installations in Norway and Denmark, would block Soviet attack submarines from entering the North Sea and the Atlantic. They would also stop Soviet strategic submarines from entering the Baltic and Barents Seas in the Greenland-Iceland-Norway (GIN) Gap. British high-speed interceptor-fighters would take off from Germany and Home Islands to intercept Soviet Backfire bombers launched from the Kola Peninsula.<sup>10</sup>

The only contingency London accounted for beyond its NATO commitments was the crisis in Northern Ireland. In February 1969, British Secretary of State for Defense Denis Healey reported to Harold Wilson "on the implications of any possible requirement for military assistance" in maintaining law and order in Northern Ireland. Healey postulated that military intervention against the worst-case civil unrest scenario might require a force of up to two pre-designated divisions stationed in the Home Islands.<sup>11</sup> This further drew fiscal and manpower resources away from the RAF and RN. Overall, the decline of British military potential, the existential nature of the Soviet threat, and the immediacy of the Northern Ireland crisis left the traditional British task of global power projection with a large investment gap in the 1970s. This, in turn, cast an inescapable shadow on the RAF and RNFAA in terms of their ability to win a Falklands-like scenario.

## **RAF and RNFAA's Military Preparations in the 1970s**

### **Force Structure**

Force structure reflects changes in a country's threat environment and the evolution of military thoughts among its national security elites. British nuclear planning was never satisfactorily settled due to their ill-fated struggle for a robust independent deterrent. The RAF had to constantly devote energy and resources to the research and procurement of nuclear weapons and their delivery platforms for both strategic utility and organizational survival. The late 1960s Soviet fielding of high-speed high-altitude interceptors and surface-to-air missiles (SAMs) made the previous RAF strategic nuclear delivery platform, the V bombers, largely obsolete. The Valiant (the mainstay of the V bombers) was designed in the early 1950s for high-altitude nuclear delivery and was entirely unfit for low-altitude penetration tactics. The Vulcan and the newer Victor were also suboptimal for long-range missions: low-altitude flights reduced their cruise range and the constrained defense budget forced the Air Ministry to reduce the radius of action requirement by 1/4.<sup>12</sup> The RAF tried to keep the bombers in service

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conventional balance in Europe in the mid-1960s, see: Deye Li, "Soldiers, the City, and the State: The Berlin Problem and the US Military, 1960-1965" (Undergraduate Honor Thesis, 2022), chapters 2-5.

<sup>9</sup> Kristan Stoddart, *The Sword and the Shield: Britain, America, NATO, and Nuclear Weapons, 1970-1976* (Houndmills, UK: Palgrave Macmillan, 2014), 153-54.

<sup>10</sup> Geoffrey Till, *Britain and NATO's Northern Flank* (Hampshire, UK: Macmillan, 1988), chapter 5, 10.

<sup>11</sup> Ronan Fanning, "Playing It Cool: The Response of the British and Irish Governments to the Crisis in Northern Ireland, 1968-9", *Irish Studies in International Affairs* 12 (2001): 64, <https://www.jstor.org/stable/30002059>.

<sup>12</sup> John Baylis, *Ambiguity and Deterrence: British Nuclear Strategy 1945-1964* (Oxford, UK: Oxford University Press, 2011), chapter 9; Humphrey Wynn, *RAF Nuclear Deterrent Forces: Their Origins, Roles and Deployment 1946-1969, a Documentary History* (London, UK: Stationery Office, 1997), 44-50.

by introducing stand-off attack tactics using its Blue Steel and the American-built Skybolt air-launched cruise missiles. However, the liquid-fueled Blue Steel was extremely unreliable and US Secretary of Defense Robert McNamara canceled Skybolt.<sup>13</sup> Britain then shifted its strategic nuclear deterrence mission to the RN, relieving the RAF of the need to replace its strategic bombers and allowing it to reduce the V bomber fleet size into the 1970s.

Since global power projection was no longer the strategic priority and joint expeditionary warfare was no longer an operational contingency, the UK's logistical demand for aerial transport and refueling aircraft diminished through the 1970s. In 1974, the RAF still had three tanker squadrons consisting of 56 Victor K1/K1A/K2 and four strategic transport squadrons of 14 VC-10, 10 Belfast, and 15 Britannia. By 1980, RAF only had two tanker squadrons of 16 Victor K2 and one strategic transport squadron of 11 VC-10.<sup>14</sup> This left the RAF ill-suited to support aerial operations beyond the North Atlantic and Europe. Moreover, although RAF did order Chinooks in 1978 to provide battlefield mobility to ground assault forces, they were generally not conceived to operate from carriers in littoral operations.

The RAF largely overlooked the value of airborne early warning (AEW) aircraft until the early 1970s. The RAF had relied on ground radars in the Home Islands to guide its Lightning interceptors. After the withdrawal of *HMS Ark Royal* from service, the RN assigned their Shackleton AEW-2 aircraft to the RAF No. 8 Squadron in 1972. The RN even paid for their maintenance and operations because the RAF "had no requirement for the AEW role."<sup>15</sup> However, the RAF did not have any long-range AEW until the procurement of the American E-3A in the late 1980s.

The North Sea, instead of the wide oceans, was conceived as the future maritime battlefield. In concert with a general reduction of defense spending as a proportion of GDP, the RN took over strategic nuclear deterrence from the RAF and made it the priority within the service. The RN almost exclusively focused on the development of dual-use ASW capability (destroyers and frigates) and maritime nuclear deterrents (nuclear-powered strategic ballistic missile submarines (SSBN) and the corresponding sea-launched ballistic missile [SLBM]). There was no perceived need nor budgetary means for the replacement or even maintenance of fleet carriers and naval aviation. As a result of the *Healey Review*, the RN canceled the CVA-01 series large carriers, scrapped the first two *Centaur Class* light carriers by the end of 1973, and decommissioned its two *Audacious Class* fleet carriers by the end of 1979. The last two *Centaur Class* light carriers were first redesignated as commando carriers carrying Royal Marine companies and then reassigned as ASW carriers carrying helicopters by the end of the decade.<sup>16</sup> Light carriers had neither long flight decks nor catapults: therefore, only helicopters and Vertical Takeoff or Landing (VTOL) aircraft could operate on them. The more capable traditional combat aircraft, like Buccaneers, lost fleet carriers on which to operate and were transferred to the RAF.

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<sup>13</sup> Chris Gibson and Tony Buttler, *British Secret Projects: Hypersonics, Ramjets and Missiles* (Hinckley, UK: Midland Publishing, 2007); Derek Wood, *Project Cancelled: The Disaster of Britain's Abandoned Aircraft Projects* (London, UK: Tri-Service, 1990), 144.

<sup>14</sup> *The Military Balance 1973-1974* (London, UK: International Institute for Strategic Studies, 1974), 14; *The Military Balance 1979-1980* (London, UK: International Institute for Strategic Studies, 1979), 38.

<sup>15</sup> David Hobbs, *The British Carrier Strike Fleet after 1945* (Barnsley England: Seaforth Publishing, 2015), 398-99, 402.

<sup>16</sup> Hobbs, *The British Carrier Strike Fleet*, 392-94.

Sea Harriers were the only bright spot in an otherwise collapsed force structure of British naval aviation in the 1970s. P1127, the prototype of the Harrier/Sea Harrier, successfully conducted trials on aircraft carriers as early as 1966. The RAF picked it for its fitness in providing close air support (CAS) in the Central Front battles. The RN choose the naval variant of the Harrier to be its future combat aircraft on light carriers in 1975. Under a tight budget, such aircraft would have to be multi-role. Sea Harriers were put in service in 1979 and three squadrons had equipped them before the Falklands War. The versatile Sea Harrier had five weapon pylons and could carry 2.27 tons of weapons, including WE-177 air-dropped nuclear weapons, Sea Eagle air-to-surface missiles (ASM), AIM-9/L air-to-air missiles (AAM), 1000lb bombs, and 2" rockets.<sup>17</sup> However, VTOL/Short Takeoff or Landing (STOL) operations on a light carrier flight deck dramatically reduced the Sea Harrier's fuel and weaponry. Major D. R. Taylor invented the ski jump that enabled the Sea Harrier to carry 2000 additional pounds when taking off.<sup>18</sup> Twelve-degree ski-jump structures were installed on the *HMS Hermes* and the first two light carriers of the *Invincible Class* before the Falklands War.

However, even with the ski-jump structures, the fixed-wing AEW-2 was still too large to take off on light carriers. The AEW-modified Sea King helicopter would provide limited situational awareness of the battlefield to the carrier strike group (CSG). However, their reconfiguration for AEW missions would not be raised until the decision to go to war in the Falklands was made. As a result, they would not be ready for deployment until the very end of the conflict.<sup>19</sup> In conclusion, the substantial albeit still severely limited compatibility between RAF/RNFAA force structures and the requirement of the Falklands conflict was achieved inadvertently since the British defense establishment did not conceive the Falkland-typed scenario in the 1970s.

### Doctrine

RAF doctrine in the fourth edition of the *AP-1300* centered on nuclear deterrence and operations in the advent of the thermonuclear age. It stated:

[T]he aim of air power...is therefore: (a) To maintain a level of nuclear striking power that will cause a potential aggressor to have grave doubts as to his ability to achieve his war aims without incurring devastating retaliatory damage; and (b) Should this deterrent fail, to destroy the enemy's nuclear offensive power and his means of continuing the war.<sup>20</sup>

When the RN assumed the exclusive strategic nuclear role and the RAF lost its relevance on the strategic level, *AP-1300* was withdrawn as "obsolete" in the early 1970s. The RAF experienced a doctrinal vacuum and general disinterest in theoretical thinking that extended through the 1970s and into the early 1980s.<sup>21</sup> The UK's NATO-centric strategic priorities and operational conceptions brought about the dominance of NATO tactical air doctrine in the RAF. Still, the Britain-dominant Second Allied Tactical Air Force (2ATAF) had distinct differences with the

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<sup>17</sup> Hobbs, *The British Carrier Strike Fleet*, 439; Douglas C Dildy and Pablo Calcaterra, *Sea Harrier FRS 1 vs Mirage III/Dagger* (London, UK: Bloomsbury Publishing, 2017), 20-30.

<sup>18</sup> Hobbs, *The British Carrier Strike Fleet*, 427.

<sup>19</sup> Hobbs, *The British Carrier Strike Fleet*, 470-71.

<sup>20</sup> Viktoriya Fedorchak, *British Air Power: The Doctrinal Path to Jointery* (London, UK.: Bloomsbury, 2020), 59.

<sup>21</sup> Fedorchak, *British Air Power*, 65; Peter W Gray, *Air Warfare: History, Theory and Practice* (New York, NY: Bloomsbury Academic, An Imprint Of Bloomsbury Publishing Inc, 2016), 19.

America-dominant 4ATAF. NORTHAG faced a much greater threat of Soviet operational breakthrough than the Central Army Group (CENTAG) due to terrain and quality of forces. The RAF therefore designed its tactical doctrine to maximize defensive resilience against the Soviet first echelon's maneuver-strike. In contrast to 4ATAF's more centralized command and control (C2), emphasis on the Soviet second echelon, and the deep interdiction, 2ATAF's attack aircraft would primarily be employed in the portion of the close fight beyond allied artillery range, in coordination with ground forces. In short, the British focused more on CAS and close interdiction.<sup>22</sup> Correspondingly, the RAF adopted the concept of Tactical Air Support for Maritime Operations (TASMO) in the mid-1970s to perform the remnant tasks of the absent carrier air wings to support operations in the northeastern Atlantic.<sup>23</sup>

### Training

Despite losing their large carriers, the RNFAA's airmen did not give up on training. The RNFAA established the air-sea advanced training unit Fleet Requirements and Aircraft Direction Unit (FRADU) in 1972 which substantially expanded the RN's training regimen. Using Hunter T8 and GA11 advanced trainers, trainees participated in AEW and electronic countermeasure (ECM) exercises required by NATO's northern operational environment. FRADU also conducted simulated ship attacks, provided fighter control training, and ran helicopter fighter affiliation training.<sup>24</sup> Even after the reassignment of RNFAA's three squadrons to the RAF Strike Command, the Fleet still directed that these squadrons participate in the Navy's exercises, trials, and training. Along with the RNFAA squadrons, the newly established TASMO squadrons also substantially advanced their learning curve of fleet air combat.<sup>25</sup> NATO also organized CLOCKWORK winter training in Norway starting in 1970 with the RN and Royal Marines as the spearhead forces. CLOCKWORK trained a cadre of aircrew and commandos in Arctic warfare techniques. After the training, NATO often organized COLD WINTER exercises with commando carriers or amphibious vessels in the littoral, which coincidentally had an operational environment and concept similar to those of the future Falklands conflict.<sup>26</sup> However, the RAF Vulcan bombers were purely assigned for NATO nuclear operations and neither aerial refueling nor conventional bombing was practiced in the late 1970s.<sup>27</sup> As this paper will later show, this would limit the effectiveness of British suppression of enemy air defense (SEAD) and interdiction missions in the Falklands War.<sup>28</sup>

### Posture

British military posture concerned the dispositions of armed forces and their relations with temporal sequence and geographical space. Following the global retrenchment of the 1950s and 1960s, the RAF did not have many bases remaining after 1971. The RNFAA underwent a major cut of its once-global footprints. The RN Air Stations at Lossiemouth, Brawdy, Hal Far in

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<sup>22</sup> D J Stein, *Development of NATO Tactical Air Doctrine, 1970-1985* (Santa Monica, CA: RAND Corporation, 1987), 10, 26-29.

<sup>23</sup> Hobbs, *The British Carrier Strike Fleet*, 403-04.

<sup>24</sup> Steve Bond, *Fleet Air Arm Boys: Strike, Anti-Submarine, Early Warning and Support Aircraft since 1945* (London, UK.: Grub Street, 2021), 11.

<sup>25</sup> Hobbs, *The British Carrier Strike Fleet*, 402-03.

<sup>26</sup> Hobbs, *The British Carrier Strike Fleet*, 404-05.

<sup>27</sup> Rowland White, *Vulcan 607* (London, UK: Bantam, 2012), 89-90, 123-26.

<sup>28</sup> See Page 41 of this paper.

Malta, and Sembawang in Singapore were either closed, handed over to the RAF, or transferred to the host nations.<sup>29</sup> Many airbases, like Ascension Island, were not garrisoned and would take time to restore their full operational capacity.<sup>30</sup> Large forward bases are essential for conducting joint expeditionary operations. The absence of those bases in the former imperial periphery severely constrained Britain's global power projection capability. Since the strategic nuclear deterrent and tactical airpower in Germany were the respective readiness priorities of the RN and RAF, British air readiness for expeditionary warfighting was relatively ignored. The commando carrier *HMS Bulwark*, critical to amphibious operations, was withdrawn from active service from 1976 to 1978.<sup>31</sup> Corps-level rapid reinforcement, conceived for the I Corps, ranked high on the RAF's agenda. Full-scale rehearsals like CRUSADER 1980 involved moving 15,000 troops by air.<sup>32</sup> The conceived surge via air mobility revealed the British premise of an existing land foothold proximate to the British Isles in times of major conflict, underscoring the primacy of NATO priorities over expeditionary concerns.

Based on their operational conception, Supreme Headquarters Allied Powers Europe (SHAPE) dictated that NATO members should hold ammunition stocks ready for 30 days of fighting. The consensus of the time was that NATO could hold for the first two weeks of the conventional war against the Warsaw Pact. This would allow time for the mobilization of NATO's superior manpower and resources which would disabuse the Warsaw Pact of any hope of winning. If NATO forces could not hold for two weeks in the Central Front, then NATO powers would use nuclear weapons as planned and conventional munitions shortages would not be a concern.<sup>33</sup> In reality, most NATO countries, including Britain, had stocks sufficient for no more than two weeks of high-intensity combat.<sup>34</sup> In sum, if Britain did not decisively succeed in the initial period of a conflict, it would be ill-prepared for fighting a long war of medium intensity.

In short, on every major aspect from force structure to doctrine, training, and posture, British air power in the 1970s was focused narrowly on its NATO mission and not on the long-range power projection required by the Falklands conflict.

### **Falklands: Strategic Direction and Operational Contingency Planning**

The Thatcher Government claimed the Argentine invasion of Britain's long-occupied territory as the *casus belli*.<sup>35</sup> However, the shooting war in the Falklands made little strategic sense for Britain. During Britain's imperial age, control over the Falklands was a major boost for the

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<sup>29</sup> Robert Harkavy, *Great Power Competition for Overseas Bases: The Geopolitics of Access Diplomacy* (New York, NY: Pergamon Press, 1982), 123-27.

<sup>30</sup> Lawrence Freedman, *The Official History of the Falklands Campaign. Vol. II, War and Diplomacy* (London, UK: Routledge, 2007), 30.

<sup>31</sup> "HMS Bulwark, R08, Commando Carrier," [www.battleships-cruisers.co.uk](http://www.battleships-cruisers.co.uk), accessed April 23, 2022, [https://www.battleships-cruisers.co.uk/hms\\_bulwark.htm](https://www.battleships-cruisers.co.uk/hms_bulwark.htm).

<sup>32</sup> David Miller, *The Cold War: A Military History* (London, UK: Pimlico, 2001), 244.

<sup>33</sup> Miller, *The Cold War*, 300-303.

<sup>34</sup> Herman Roozenbeek, "Waste and Confusion? NATO Logistics from the Dutch Perspective," in *Blueprints for Battle: Planning for War in Central Europe, 1948-1968*, ed. Jan Hoffenaar, KrügerDieter, and David T Zabecki (Lexington, KY: University Press Of Kentucky, 2012), 95-99.

<sup>35</sup> "Debate 3 April 1982 - the Announcement of the Invasion to the House of Commons," April 3, 1982, <https://api.parliament.uk/historic-hansard/commons/1982/apr/03/falkland-islands>.

British command of the Southern Atlantic and Southwestern Pacific. The absence of major German challenges to the Entente's global SLOC after the RN's in the December 1914 Battle of Falklands Islands vindicated this commitment.<sup>36</sup> However, Britain was a regional power in 1982 and its NATO commitment was the imperative compared to the less vital and more distant Falklands. The Thatcher government's decision to launch an expedition and take them back by force was committing to a war of choice instead of necessity, a deviation from the UK's stated strategic direction.

Operationally, the British were working with a narrow margin. Expeditionary warfare entails combined and sequential operations.<sup>37</sup> The four essential phases for the UK's Falkland Islands campaign included: (1) Projecting a major combined force from the Home Isles to the Southern Atlantic, (2) gaining and maintaining regional sea control and local air superiority, (3) landing a major contingent on the East Falklands and securing a beachhead for the force buildup, (4) breaking out from the garrison perimeter and fighting all the way through until the capture of Port Stanley. The entire campaign concept would fail if one of the four phases failed. The time frame of this sequential campaign was much longer than a NATO-Warsaw Pact war, ranging from less than a month to possibly more than three months. This starkly contrasted to the mere two weeks the British prepared for in Europe. The British would have to pursue a rapid battlefield decision or confront attrition they were ill-prepared for. Fighting Argentina entailed a much higher operational intensity than did the Northern Ireland contingency. Therefore, the British military and economic capacity limitations would allow a protracted conflict in Northern Ireland but not in the Falklands.

### **Assessing the Preparedness of RAF and RNFAA in the Falklands War**

The fact that carriers *HMS Invincible* and *HMS Hermes* were in Portsmouth in early April of 1982 was due to not only British luck but also the high readiness peacetime posture. The peacetime winter training in Norway made the operational environment of the sub-Antarctic South Atlantic familiar to the British combined forces.

Strategic bombing spearheaded the British air campaign in the Falklands War. The United States extended Ascension Island's Wideawake airfield to 10,000 feet in 1966, which made prompt deployment possible and prevented the delay of British strategic bombings. Despite this foothold, the RAF merely performed seven (conventional) missions in the 42-day duration of the strategic bombing campaign.<sup>38</sup> Only the lack of long-range bombers and tanker squadrons in the previously mentioned RAF force structure could explain the abysmally low sortie rate. It required 15 Victor K2 sorties and at least 18 inflight refueling to get one Vulcan bomber to the skies of the Falklands.<sup>39</sup> At the beginning of the war, the RAF tried to use Vulcans to conduct raids against Argentine airfields to gain local air superiority. The strategic bombing-air superiority mission BLACK BUCK 1 did crater Port Stanley Airfield's runway with a single bomb, disabling the operations of Argentina's high-performance combat aircraft

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<sup>36</sup> Norman Friedman, *Fighting the Great War at Sea: Strategy, Tactics and Technology* (Annapolis, MD: Naval Institute Press, 2014), 72-90.

<sup>37</sup> Julian Corbett, *Some Principles of Maritime Strategy* (East Sussex, UK: Naval-Military Press, 2006), 43-50, 255-73.

<sup>38</sup> Kenneth Privratsky, *Logistics in the Falklands War* (Barnsley, UK: Pen & Sword Military, 2017), 99-100; Freedman, *The Falklands Campaign*, 542.

<sup>39</sup> Christopher Chant, *Air War in the Falklands, 1982* (Oxford, UK: Osprey Aviation, 2001), 40-41.

there.<sup>40</sup> However, all the bombs missed in BLACK BUCK 2. The deficient performance of BLACK BUCK 1 and 2 is partially because Vulcan bombardiers released the bombs at a higher altitude to evade the Argentine Roland SAMs.<sup>41</sup> Training deficiencies played into this risk-averse bombing tactic since nuclear weapons employment does not require pinpoint accuracy. Therefore, air defense evasion is the only concern for the crew. By contrast, accuracy was the centerpiece of counter-force conventional missions, which the RAF never practiced in the 1970s.

Another factor in the RAF's adoption of risk-averse bombing tactics was their tactical bombers' lack of cover and protection. To simultaneously prioritize accuracy and ensure survivability, the air commands could assign fighters equipped with anti-radiation missiles to enhance the ECM of the air formations.<sup>42</sup> Electronic warfare is a never-ending contest of innovation and adaptability between aircraft and air defense. SEAD escort would also have been useful for a sustained conventional bombing campaign as Britain practiced over the Falklands. Unfortunately, the RAF (like other NATO air forces) did not write SEAD escort of bombers into their doctrine. This was because such aircraft only take off for missions when the attrition of tactical aircraft becomes less of a military concern in a losing ground campaign in the Central Front. Factors other than bombing inaccuracy also contributed to the failures of the strategic bombing missions. For instance, the absence of peacetime aerial refueling training caused substantial refueling failures leading to mission failures in BLACK BUCK 4 and 6.<sup>43</sup>

Since bombing was relatively ineffective and the Sea Harrier had limited operational range, the fleet air defense became the main way for the RNFAA to gain air superiority. The British imposed rapid attrition on Argentine fighters with few friendly losses, deterring the Argentines from contesting the local airspace. Its success belied the air force-centric airpower theory which gives primacy to the offense in pursuit of air superiority.<sup>44</sup> Carriers were the clear center of gravity in this joint expedition because their loss or paralysis alone would inhibit the successful conduct of the second phase of the campaign and present a sufficient condition for campaign failure.<sup>45</sup> This fact enabled the concentration of combat aircraft around the CSG: British aircraft could easily refuel, reequip, and join the action again. Argentine fighters and strike aircraft had to operate at the extreme of their operational range, and therefore could not stay around the CSG for a long duration.

Fleet air defense requires early detection and timely interception before enemy aircraft are able to get close enough to the fleet to attack. As previously noted, the RNFAA could not operate fixed-wing AEW aircraft and their AEW modification of Sea King helicopters was not yet available. Therefore, guided-missile destroyers and frigates had to serve as pickets patrolling 10-20 miles away from the CSG to provide situational awareness. Pickets must keep their

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<sup>40</sup> Martin Middlebrook, *The Argentine Fight for the Falklands* (Barnsley, UK: Pen & Sword Military, 2012), 172-75.

<sup>41</sup> Rodney Burden, *Falklands: The Air War* (New York, NY: Arms And Armour Press, 1986), 365.

<sup>42</sup> William Momyer, *Air Power in Three Wars* (Washington, DC: Office Of Air Force History, U.S. Air Force, 1986), 130-32.

<sup>43</sup> Burden, *Falklands: The Air War*, 365-67.

<sup>44</sup> Giulio Douhet, *The Command of the Air* (Washington, DC: Office Of Air Force History, 1983); Benjamin F Cooling, *Case Studies in the Achievement of Air Superiority* (Washington, DC: Center For Air Force History, 1994); John Warden, *The Air Campaign: Planning for Combat* (Washington, DC: National Defense University Press, 1988); Momyer, *Air Power in Three Wars*.

<sup>45</sup> See Page 38.

electromagnetic signatures down in order to avoid highlighting their position to the adversary.<sup>46</sup> This arrangement directly contributed to gaps in British situational awareness, and the sinking of *HMS Sheffield*, *HMS Glasgow*, *HMS Coventry*, and *HMS Ardent*.<sup>47</sup>

To assure the timely interception of Argentine aircraft, the Task Force ordered rigorous combat air patrols of at least two Sea Harriers airborne at any time.<sup>48</sup> Sea Harriers in the British force structure proved to be potent weapons against even the advanced Mirage III and Dagger fighters of the Argentine No. 6 and No. 8 Air Brigades. On May 1, two Sea Harriers shot down two Mirage IIIs in an aerial engagement. After that, the Argentine command decided to keep 8 Air Brigade's Mirages in the mainland bases for only limited defensive purposes.<sup>49</sup> The Sea Harriers downed 9 of 11 Argentine Daggers shot down in the war, with zero losses of their own in air combat.<sup>50</sup> Since contesting the airspace of the British Exclusion Zone<sup>51</sup> seemed to be hopeless, Daggers stopped carrying air-to-air weaponry by mid-May.<sup>52</sup> Benefitting from the TASMO training in performing maritime missions, the RAF assigned two of their Harrier pilots to fly No. 809 Squadron's Sea Harriers, and 6 Harriers from the No. 1 Squadron RAF were assigned to the Task Force.<sup>53</sup> However, the Sea Harrier also left loopholes in the British CSG's fleet air defense. Because Sea Harrier had no look down/shoot down radar and its pulse radar could not acquire low-altitude targets independently, the doctrinal imperative to counter the Argentine high-low-high strike tactic was insufficiently implemented.<sup>54</sup>

The RN was primarily trained for ASW against Soviet submarines in the 1970s; by comparison, countering Argentina's two submarines was fairly easy. The old *ARA Santa Fe* was detected and depth-charged by a Wessex ASW helicopter from *HMS Antrim*. It was then forced to surface and surrender on April 25 after being strafed by helicopters from *HMS Brilliant* and *HMS Plymouth*.<sup>55</sup> The newer *ARA San Luis* was also suppressed by Sea Kings from actively engaging British warships.<sup>56</sup>

The Sea Harriers and Harriers proved their versatility on May 21, the date of the British amphibious invasion. Two Harriers launched interdiction strikes against the No. 601 Combat Aviation Battalion's helicopter nest to cripple Argentine mobile defense against the invasion beachhead.<sup>57</sup> A Sea Harrier shot down an Argentine C-130E on June 1, making Argentine

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<sup>46</sup> Freedman, *The Falklands Campaign*, 257.

<sup>47</sup> Hobbs, *The British Carrier Strike Fleet*, 466-67; Middlebrook, *The Argentine Fight for the Falklands*, 370-73.

<sup>48</sup> Freedman, *The Falklands Campaign*, 280.

<sup>49</sup> Middlebrook, *The Argentine Fight for the Falklands*, 357.

<sup>50</sup> Freedman, *The Falklands Campaign*, 415.

<sup>51</sup> Shortly after the start of the conflict, the UK declared the British Exclusion Zone: a 200 nautical mile radius circle centered on the Falklands Islands. Argentine aircraft and ships were prohibited from passage through the zone.

<sup>52</sup> Middlebrook, *The Argentine Fight for the Falklands*, 203-04.

<sup>53</sup> Hobbs, *The British Carrier Strike Fleet*, 457.

<sup>54</sup> MJ Armitage and RA Mason, *Air Power in the Nuclear Age, 1945-82* (New York, NY: Springer, 1983), 206.

<sup>55</sup> Hobbs, *The British Carrier Strike Fleet*, 471-72.

<sup>56</sup> Norman Friedman, "The Falklands War in Retrospect", Defense Media Network, April 2, 2015, <https://www.defensemедianetwork.com/stories/the-falklands-30-years-later/>.

<sup>57</sup> Middlebrook, *The Argentine Fight for the Falklands*, 351-52.

ground defense even less mobile.<sup>58</sup> A British air assault at this time could have been a huge boost for the British operational momentum, eliminating the need to fight across seventy miles of contested terrain from San Carlos to Port Stanley. But British vulnerability to Argentine Exocet strikes, somewhat attributable to the preparedness problems, contributed to the sinking of *SS Atlantic Conveyor*. The loss of five Chinooks on board called off any potential British airborne and airmobile assaults of scale.<sup>59</sup> As a result of this tactical airlift loss, the British ground campaign had to be conducted in an operational method that gradually pushed back the front instead of exerting military pressure synergically across the depth.<sup>60</sup>

Bad weather, a persistent air threat to the carriers, and the complex terrain of Goose Green prevented British airpower from providing significant close air support to the British invasion force.<sup>61</sup> Three RAF Harriers conducted the finishing strike against troublesome Argentine anti-aircraft (AA) guns in the late afternoon of May 28.<sup>62</sup> However, the lack of timely indirect fire was a major obstacle for the 2nd Battalion, the Parachute Regiment (on foot) throughout the battle.<sup>63</sup> The sortie rate for Harrier strikes on the Stanley battlefield was also modest despite the improved weather. This can be attributed to the capacity limitation of the Task Force and the overall limited number of Harriers in the RAF force structure. This was confirmed by an Argentine military surgeon, who claimed that most casualties in days before the Battle of Stanley were incurred by field artillery rather than airstrikes.<sup>64</sup> When British ground forces reached the Stanley perimeter despite the deficient initial preparedness of RAF and RNFAA, the fate of the Argentine forces was sealed. Free of constraints, the British command used four Scout helicopters for CAS and three Sea Kings for a final air assault against the last ground held by the Argentine garrison on June 14. Ironically, this effort was not much needed by then as the Argentine garrison surrendered on the same day.<sup>65</sup>

### **Conclusion and Lessons**

British strategic direction in the 1970s drove continued global retrenchment and a tight focus on NATO commitment. Its operational contingency planning envisaged a quick conventional campaign against a massive Warsaw Pact invasion of Europe. Therefore, the RAF and RNFAA set their force structure, doctrine, training, and posture based on the aforementioned strategic direction and operational conceptions. However, the Falklands campaign deviated from the British strategic direction and brought unexpected operational requirements. The RAF, RNFAA, and other elements of British airpower were therefore only modestly prepared for the shooting war in 1982, winning the war on dangerous margins of luck and Argentine deficiency. In the absence of clear superiority, the Clausewitzian “play of chance and

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<sup>58</sup> Chant, *Air War in the Falklands*, 68-69.

<sup>59</sup> Chant, *Air War in the Falklands*, 68.

<sup>60</sup> Shimon Naveh, *In Pursuit of Military Excellence: The Evolution of Operational Theory* (London, UK: Frank Cass, 1997), chapter 6.

<sup>61</sup> Mark Adkin, *The Battle of Goose Green: A Battle Is Fought to Be Won* (Barnsley, UK: Pen & Sword Military, 2019), 267-68.

<sup>62</sup> Middlebrook, *The Argentine Fight for the Falklands*, 351-52.

<sup>63</sup> Adkin, *The Battle of Goose Green*, chapter 5, 339.

<sup>64</sup> Middlebrook, *The Argentine Fight for the Falklands*, 522-24.

<sup>65</sup> Middlebrook, *The Argentine Fight for the Falklands*, 610-13.

probability” will have a greater effect on the outcome of a war.<sup>66</sup>

The British lessons learned regarding military preparedness and joint forced entry power projection during the Falklands War resonate today. Future operations in the Indo-Pacific, particularly Taiwan, are more likely to resemble a scaled-up Falklands War than any campaign during the Global War on Terror.<sup>67</sup> The primary strategic lesson of this historical episode is that the trade-off between addressing different threats is real. It is simply unrealistic to optimize a military for handling all threats across the globe and the competition continuum. High-intensity land wars of yesterday’s NATO Central Front or today’s NATO Eastern Front, expeditionary warfare of the Falklands or Taiwan, and counterinsurgencies in Northern Ireland or the Greater Middle East all have different requirements. War preparation and force development have limits; therefore, focusing on preparing for the primary strategic threat, China in the West Pacific, is imperative. Political leaders should think twice before making commitments elsewhere that the armed forces might struggle to fulfill. Air services like the USAF might have to ditch unfit platforms like the A-10 to focus on high-end air warfare and long-range standoff capabilities. They will have to push for doctrinal innovation against organizational preferences like independent action of branches and offense-mindedness. They must adopt a relevant joint expedition campaign concept and adapt to the West Pacific operational environment. Finally, they must develop a highly readied, strategically concentrated, but operationally dispersed posture and expand the training regimen to cope with the probable attrition of skilled pilots.

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<sup>66</sup> Carl Von Clausewitz, *On War*, trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1989), 88–90.

<sup>67</sup> Stephen Biddle and Ivan Oelrich, “Future Warfare in the Western Pacific: Chinese Anti-access/Area Denial, U.S. AirSea Battle, and Command of the Commons in East Asia”, *International Security* 41, no. 1 (2016): 7–48, [https://doi.org/10.1162/isec\\_a\\_00249](https://doi.org/10.1162/isec_a_00249).

# Cybersecurity as an Instrument of State Power: Evaluating the Republic of China's (ROC's) Information, Communications, and Electronic Force Command (ICEFCOM) Against the People's Republic of China's (PRC's) Escalating Threats

Willis Wang

*Was the Republic of China's (ROC's) decision to form a new cyber defense command due to an increasing number of cyberattacks from external threats, especially from the People's Republic of China (PRC)? This paper examines how increasing Chinese cybersecurity threats targeted at the ROC led to the establishment of ICEFCOM under President Tsai Ing-wen's administration. Specifically, this paper seeks to unravel whether the formation of ICEFCOM under President Tsai Ing-wen's administration was a direct response to various Chinese cybersecurity attacks, including Distributed Denial of Service (DDoS) attacks, SQL Injection, and Advanced Persistent Threat (APT) Groups. By scrutinizing the intricate dynamics of these cyber confrontations and the subsequent defensive measures taken by the ROC, this study endeavors to illuminate the pivotal role of ICEFCOM in bolstering its cybersecurity capacity. The paper concludes, with empirical analysis, that a correlation exists between the ROC's response to the Chinese cyber threats and the strategic formation of the ICEFCOM during President Tsai Ing-wen's tenure.*

**T**he ROC Ministry of Defense (MND) created its Information, Communications, and Electronic Force Command (ICEFCOM) in 2017 to meet growing cybersecurity challenges. ICEFCOM increases the ROC's multi-domain deterrence capacity against PRC cyberattacks. But was its formation specifically driven by the PRC's actions? This paper adopts two approaches to argue that the ROC decision to create the new command was a response to escalating cybersecurity attacks on the nation. This study examines the annual budgets within ICEFCOM's three forces: Army Command Headquarters (HQ), Navy Command HQ, and Air Force Command HQ. The work then identifies whether annual ICEFCOM budget increases within the Army, the Navy, and the Air Force exist. The study elaborates on cyber-war exercises between ICEFCOM and other countries, primarily the U.S. and Japan. Doing so identifies examples of closer collaboration between the ROC's military cyber forces and those of other countries. A significant limitation of this approach is the superficial descriptions of ICEFCOM's activities in open-source literature.

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This research topic merits more attention for several reasons. The PRC is an ongoing threat to the ROC's regime survival, as it has never renounced its use of force to take over the island.<sup>1</sup> According to the ROC's National Center for Cyber Security Technology, China launches twenty to forty million cyber-attacks per month against the ROC.<sup>2</sup> Cyber-war exercises among the ROC and other countries (primarily the U.S.) both strengthen the ROC's military and elevate its international status. Cybersecurity is a current concern to both the U.S. and the ROC. Through the U.S.-led Global Cooperation and Training Framework (GCTF), the U.S., Japan, and the ROC closely cooperate on joint cyber exercises.<sup>3</sup> Finally, better understanding the origins and mission of ICEFCOM could boost Taiwanese public morale.

### **What Factors Led to the Upgrade from the Three IEFCOMs to ICEFCOM?**

This section discusses the increasing cyberattacks from the PRC towards the ROC, which led to the formation of ICEFCOM and elaborates on ICEFCOM's institutional structure. This structure informs military planners and readers about the budget, objectives, and future courses of action for the command.

The PRC's escalating cyberattacks on the ROC drove ROC's creation of ICEFCOM. China's military launched more than 30 million cyber-attacks per month towards the ROC from 2014 to 2020.<sup>4</sup> The Third Department, the home command of these attacks, is likely responsible for strategic level planning, including collecting signals intelligence (SIGINT) and planning in accordance with the PRC's Integrated Network and Electronic Warfare doctrine. Its Second Division presumably is responsible for tactical and operational levels of military actions, including Distributed Denial of Service (DDoS) attacks, SQL Injection, and Advanced Persistent Threat (APT) Groups.<sup>5</sup> Chinese cyber forces targeted the Taiwanese civilian social media accounts on Facebook, Instagram, and Line<sup>6</sup>, and attacked some of the ROC's most critical military institutions, including the MND Main Webpage, the National Defense University, the MND's Recruiting Center of National Armed Forces, the MND Medical Affairs Bureau, and the MND's Political Warfare Bureau. In 2019 July, Chinese hackers stole at least 59,000 Taiwanese government officials' personal information, later selling some of it on the

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<sup>1</sup> Lun-Tian Yew, "Attack on The Republic of China an Option to Stop Independence, Top China General Says," *Reuters*, May 28, 2020, <https://www.reuters.com/article/us-china-The-Republic-of-China-security/attack-on-The-Republic-of-China-an-option-to-stop-independence-top-china-general-says-idUSKBN2350AD>.

<sup>2</sup> Huang Tzu-ti, "The Republic of China Government Websites Hit with Over 20 million Cyber Attacks a Month, Mostly from China," *The Republic of China News*, April 5, 2018, <https://www.The-Republic-of-Chinanews.com.tw/en/news/3398654>.

<sup>3</sup> Pei-ju Teng, "The Republic of China, U.S., and Japan Co-host Workshop on Cybersecurity," *The Republic of China News*, May 28, 2019, <https://www.The-Republic-of-Chinanews.com.tw/en/news/3712340>.

<sup>4</sup> Aaron Tu, Chung Li-hua, and Jake Chung, "Tsai Swears in Cyberwar Commander," *Taipei Times*, June 30, 2017, <http://www.taipeitimes.com/News/The-Republic-of-China/archives/2017/06/30/2003673594>. The article specifically identifies the Second Division of the Third Department of the People's Liberation Army General Staff Department, the People's Liberation Army Advanced Persistent Threat (APT) Unit with Military Unit Cover Designators (MUCDs) 61398, 61486, 61449, and 78020 Units, as the perpetrators of these attacks.

<sup>5</sup> In DDoS attacks, the aggressor intentionally overloads servers to jam a computer. SQL injections revolve around the use of malicious code and target a computer's MS SQL Server database. Phishing is the use of malicious emails that pretend to be a well-credited company to deceive the victims to click and access malicious links.

<sup>6</sup> Line is a popular social media application in Japan, Taiwan, Thailand, and Indonesia. "Why is LINE the most popular social media app in Japan?", *Digital Marketing for Asia*, <https://www.digitalmarketingforasia.com/why-line-is-the-most-popular-social-media-app-in-japan/>.

dark web.<sup>7</sup> These cyberattacks continue to target the ROC's critical infrastructure.

ICEFCOM is designed specifically to equip the ROC with a stronger capacity to deter China's cyberattacks, even though it nominally has a different command structure than similar organizations. In peacetime, ICEFCOM integrates MND's network, electronics, and information communication platforms to ensure effective communication.<sup>8</sup> ICEFCOM also implements maintenance for cyberspace security and electromagnetic reconnaissance.<sup>9</sup> In wartime, ICEFCOM will assist the defense of the ROC's critical information infrastructure to secure the country's physical territory and cyber space. The MND does not label ICEFCOM as a military agency in the same way as the Army Command HQ (ROCA), Navy Command HQ (ROCN), and Air Force Command HQ (ROCAF). According to the MND's 2019 National Defense Report, ICEFCOM is coordinated with Reserve Command and Military Police Command.<sup>10</sup> In peacetime, the latter two specialize in defense and logistical aspects of national security. Therefore, the institutional alignment of this new organization appears partially aimed at not provoking the PRC.

The upgrade from individual service IEFCOMs to an integrated ICEFCOM is significant for integration and coordination purposes. Prior to the integrated ICEFCOM, the Communication Development Office of the General Staff Headquarters (MND-GSH-CDO) and the Information and Electronic Force Commands (IEFCOMs) in ROCA, ROCN, and ROCAF conducted Taiwanese cyber operations. However, the CDO and IEFCOMs in each military agency acted independently. This lack of coordination caused problems for interoperability within the cybersecurity capacity. The transition to a joint ICEFCOM solves the issue of strengthening inter-operability. ICEFCOM Chief of Staff Ting-Shen Li explained that, prior to the integration, the three IEFCOMs acted as "telecom maintenance units" that focus solely on their respective forces' independent headquarters, different telecommunications, various strategy development rooms, and, most problematically, distinct military culture.<sup>11</sup> Chief of Staff Li asserted that, after the integration, the ICEFCOM can work more closely on assigned tasks.

### **Is there a Relationship between Number of Cyber Attacks that the Republic of China Faces and Increases in ICEFCOM's Budget?**

Moving from a qualitative assessment of Taiwanese intentions, this section explores the quantitative aspect of ICEFCOM's origins. There is no question that the number of Chinese cyber-attacks on the ROC are increasing. MND Spokesperson Colonel Yi-Chang Lin asserts that the ROC experienced approximately 204 million cyber-attacks in 2017; 299 million cyber-attacks in 2018; and 300 million cyber-attacks in 2019.<sup>12</sup> ROC Congresswoman Wu Yu-Chin

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<sup>7</sup> Lin-Jun Xie, "59,000 data of officials from the Ministry of Civil Service Stolen", *Liberty Times Net*, July 14, 2019, <https://news.ltn.com.tw/news/politics/breakingnews/2852408>.

<sup>8</sup> Shiang-Shin Su, "Policy Analysis on the Construction of Information, Communications and Electronic Force Command," *Legislative-Yuan ROC*, November 2017, <https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=6590&pid=176016#>.

<sup>9</sup> Shiang-Shin Su, "Policy Analysis."

<sup>10</sup> "The 2019 National Defense Report," *Ministry of National Defense of the ROC*, 2019, <https://www.usThe Republic of Chinadefense.com/tdnswp/wp-content/uploads/2020/02/The Republic of China-National-Defense-Report-2019.pdf>.

<sup>11</sup> Yen-Xin Huan, "For the First Time Ever, MND Discusses its Cyberwarriors," *ITHOME Technology Magazine*, July 7, 2017, <https://www.ithome.com.tw/news/115460>.

<sup>12</sup> Ying-Yu Lin, "Strategic Importance on Information Warfare to the National Defense Operations," *Navy Command ROC*, October 2017, <https://navy.mnd.gov.tw/Files/Paper/8-資訊戰對國軍防衛.pdf>, page 123.

notes that, while the ROC intercepts 99.99% of cyber-attacks from foreign powers, the missing 0.01 percent usually result in serious damages like the previously mentioned leaks.<sup>13</sup>

The figures for ICEFCOM's budget from 2017 to 2021 offer a mixed signal. According to the 2017-2021 Fiscal Year (FY) Budget of the Ministry of National Defense, the ROCA ICEFCOM budget did not show an annual increase as predicted.<sup>14</sup> However, the overall trend for the ROCN and ROCAF ICEFCOM budgets is positive, showing an annual increase (excluding the FY2021 budget).<sup>15</sup> This observation seems to support the argument that the ROC is increasing its budget to defend its primary aggressor. In terms of ROCA, however, numbers show a mixed sign. While FY 2018 shows a decrease of 30 percent compared to FY2017, the year when ICEFCOM was founded, FY 2019 continued to show a decrease of approximately two percent compared to FY2018.<sup>16</sup> After the two decreases in consecutive years, FY 2020 shows an increase of nine percent compared to FY 2019. While the initial cost (FY2017) to create ICEFCOM in ROCA is understandable, a significant decrease of nearly 30% between FY2017 and FY2018 is puzzling. A numerical of these variances is provided below in Table 1.

**Table 1: ICEFCOM's Service Budgets FY 2017-2021 (in 1000s of New Taiwanese Dollars (NTD))<sup>17</sup>**

	FY2017	FY2018	FY2019	FY2020	FY2021 (pending)	Total (w/o FY2021)	Total (incl FY2021)
ROCA	672,667	467,805	458,578	502,971	469,020	2,102,021	2,571,041
ROCN	353,563	355,563	360,251	431,776	369,609	1,503,153	1,872,762
ROCAF	447,664	451,407	463,294	529,194	457,335	1,891,559	2,348,914

What factors explain the 30% decrease in ROCA ICEFCOM's FY 2017 and FY 2018 Budgets? One clue is in budget statements for "Military equipment and facilities": FY2017 shows a cost of 224,927 NTD while FY2018 stipulates an outlay of only 3877 NTD.<sup>18</sup> FY 2017 cryptically

<sup>13</sup> "The 1st Joint Meeting of the Finance, Justice and Legal Affairs Committee," *Legislative Yuan ROC*, October 28, 2020, <https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=43988&pid=203529>.

<sup>14</sup> "The 2017 Statutory Budget Statement of the Ministry of National Defense", [https://www.mnd.gov.tw//NewUpload/201710/106年度國防部所屬單位法定預算書表\\_501068.PDF](https://www.mnd.gov.tw//NewUpload/201710/106年度國防部所屬單位法定預算書表_501068.PDF); "The 2018 Statutory Budget Statement of the Ministry of National Defense", [https://www.mnd.gov.tw//NewUpload/201803/107年度國防部所屬單位法定預算書表\\_115897.PDF](https://www.mnd.gov.tw//NewUpload/201803/107年度國防部所屬單位法定預算書表_115897.PDF); "The 2019 Statutory Budget Statement of the Ministry of National Defense", [https://www.mnd.gov.tw//NewUpload/201904/108年度國防部所屬單位預算書表\\_531330.PDF](https://www.mnd.gov.tw//NewUpload/201904/108年度國防部所屬單位預算書表_531330.PDF); "The 2020 Statutory Budget Statement of the Ministry of National Defense", [https://www.mnd.gov.tw/NewUpload/202004/109年度國防部所屬單位法定預算書表%20\\_572871.pdf](https://www.mnd.gov.tw/NewUpload/202004/109年度國防部所屬單位法定預算書表%20_572871.pdf); "The 2021 Statutory Budget Statement of the Ministry of National Defense", [https://www.mnd.gov.tw//NewUpload/202009/110年度國防部所屬單位預算案書表\\_274102.pdf](https://www.mnd.gov.tw//NewUpload/202009/110年度國防部所屬單位預算案書表_274102.pdf). All documents published by Republic of China Ministry of National Defense, Taipei, The Republic of China.

<sup>15</sup> Statutory Budget Statements.

<sup>16</sup> Statutory Budget Statements.

<sup>17</sup> Created by Author, derived from Statutory Budget Statements.

<sup>18</sup> "2017 Statutory Budget Statement", 148; "2018 Statutory Budget Statement", 156.

refers to this expense as “Installation of network equipment of the Xun’an communication system software to implement the military equipment and facilities.” While FY 2018 also included maintenance of the Xun’an communication system software, the cost is nowhere near that of FY 2017. It is reasonable to assume that ICEFCOM had purchased new (presumably classified) equipment or invested hugely in communication capacity in FY 2017.

Another explanatory factor is the “Maintenance of military equipment and facilities” category, where the FY2017 Report reflects a total of 330,705 NTD while the FY2018 shows a total of 323,012 NTD.<sup>19</sup> The FY2017 figure reflects MND installation and maintenance of communication and information wires, sea and ground cables, optical fiber, radio, and similar backbone infrastructure. FY2018 spending is categorized as maintenance of the Xun'an System, Tactical Area Communication System Software Support, and other equipment. The limited information available shows that ICEFCOM increased its communication capabilities to a certain extent beyond mere maintenance in FY2017.

### **Is There a Relationship Between Numbers of Cyber Attacks That the ROC Faces and Numbers of Joint Cyber-related Exercises that The ROC Conducts with Other Countries?**

This section begins by looking at the number of cooperative cyber events ICEFCOM executes. While the data for this section is limited, as the MND does not provide detailed descriptions of the events, Table 2 provides a summary of those interactions. The MND engages primarily with the U.S. and other European countries in the “Link 16 System International Conference” and “International Multilateral Working Groups Conference.” It is noteworthy that the listed events are solely ROCA and ROCAF; no information on ROCN events is available in open-source literature. It is therefore difficult to draw a correlation between increased Chinese cyber-attacks and increased Taiwanese military cyber cooperation with other countries.

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<sup>19</sup> Please refer to page 105 of the 2017 Statutory Budget Statement and page 106 of the 2018 Statutory Budget Statement.

**Table 2: Service ICEFCOM Events with Other Countries, FY 2017-2020<sup>20</sup>**

Year	Event	Service	Country
FY2017	Project <i>Tactical Area Communication System</i> Software	ROCA	U.S.
	Annual Fair of the Association of Old Crows (AOC)	ROCAF	U.S.
	Information and Electronic Force Operations Conference	ROCAF	U.S.
	<i>Link 16 System</i> International Conference	ROCAF	U.S.
FY2018	A Study Trip to the Georgia Military College	ROCA	Georgia, U.S.
	Information and Electronic Force Operations Conference	ROCAF	U.S.
	<i>Link 16 System</i> International Conference	ROCAF	U.S.
	Black Hat USA	ROCAF	U.S.
FY2019	A Study Trip to the Georgia Military College	ROCA	Georgia, U.S.
	Annual Fair of the Association of Old Crows (AOC)	ROCAF	U.S.
	Information and Electronic Force Operations Conference	ROCAF	U.S.
	International Multilateral Working Groups Conference	ROCAF	European Countries
	Black Hat USA	ROCAF	U.S.
FY2020	A Study Trip to United States Indo-Pacific Command (INDOPACOM)	ROCA	U.S.
	International Multilateral Working Groups Conference	ROCAF	European Countries
	Black Hat USA	ROCAF	U.S.
	Annual Fair of the Association of Old Crows (AOC)	ROCAF	U.S.
	Information and Electronic Force Operations Conference	ROCAF	U.S.

It is possible to make two generalized observations about ICEFCOM cooperation with other countries. Both the ROCA and ROCAF ICEFCOM use military schools in the U.S. to establish closer ties with America. Because the U.S. prohibits Taiwanese personnel from wearing military uniforms in the U.S., ROCA/ROCAF members must interact with U.S. military personnel and soldiers as civilians.<sup>21</sup> ICEFCOM continues to join U.S.-led international civilian cyber events, such as the Association of Old Crows (AOC) and Black Hat, which also further ROC-U.S. cyber cooperation. While no specific data shows the exact activities that happened during these cybersecurity events, the ROC participation in them suggests a shared desire to counter Chinese cyber activity.

Two other events reflect the robust U.S.-ROC cooperation in cyber defense. To celebrate the 40th anniversary of U.S.-ROC relations in 2019, the American Institute in Taiwan (AIT) launched the first five-day U.S.-ROC Cyber Offensive and Defensive Exercise (CODE).<sup>22</sup>

<sup>20</sup> Created by Author, derived from Statutory Budget Statements FY 2017-FY 2020. No additional detail on which European Countries participated is available in source documents.

<sup>21</sup> "107th Congress First Session Committee Print: U.S. Defense Policy Toward The Republic of China: In Need of An Overhaul," U.S. Government Publishing Office, April 2001, <https://www.govinfo.gov/content/pkg/CPRT-107SPRT71658/html/CPRT-107SPRT71658.htm#:~:text=However%2C%20the%20U.S.%20Government%20imposes,train%20in%20the%20United%20ates.>

<sup>22</sup> "The Republic of China and U.S. co-hosting multinational cybersecurity exercise," Department of Information Services of the Executive Yuan, November 6, 2019, <https://english.ey.gov.tw/Page/61BF20C3E89B856/0f357b66-7ed3-4123-98c6->

According to the Vice Premier of the National Information and Communication Security Taskforce (NICST) Convener Chen Chi-Mai, the CODE exercises are similar to the U.S. CYBER STORM biannual cyber exercises conducted by the U.S. Department of Homeland Security. CODE exercises are rare opportunities for ROC to gain hands-on experience in cyber defense from the U.S. Another U.S.-ROC cooperative venue is the July 2020 U.S.-ROC Cybersecurity Forum on 17 July 2020 in Taipei co-hosted by the Ministry of Economic Affairs Department of International Cooperation and the AIT.<sup>23</sup> The experts from both sides discussed emerging cyber threats and technology to defend private firms and governments from these cyber-attacks. This event also shows a robust relationship between the ROC and the U.S.

### **Conclusion: Formation of the ICEFCOM and the Fundamental Differences on Cyberspace Between the PRC and the US-led International Order**

This paper shows that the ROC's decision to increase its spending on ICEFCOM is a response to the escalating cybersecurity attacks caused by China. However, an examination of empirical data pertaining to ICEFCOM's budget in the ROC between 2017 and 2021 demonstrates a varied trajectory that reflects nuanced trends or fluctuations. The overall trend for the ICEFCOM budget in ROCN and ROCAF indicates a positive annual increase, except for the FY2021 budget, while the budget for ICEFCOM in ROCA did not increase annually as predicted. The budget for ROCA shows a mixed signal because the money does not necessarily indicate a positive slope year by year. A relatively high cost in Military Equipment and Facilities category is the most likely explanation for this outlier. The ROC continues to conduct cyber activities with the U.S. and other countries as well.

In the future, as cross-strait tension continues to escalate, ICEFCOM will continue to strengthen its interoperability with the U.S. military. Clear communication, mutual trust, and capacity will continue to be critical elements to defeat authoritarian adversaries. Moving forward, the ROC's collaboration with strategic allies and partners, notably the United States and other like-minded democratic countries, contributes to fostering the US-based international cybersecurity norms. As the digital realm continues to evolve as an instrument of state power, cross-border cooperation and technological prowess and the preservation of individual privacy remain strategically important.

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[b91097b82536](#). The American Institute in the ROC functions as a *de facto* U.S. Embassy, since the U.S. has no formal diplomatic relations with the ROC under the "One China" policy.

<sup>23</sup> "Cybersecurity forum staged by The Republic of China, U.S. in Taipei," *The Republic of China Today*, July 20, 2020, <https://The Republic of Chinatoday.tw/news.php?unit=2,6,10,15,18&post=181583>.

# Non-interference or Neo-colonialism? Assessing the Implications of Chinese Foreign Policy and Influence in East Africa Via the Belt and Road Initiative

Xiang Chi

In March 2021, the US Interim National Security Strategic Guidance identified China as one of the primary threats to American national security.<sup>1</sup> The guidance accused China of combining “its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system.”<sup>2</sup> One of the alleged mechanisms for China’s challenge of international status quo is through its Belt and Road Initiative (BRI), a transnational infrastructure project development strategy. Some experts believe BRI is solely an economic initiative that aims to enhance global economic connectivity and cooperation, while others argue BRI is a geopolitical tool, part of a larger Chinese grand strategy seeking to further China’s influence abroad.<sup>3</sup> Is China’s BRI reflective of a China that is consistent with its traditional foreign policy of “non-interference” or does it portend a neo-colonial power seeking to further its influence abroad and undermining the sovereignty of other states? Does the BRI actually benefit the participating countries or has China utilized debt-trap tactics to seize control of strategic assets from heavily indebted countries?

This paper will examine China’s campaign in East Africa as a case study of the BRI’s influence abroad by exploring specific BRI countries and projects in the region. This empirical inquiry into China’s East African presence will identify trends and patterns of Chinese foreign policy in the region, and potentially explain China’s underlying motivations behind the BRI at large. While China has long engaged in a policy of non-interference with its East African partners, this study argues that China’s current foreign policy—spearheaded by BRI—has transformed into one characterized by soft-power projection with neocolonial undertones. Although China’s engagements abroad fall short of the popular debt-trap diplomacy narrative (defined later in this paper), Beijing nonetheless seeks to elevate itself toward a Sino-centric international order that resembles its former imperial tributary system.

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<sup>1</sup> “Interim National Security Strategic Guidance”, (Washington, DC: The White House, 2021), 8.

<sup>2</sup> “Interim National Security Strategic Guidance”, 8.

<sup>3</sup> Michael Clarke, “The Belt and Road Initiative: China’s New Grand Strategy?”, *Asia Policy* 24 (2017): 71–72.

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## **Background**

### **Historical Context of Chinese Foreign Policy**

Dating back to as early as the Han dynasty (roughly 202 BCE to 220 CE), China once viewed itself as being at the center of a tributary system. In this conception of foreign relations, smaller neighboring states are subordinate to a more powerful country that dominates the region (in this instance, China) in exchange for economic and strategic benefits.<sup>4</sup> China's tributary system lasted until the Qing dynasty (1644 to 1912), when it was swiftly dismantled upon engagement with Western powers.<sup>5</sup> This period marked a turning point in China's international status. Beginning with the First Opium War in 1839, Western colonial powers and Japan exposed the Qing Dynasty's weaknesses.<sup>6</sup> Additional defeats to the West and Japan caused China to experience further subjugation which led to the ceding of territories such as Hong Kong, Taiwan, and parts of Manchuria as well as creating internal turmoil within an already-weak Qing Dynasty.<sup>7</sup> Having been the dominating power in Asia throughout most of history, this low point in China's history became a source of national embarrassment. Coined the "Century of Humiliation," the Chinese historical narratives of subjugation and humiliation by foreign powers are a key driving force of China's modern-day foreign policy.<sup>8</sup> Consequently, China's tributary system remains a symbol of its previous historical status as a great power and Asia's regional hegemon.

### **Defining the Belt and Road Initiative**

The Belt and Road Initiative—also known as "One Belt, One Road" (OBOR)—was officially launched in 2013 under President Xi Jinping.<sup>9</sup> The BRI coincides with President Xi's ascent to power in the 2010s, which has been characterized by a foreign policy shift from passive diplomacy to a more proactive, assertive China. According to the World Bank, the Belt and Road is defined as "a China-led effort to improve connectivity and cooperation on a transcontinental scale."<sup>10</sup> BRI presents itself as an alternative model of development to the traditional international mechanisms offered by Bretton Woods institutions. BRI seeks to create linkages between China and the rest of the world via infrastructure. The BRI network envisions global infrastructure projects, including dams, railways, highways, and ports, comprising six land-based corridors and a "Maritime Silk Road" linking China to the rest of Asia, the Middle East, Europe, and East Africa via a sophisticated port network.<sup>11</sup>

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<sup>4</sup> Chen Shangsheng, "The Chinese Tributary System and Traditional International Order in East Asia", *Journal of Chinese Humanities* 5 (2019): 173.

<sup>5</sup> Shangsheng, "The Chinese Tributary System", 192.

<sup>6</sup> Alison Kaufman, "China's Narratives Regarding National Security Policy", *Testimony before the U.S.-China Economic and Security Review Commission Hearing* (Washington, DC: March 10, 2011), 3, <https://www.uscc.gov/sites/default/files/transcripts/3.10.11HearingTranscript.pdf>

<sup>7</sup> Kaufman, "China's Narratives", 2.

<sup>8</sup> Kaufman, "China's Narratives", 3-5.

<sup>9</sup> David Shambaugh, *China and The World* (Oxford, UK: Oxford University Press, 2000), 17.

<sup>10</sup> Michele Ruta, "Belt and Road Initiative", *The World Bank*, 2019, <https://www.worldbank.org/en/topic/regional-integration/brief/belt-and-road-initiative>.

<sup>11</sup> Shambaugh, *China and the World*, 124-126. For a detailed interactive graphic of the envisioned BRI in Africa, see Judd Devermont, Amelia Cheatham, and Catherine Chiang, "Assessing the Risks of Chinese Investments in Sub-Saharan

China's BRI methodology is opaque and ambiguous. A decade after its creation, much external confusion still exists about the scope and specifics of BRI. There is no official list of BRI projects, an organizational charter, or even a total amount of initiative funding.<sup>12</sup> This ambiguity has not deterred countries from joining, with 145 countries having signed on to the BRI via a Memorandum of Understanding (MoU) with China as of December 2021.<sup>13</sup> The decentralized nature of BRI is perhaps one of its greatest strengths, making it flexible, hard to define, and therefore difficult to counter.<sup>14</sup> BRI began with the goal of investing and developing in infrastructure projects abroad. It has become a catch-all slogan for Beijing's global influence strategy, which now combines multiple aspects of foreign affairs (e.g., culture, education, politics, and technology) into this single initiative.<sup>15</sup> This paper therefore uses the term BRI to reference China's infrastructure network and its foreign influence mechanisms.

### Defining Neo-Colonialism

Although China claims to develop its partnerships based on equality and brotherhood, the aforementioned characteristics of Chinese foreign policy establish ideal conditions for China to exploit its overseas partners. These actions by China—particularly in East Africa—can be interpreted as a modern form of colonialism, or neo-colonialism. The Oxford English Dictionary defines neo-colonialism as “the use of economic, political, cultural, or other pressures to control or influence another country.”<sup>16</sup> Unlike traditional forms of colonialism in the past, neo-colonialism does not require complete military or political control. Former Ghana President Kwame Nkrumah popularized the term “neo-colonialism.” In Nkrumah's book, *Neo-Colonialism, the Last Stage of Imperialism*, he noted that neo-colonialism “operates not only in the economic field, but also in the political, religious, ideological and cultural spheres.”<sup>17</sup> Furthermore, he argues “the essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality, its economic system and thus its political policy is directed from outside.”<sup>18</sup> This paper will examine two case studies of the BRI and the economic influence China has exercised. In a later section, this paper will look at China's growing influence in East Africa outside of its economic statecraft, including political, cultural, and now technological influences.

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African Ports”, *Center for Strategic and International Studies*, June 4, 2019, <https://www.csis.org/analysis/assessing-risks-chinese-investments-sub-saharan-african-ports>.

<sup>12</sup> Wade Shepard, “Why the Ambiguity of China's Belt and Road Initiative is Perhaps its Biggest Strength”, *Forbes*, October 19, 2017, <https://www.forbes.com/sites/wadeshepard/2017/10/19/what-chinas-belt-and-road-initiative-is-really-all-about/>.

<sup>13</sup> Liu Meng, “A list of the countries that have signed Memorandum of Understanding with China on the Belt and Road”, China National Development and Reform Commission, 2021, <http://www.yidaiyilu.gov.cn/xwzx/roll/77298.htm>.

<sup>14</sup> Shepard, “Ambiguity.”

<sup>15</sup> Andreea Brinza, “Redefining the Belt and Road Initiative,” *The Diplomat*, March 20, 2018, <https://thediplomat.com/2018/03/redefining-the-belt-and-road-initiative/>

<sup>16</sup> “neocolonialism, n.”, *The Oxford English Dictionary Online*, 2022, <https://www.oed.com/view/Entry/126019?redirectedFrom=neo-colonialism>.

<sup>17</sup> Kwame Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (New York, NY: International, 1966).

<sup>18</sup> Nkrumah, *Neo-Colonialism*.

## East Africa and Chinese Engagement

For the purposes of this study, East Africa encompasses ten countries, defined by the six countries of the East African Community (EAC) (Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda) and four additional countries in the Horn of Africa (Djibouti, Eritrea, Ethiopia, and Somalia). Each of these countries are officially part of the BRI via a Memorandum of Understanding.<sup>19</sup> Geographically, East Africa is situated just south of the Red Sea and the Gulf of Aden, and west of the Indian Ocean. The Red Sea connects waterways from the Indian Ocean to the Mediterranean to the Pacific with added significance due to its proximity to the oil-rich Arabian Peninsula. Roughly \$700 billion worth of annual trade, including millions of barrels of oil daily, transits through the Red Sea's strategic waterways and chokepoints.<sup>20</sup>

East Africa is currently considered part of China's "greater strategic periphery," which refers to the surrounding geographic belt regarded as strategically important to Beijing.<sup>21</sup> Three characteristics typify China's relations with developing countries such as those in East Africa: asymmetry, comprehensiveness, and an interlocking structure.<sup>22</sup> Asymmetry refers to Beijing's "disproportionate agenda-setting power," exercised bilaterally and through regional institutions like the Forum on China-Africa Cooperation (FOCAC).<sup>23</sup> The leaders of 51 African countries attended the 2018 FOCAC in Beijing, whereas only about half as many of the same countries attended the 73rd Session of the U.N. General Assembly that same year.<sup>24</sup> At the 2018 FOCAC, President Xi pledged \$60 billion<sup>25</sup> in financing to the region, with \$15 billion in grants and interest-free loans.<sup>26</sup> Comprehensiveness refers to Beijing's ability to combine its wealth of resources, such as the loan of funds from the China Development Bank and other policy banks, to create maximum leverage over other countries.<sup>27</sup> As illustrated in Figure 1, below, 23 percent of the bilateral external debt in the combined East African economies belonged to China in 2010. By 2019, China owned an astounding 54 percent of that debt across the combined East African economies.<sup>28</sup> Interlocking structure refers to China's extensive network of state partnerships on the bilateral, regional, and international levels.<sup>29</sup> China has emphasized that its relations with developing countries are based on bilateral relationships.

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<sup>19</sup> Meng, "A list of the countries."

<sup>20</sup> USIP Senior Study Group, "China's Impact on Conflict Dynamics in the Red Sea Arena" (Washington, DC: U.S. Institute of Peace, 2020), 2-3, <https://www.usip.org/publications/2020/04/chinas-impact-conflict-dynamics-red-sea-arena>.

<sup>21</sup> Shambaugh, *China and the World*, 293.

<sup>22</sup> Shambaugh, *China and the World*, 294.

<sup>23</sup> Shambaugh, *China and the World*, 294-295.

<sup>24</sup> Shambaugh, *China and the World*, 296.

<sup>25</sup> All references to dollars are United States Dollars unless explicitly noted otherwise.

<sup>26</sup> Jevans Nyabiage, "China in Africa: No More Hard Cash as Debt-Hit Nations Battle Covid-19 Disruptions", *South China Morning Post*, December 12, 2021, <https://www.scmp.com/news/china/diplomacy/article/3159288/china-africa-no-more-hard-cash-debt-hit-nations-battle-covid>.

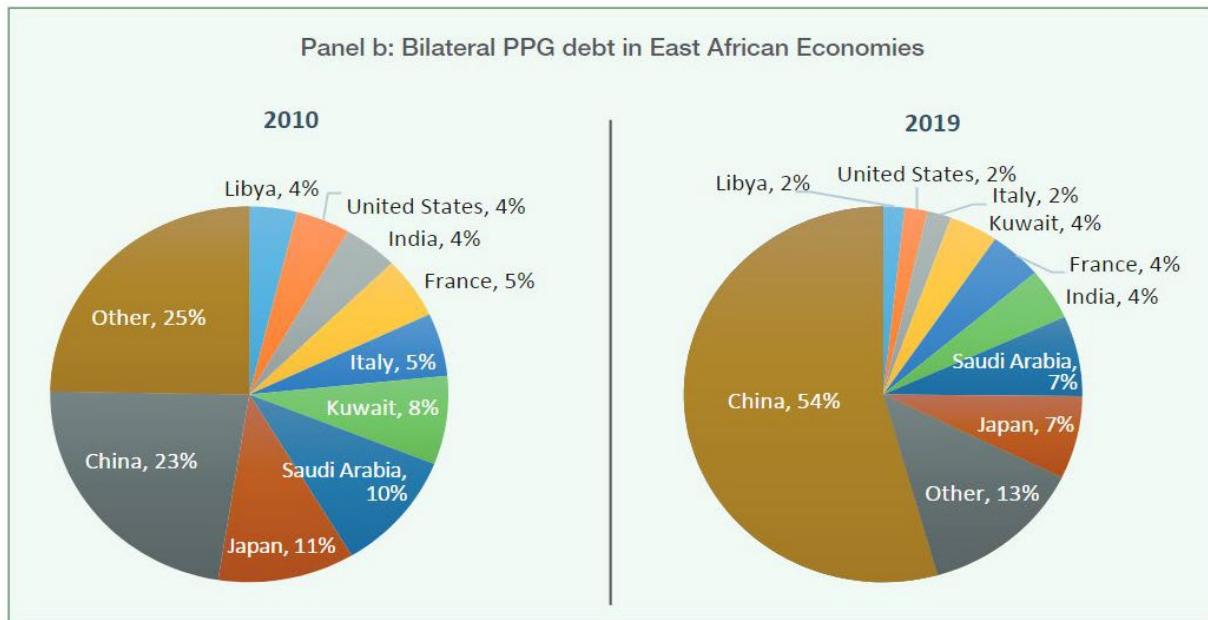
<sup>27</sup> Shambaugh, *China and the World*, 297-298.

<sup>28</sup> "East Africa Economic Outlook 2021," (Abidjan, CDI: Africa Development Bank Group, 2021), 53, <https://www.afdb.org/en/documents/east-africa-economic-outlook-2021>.

<sup>29</sup> Shambaugh, *China and the World*, 295-296.

China currently maintains bilateral, strategic partnerships with sixty-seven states.<sup>30</sup>

**Figure 1: Bilateral Debt Owed by East African Economies<sup>31</sup>**



Source: Dafe, Essers, and Volz 2018; World Bank 2021a.

Note: Data do not include Eritrea, Seychelles, and South Sudan. Data for Sudan do not include penalty interest due on arrears.

## Case Studies

Two case studies are illustrative of BRI’s function in East Africa: Djibouti and Ethiopia. These case studies allow us to better understand China’s economic influence, with a specific emphasis on China’s investment in development projects in the region.

### Djibouti

Between 2012 and 2020, China has spent an estimated \$14 billion on Djiboutian infrastructure investments, including port facilities, railways, pipelines, and airports.<sup>32</sup> Djibouti’s debt to China is currently over 70 percent of its gross domestic product (GDP).<sup>33</sup> A 2021 report from AidData, a research lab at the College of William and Mary, identified and tracked 96 different Chinese-funded development projects in Djibouti from 2000-2017.<sup>34</sup> The most notable project is the \$590 million military support base. In 2017, China established its first overseas naval base in Djibouti only six miles northwest of the US military’s only enduring African base: Camp

<sup>30</sup> Shambaugh, *China and the World*, 295.

<sup>31</sup> “East Africa Economic Outlook 2021”, ADBG, Charts, 37.

<sup>32</sup> Sebastian Seibt, “Djibouti-China Marriage ‘Slowly Unravelling’ as Investment Project Disappoints”, *France24*, September 4, 2021, <https://www.france24.com/en/africa/20210409-djibouti-china-marriage-slowly-unravelling-as-investment-project-disappoints>.

<sup>33</sup> Mordechai Chaziza, “China Consolidates Its Commercial Foothold in Djibouti”, *The Diplomat*, January 26, 2021, <https://thediplomat.com/2021/01/china-consolidates-its-commercial-foothold-in-djibouti/>.

<sup>34</sup> Samantha Custer et al., “Tracking Chinese Development Finance: An Application of AidData’s TUFF 2.0 Methodology”, *AIDDATA*, September 29, 2021, <https://www.aiddata.org/publications/aiddata-tuff-methodology-version-2-0>.

Lemonnier.<sup>35</sup> China's new base overlooks one of the most strategically important maritime chokepoints in the world: The Gulf of Aden, and specifically, the Bab-el-Mandeb Strait. An estimated 12 to 20 percent of the world's trade passes through this waterway each year.<sup>36</sup> For China, there is a major interest in securing the area's waterways to ensure a continuous flow of trade, particularly oil and natural gas.<sup>37</sup> For decades, Beijing's policy of non-interference was a central aspect of Chinese foreign policy. However, its expanding presence in Djibouti—as made evident by the building of an overseas military base on sovereign territory—is in direct contradiction to its historical policy.

The relatively small number of People's Liberation Army Navy (PLAN) (approximately 2,000 troops) currently stationed in Djibouti represents the gradual buildup of China's military presence in Djibouti.<sup>38</sup> In 2021, China completed the construction of a 1,120-foot pier at its PLAN base in Djibouti which could accommodate a Chinese aircraft carrier or "four of China's nuclear-powered attack submarines if required."<sup>39</sup> On March 28, 2022, a PLA Navy Type-903A *Luomahu* replenishment ship was spotted at the PLAN base in Djibouti, the first Chinese warship ever docked there.<sup>40</sup> This news comes amid recent US intelligence reports of China looking into building its second military base in Africa, this time along the Atlantic Coast of Equatorial Guinea.<sup>41</sup> China's foothold in Djibouti—and soon potentially in Equatorial Guinea—raised immediate US concerns in regards to "operational safety and counterintelligence issues."<sup>42</sup> In 2019, US intelligence officials accused China of "irresponsible actions" in Djibouti such as restricting airspace, "attempting to gain access into Camp Lemonnier," and flying drones that interfered with US flight operations nearby.<sup>43</sup> A Chinese military presence in the East African region presents long-term international security concerns over China's potential ability to control access to sea lines of communication (SLOCs) and maritime chokepoints, particularly in times of conflict.<sup>44</sup>

The PLAN base in Djibouti is also adjacent to the Doraleh Port, a Chinese-backed multipurpose berthing. The China Merchants Group has a 23.5% stake in the Doraleh Port and exclusive

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<sup>35</sup> Zach Vertin, "Great Power Rivalry in the Red Sea", *Brookings Institution*, June 2020, <https://www.brookings.edu/research/great-power-rivalry-in-the-red-sea/>.

<sup>36</sup> Monica Wang, "China's Strategy in Djibouti: Mixing Commercial and Military Interests", *Council on Foreign Relations*, April 13, 2018, <https://www.cfr.org/blog/chinas-strategy-djibouti-mixing-commercial-and-military-interests>.

<sup>37</sup> USIP Senior Study Group, "China's Impact", 17.

<sup>38</sup> USIP Senior Study Group, "China's Impact", 6.

<sup>39</sup> Sam LaGrone, "AFRICOM: Chinese Naval Base in Africa Set to Support Aircraft Carriers", *U.S. Naval Institute*, April 20, 2021, <https://news.usni.org/2021/04/20/africom-chinese-naval-base-in-africa-set-to-support-aircraft-carriers>.

<sup>40</sup> Meera Suresh, "PLA Warship Seen for The First Time in China's 'Medieval Fortress' Base in Djibouti", *International Business Times*, March 28 2022, <https://www.ibtimes.com.au/pla-warship-seen-first-time-chinas-medieval-fortress-base-djibouti-1804446>.

<sup>41</sup> Michael Phillips, "China Seeks First Military Base on Africa's Atlantic Coast, U.S. Intelligence Finds", *The Wall Street Journal*, December 5, 2021, <https://www.wsj.com/articles/china-seeks-first-military-base-on-africas-atlantic-coast-u-s-intelligence-finds-11638726327>.

<sup>42</sup> USIP Senior Study Group, "China's Impact", 18.

<sup>43</sup> USIP Senior Study Group, "China's Impact", 27.

<sup>44</sup> USIP Senior Study Group, "China's Impact", 6.

rights to one of the port's berths.<sup>45</sup> The proximity between Doraleh and the naval base is not a coincidence: it is an indicator of the integrative nature of Chinese commercial and military interests in its geopolitical strategy. For now, China's presence in Djibouti is still primarily economic in nature, as both China and the US have a shared interest (at least in the context of the Red Sea) in promoting a "free flow of trade and resources, and the freedom of navigation of naval vessels."<sup>46</sup>

Djibouti's heavy debt burden to China, coupled with a growing Chinese military presence in the country, is a prime example of how Beijing has shifted away from its traditional non-interference policy. In accordance with Nkrumah's definition of neocolonialism, China has used economic and political pressures to increase control over Djibouti through overseas military base and partial ownership of Djibouti's infrastructure facilities. China leverages those ties as a source of bargaining power over other states to achieve military objectives abroad without ever having to compel them via military force. This type of Chinese engagement threatens to erode Djibouti's national sovereignty, particularly in areas of significant strategic and economic importance.

### Ethiopia

China and Ethiopia established official diplomatic ties over a half-century ago in 1970. In 2017, China upgraded their relationship to a Comprehensive Strategic Cooperative Partnership, the highest tier relationship in China's foreign partnership hierarchy.<sup>47</sup> Ethiopia is one of the greatest beneficiaries of Chinese investment, hosting 218 identified Chinese-funded projects ranging from industrial parks to air, road, and rail infrastructure between 2000-2017.<sup>48</sup> The most notable is Addis Adaba-Djibouti Railway, a modern standard-gauge railway originating in Ethiopia's capital. This railway provides land-locked Ethiopia with access to maritime trade access to the Gulf of Aden and the Red Sea by way of the Doraleh Port.<sup>49</sup> This railway is the backbone of Djibouti's new railway system and according to the Ethiopian Embassy in China, the "lifeline for Ethiopia's economic growth."<sup>50</sup>

BRI projects are a heavy financial burden for Ethiopia. Ethiopia is second among all African countries in total estimated debt owed to China (\$13.5 billion in 2018.)<sup>51</sup> This debt burden creates an overreliance on China that makes Ethiopia significantly more susceptible to financial risks; however, this is not to be confused with debt-trap tactics. The concept of "debt-trap diplomacy" – popularized by Brahma Chellaney – is a commonly cited but frequently

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<sup>45</sup> Lauren Blanchard and Sarah Collins, "China's Engagement in Djibouti", *Congressional Research Service In Focus*, September 4, 2019, 1, <https://crsreports.congress.gov/product/pdf/IF/IF11304>.

<sup>46</sup> Blanchard and Collins, "China's Engagement", 29.

<sup>47</sup> Linda Calabrese et al., "The Belt and Road and Chinese enterprises in Ethiopia: risks and opportunities for development" (London, UK: Overseas Development Institute, 2021), 12, <https://odi.org/en/publications/the-belt-and-road-and-chinese-enterprises-in-ethiopia-risks-and-opportunities-for-development/>.

<sup>48</sup> Custer et al., "Tracking Chinese Development Finance"; USIP Senior Study Group, "China's Impact", 24.

<sup>49</sup> Istvan Tarrotsy, "China's Belt and Road Initiative in Africa, Debt Risk and New Dependency: The Case of Ethiopia", *University of Florida African Studies Quarterly* 19, no. 3-4 (2020): 14-15.

<sup>50</sup> USIP Senior Study Group, "China's Impact", 24.

<sup>51</sup> USIP Senior Study Group, "China's Impact", 17.

misunderstood concern of BRI which has been debunked by recent literature.<sup>52</sup> There is currently no evidence pointing to China employing debt-trap tactics to physically seize Ethiopian assets as repayment for a debt default. Research has in fact shown some signs of the opposite. In 2018, Beijing forgave all of Ethiopia's interest-free loans (an admittedly small fraction of Ethiopian external debt to China) originally due at the end of the year.<sup>53</sup> At the same time, the loan repayment schedule for Ethiopia's flagship Addis Ababa-Djibouti Railway was extended by twenty years, which will lead to roughly \$1 billion in losses for the involved Chinese state-owned enterprises.<sup>54</sup> The debt-trap diplomacy narrative is further dispelled by Deborah Brautigam, who asserts "in Africa, we have not seen any examples where we would say the Chinese deliberately entangled another country in debt, and then used that debt to extract unfair or strategic advantages of some kind in Africa, including asset seizures."<sup>55</sup>

While China has not yet engaged in debt-trap measures, the current East African debt situation should still be acknowledged and closely tracked as "there are valid reasons for heightened concern about Chinese engagement, with potentially neocolonial implications."<sup>56</sup> China's economic investments in East Africa place these countries in a precarious situation. As East African host countries become saddled with unsustainable levels of debt disproportionately owned by China, they become exposed to and are at the mercy of the Chinese. China could leverage a host country's debt obligations for internal influence to achieve its own strategic goals without ever physically infringing on their sovereignty.

### **Additional Sources of Chinese Influence in East Africa**

Under the traditional neo-realist view of international relations, geopolitics is rooted in material resources and hard power.<sup>57</sup> Hard power refers to a country's ability to influence the actions and behaviors of other actors through its military and/or economic strength.<sup>58</sup> With globalization, this paradigm has shifted towards "the postmodern world of images and influence."<sup>59</sup> Joseph Nye defines soft power as "getting others to want what you want, and producing outcomes through persuasion and attraction rather than coercion or payment."<sup>60</sup> Along with economic power, soft power makes neo-colonial behaviors possible. In Beijing's case, it can leverage its close economic ties into other mediums of influence (e.g., cultural, political, or technological) to enhance China's reputation and achieve its goals abroad. Ultimately, China's vast economic reach, combined with its soft power influences, has created

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<sup>52</sup> Brahma Chellaney, "China's Debt-Trap Diplomacy", *Project Syndicate*, January 23, 2017, <https://www.project-syndicate.org/commentary/china-one-belt-one-road-loans-debt-by-brahma-chellaney-2017-01>.

<sup>53</sup> USIP Senior Study Group, "China's Impact", 24-25.

<sup>54</sup> USIP Senior Study Group, "China's Impact", 25.

<sup>55</sup> Deborah Brautigam, "A Critical Look at Chinese 'Debt-Trap Diplomacy': The Rise of a Meme", *Area Development and Policy* 5, no. 1 (2019).

<sup>56</sup> Tarrotsy, "China's Belt and Road Initiative", 10.

<sup>57</sup> Julie Miao, "Understanding the Soft Power of China's Belt and Road Initiative through a Discourse Analysis in Europe", *Regional Studies, Regional Science* 8, no. 1 (2021): 163.

<sup>58</sup> Miao, "Understanding the Soft Power of China's Belt and Road Initiative", 163-164.

<sup>59</sup> Miao, "Understanding the Soft Power of China's Belt and Road Initiative", 163.

<sup>60</sup> Scott Kastner and Margaret Pearson, "Exploring the Parameters of China's Economic Influence", *Studies in Comparative International Development* 56 (2021): 6.

a Chinese neo-colonial system. The BRI serves as a backdrop for China's neo-colonial efforts to penetrate the societies of BRI host nations.

### Politics

Political training to promote the Chinese Communist Party (CCP)'s ideology and political system abroad is a prominent feature of Beijing's neo-colonial approach.<sup>61</sup> China has provided the Ethiopian People's Revolutionary Democratic Front with political training on matters such as political development, capacity building, propaganda systems, and cadre education.<sup>62</sup> In July 2018, China helped construct the Julius Nyerere Leadership School in Tanzania, which will provide political outreach and training to various party cadres in East Africa.<sup>63</sup> That same year, China hosted a multilateral meeting in Tanzania which included attendance from forty African political parties from over thirty-six countries.<sup>64</sup> Beijing's political outreach is not necessarily focused on implementing China's political model across East Africa, but rather seeks to improve African perceptions of China and ultimately legitimize CCP rule.<sup>65</sup> In doing so, China is establishing a political apparatus to exert influence in the region.

China's robust political influence in East Africa is best illustrated at the international level, where it leverages its regional influence to garner support on key concerns such as the Xinjiang crisis and China's maritime claims to the South China Sea (see Table 1, below). Nearly all East African countries exhibited official support for China on these two controversial issues. Official support is assessed through a combination of joint U.N. statements, embassy statements, media statements, and press releases. In the case of Xinjiang, the parameters for Chinese support were based on signatories of joint statements to the U.N. Human Rights Council (from 2019-2021) written in defense of China's policies. The most notable of these was the 2020 joint statement led by Cuba (backed by 45 countries including Burundi, Eritrea, South Sudan, Tanzania, and Uganda) stating:

We commend that the Chinese government pursues the 'people-centered' philosophy...We note with appreciation that China has undertaken a series of measures in response to threats of terrorism and extremism in accordance with the law to safeguard the human rights of all ethnic groups in Xinjiang...it is an imperative to respect the basic facts rather than making unfounded allegations against China and interfere out of political motivations and bias.<sup>66</sup>

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<sup>61</sup> Shambaugh, *China and the World*, 302.

<sup>62</sup> U.S. House Committee on Foreign Affairs, "China in Africa: The New Colonialism", Hearing Before the Subcommittee On Africa, Global Health, Global Human Rights, And International Organizations, March 7, 2018, <https://www.govinfo.gov/content/pkg/CHRG-115hhrg28876/pdf/CHRG-115hhrg28876.pdf>.

<sup>63</sup> Shambaugh, *China and the World*, 302-303.

<sup>64</sup> Shambaugh, *China and the World*, 302.

<sup>65</sup> Shambaugh, *China and the World*, 302.

<sup>66</sup> Catherine Putz, "2020 Edition: Which Countries Are For or Against China's Xinjiang Policies?", *The Diplomat*, October 9, 2020, <https://thediplomat.com/2020/10/2020-edition-which-countries-are-for-or-against-chinas-xinjiang-policies/>.

**Table 1: East African Countries' Positions on Key Chinese International Issues<sup>67</sup>**

Country	Position on Xinjiang?	Position on South China Sea?
<b>Burundi</b>	Supports China	Supports China (5/18/2016)
<b>Djibouti</b>	Supports China	Supports China (5/12/2016)
<b>Eritrea</b>	Supports China	Supports China (3/30/2016)
<b>Ethiopia</b>	Supports China	Supports China (6/15/2016)
<b>Kenya</b>	Data Unavailable	Supports China (6/15/2016)
<b>Rwanda</b>	Data Unavailable	Data Unavailable
<b>Somalia</b>	Supports China	Supports China (5/12/2016)
<b>South Sudan</b>	Supports China	Data Unavailable
<b>Tanzania</b>	Supports China	Supports China (5/31/2016)
<b>Uganda</b>	Supports China	Supports China (5/30/2016)

There were similar joint statements defending China's actions in Xinjiang in 2019 and 2021, which were backed by many East African countries.<sup>68</sup> These statements were written in direct response to a Western-led U.N. statement—backed by 39 countries—which called on China to “respect human rights, particularly the rights of persons belonging to religious and ethnic minorities, especially in Xinjiang and Tibet.”<sup>69</sup> In the case of the South China Sea, the parameters for Chinese support were based on official support of China in direct response to the arbitral tribunal ruling in 2016 at the Hague. Researchers at the Chongyang Institute for Financial Studies collected data on countries that support the Chinese position on the South China Sea.<sup>70</sup> They identified 70 countries—to include eight East African countries—supporting this position.<sup>71</sup> For instance, in June 2016, the Kenyan Ministry of Foreign Affairs issued a statement stating its support for China's “right of optional exception” under UNCLOS Article 298, which allows China to reject the ruling on the grounds of sovereignty.<sup>72</sup> The table

<sup>67</sup> This table was inspired by the table “Red Sea States' Positions on Key Issues for China” from the 2020 USIP report. The author created this table illustrate the same topic for the East African countries after being unable to find a comparable table. The information on Xinjiang positions is from joint statements to the U.N. Human Rights Council written in defense of China's policies. The full list can be accessed at: <https://thediplomat.com/2020/10/2020-edition-which-countries-are-for-or-against-chinas-xinjiang-policies/> (2019 and 2020), <https://www.jiia.or.jp/en/column/2021/09/china-fy2021-01.html> (2021). The information on the South China Sea positions is from the international studies department of Chongyang Institute for Financial Studies following the arbitral tribunal ruling at the Hague, which rejected Beijing's maritime claims in the South China Sea. The article tracked down and identified a list of countries supporting China based on publicly available documents and media. The full list can be accessed at: <https://thediplomat.com/2016/07/who-supports-china-in-the-south-china-sea-and-why/>.

<sup>68</sup> Putz, “2020 Edition: Which Countries Are For or Against China's Xinjiang Policies?”

<sup>69</sup> Putz, “2020 Edition: Which Countries Are For or Against China's Xinjiang Policies?”

<sup>70</sup> Wang Wen and Chen Xiaochen, “Who Supports China in the South China Sea and Why”, *The Diplomat*, July 27, 2016, <https://thediplomat.com/2016/07/who-supports-china-in-the-south-china-sea-and-why/>.

<sup>71</sup> Wen and Xiaochen, “Who Supports China.”

<sup>72</sup> Wen and Xiaochen, “Who Supports China.”

above shows the impact of Chinese neo-colonialism in East Africa, demonstrating China's ability to leverage its influence over other states for political clout. As major beneficiaries of BRI, East African countries likely will continue to lend their voices in support of China on the international stage, particularly on the most sensitive issues on Beijing's agenda.

### Security

China has recently demonstrated an increasing commitment to security cooperation in East Africa. Beginning in 2008, the PLAN has been providing anti-piracy escorts through the Gulf of Aden off the waters of Somalia. In 2015, China committed \$100 million in military aid to the African Union, and later in 2018, Beijing hosted the first China-Africa Defense and Security Forum.<sup>73</sup> China is one of the primary contributors to UN peacekeeping efforts in the region, with over 1,000 troops deployed in the midst of the South Sudanese Civil War as of 2020.<sup>74</sup> Most recently in January 2022, Beijing announced a special envoy appointment to the Horn of Africa as a broker of peace in conflict-torn areas like Ethiopia, Eritrea, and Sudan.<sup>75</sup> Ultimately, China's heavy political presence in East Africa shows China's interest in protecting its investments in the region and the depth and breadth of China's influence.

### Culture and Society

Cultural hegemony is another aspect of neo-colonialism. According to President Xi, "the Chinese people's unique history endows their nation with great natural advantages allowing it to become a global cultural power."<sup>76</sup> Winning the hearts and minds of the East African public is a key aspect of China's external outreach. By strengthening cultural ties between China and the countries of East Africa, China is able to establish the cultural sphere of influence in the region that Nkrumah argues is a critical component to neo-colonialism. As of 2019, there were 525 Confucius Institutes around the world, with seven of the ten countries in East Africa – Burundi, Eritrea, Ethiopia, Kenya, Rwanda, Tanzania, and Uganda – having at least one.<sup>77</sup> Confucius Institutes, overseen by China's Ministry of Education, were created with the explicit goal of promoting Chinese language and culture abroad; however, they have been controversial in the West due to the disputed credibility and objectivity of these Institutes.<sup>78</sup> In developing countries and regions like East Africa, such concerns have not gained as much traction, in part due to scarce educational funding elsewhere.<sup>79</sup>

For example, almost two-thirds (62 percent) of respondents in the survey responded "very positively" or "somewhat positively" when asked about Chinese economic and political influence in their respective countries. Only 14 percent of respondents considered external

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<sup>73</sup> Shambaugh, *China and the World*, 303.

<sup>74</sup> Richard Gowan, "China's Pragmatic Approach to Peacekeeping", *Brookings Institute*, September 14, 2020, <https://www.brookings.edu/articles/chinas-pragmatic-approach-to-un-peacekeeping/>.

<sup>75</sup> Duncan Miriri, "China Plans Peace Envoy for Conflict-Riven Horn of Africa", *Reuters*, January 6, 2022, <https://www.reuters.com/world/china/china-appoint-special-envoy-horn-africa-2022-01-06/>.

<sup>76</sup> Shambaugh, *China and the World*, 302.

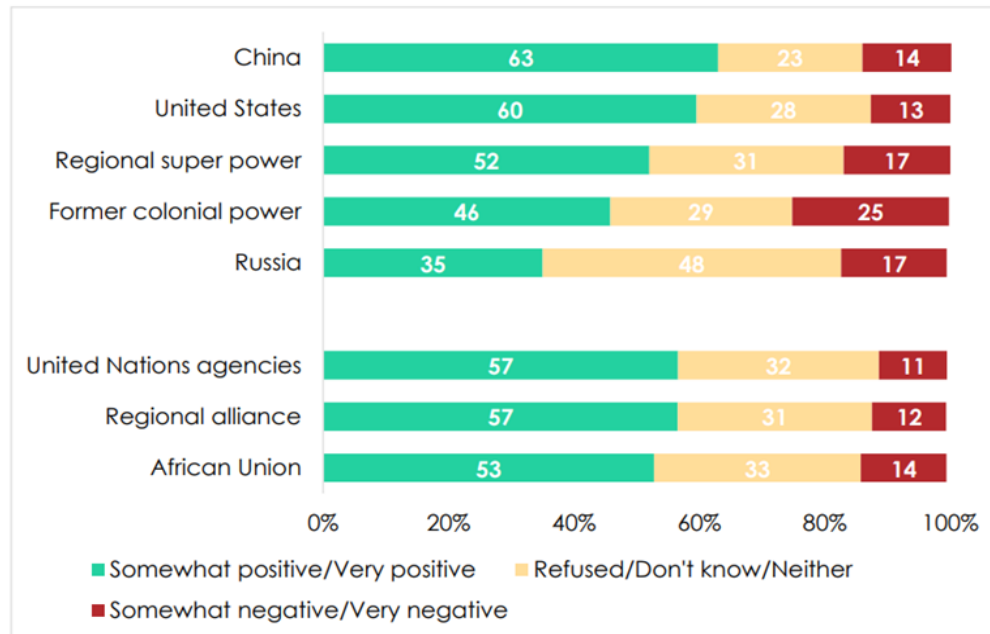
<sup>77</sup> Shambaugh, *China and the World*, 302; "Confucius Institutes Around the World", *Dig Mandarin*, <https://www.digmandarin.com/confucius-institutes-around-the-world.html>.

<sup>78</sup> Shambaugh, *China and the World*, 302.

<sup>79</sup> Shambaugh, *China and the World*, 302.

Chinese influence in their country as “negative.”<sup>80</sup> In comparison, the percentage of respondents who view United Nations or African Union influences as “somewhat positive” or “very positive” is lower at 57 and 53 percent, respectively.<sup>81</sup> The numbers mentioned above are generally consistent with a similar Afrobarometer survey conducted in 2014/2015.

**Figure 2: Positive or Negative Views of External Influences**<sup>82</sup>



## Technology

The BRI enhances China’s public reputation in East Africa and establishes a rapport with the political elites of the region. One of the more recent ways China has done this is through technology. The technology branch of the BRI, also known as the “Digital Silk Road (DSR),” provides BRI host nations with China’s most cutting-edge technology such as telecommunications, artificial intelligence, surveillance systems, and smart cities.<sup>83</sup>

At the 2017 National Party Congress, President Xi publicly offered the Chinese Internet governance model as “a new option for other countries and nations that want to speed up their development while preserving their independence.”<sup>84</sup> Xi’s statement aligns in theory with China’s traditional policy of non-interference, but a more careful look at China’s DSR makes it evident this is not the case. The increasing amount of the world’s global technology being is matched with growing concerns Chinese intelligence agencies illicitly accessing encrypted data

<sup>80</sup> Sanny and Selormey, “Africans Welcome China’s Influence”, 8-9.

<sup>81</sup> Sanny and Selormey, “Africans Welcome China’s Influence”, 8.

<sup>82</sup> Sanny and Selormey, “Africans Welcome China’s Influence”, Figure 6, 8. Respondents were asked: “In general, do you think the economic and political influence of each of the following countries/organizations on [your host country] is mostly positive, mostly negative, or haven’t you heard enough to say?”

<sup>83</sup> Steven Feldstein, “Testimony before the Commission Hearing on China’s Strategic Aims in Africa”, *U.S.-China Economic and Security Review Commission*, May 8, 2020, 2, [https://www.uscc.gov/sites/default/files/Feldstein\\_Testimony.pdf](https://www.uscc.gov/sites/default/files/Feldstein_Testimony.pdf).

<sup>84</sup> Mai Truong, Jessica White, and Allie Funk, “Freedom on the Net 2018: The Rise of Digital Authoritarianism”, *Freedom House*, October 2018, 7, [https://freedomhouse.org/sites/default/files/FOTN\\_2018\\_Final.pdf](https://freedomhouse.org/sites/default/files/FOTN_2018_Final.pdf).

through state-mandated backdoors.<sup>85</sup> In 2018, China was accused of digitally stealing surveillance footage (from Chinese-made Huawei cameras) at the African Union headquarters in Ethiopia.<sup>86</sup> Incidents like these have made Western countries wary of Chinese technology and sparked US-led efforts to ban the use of products from Chinese companies like Huawei and ZTE.<sup>87</sup> Other countries, particularly in Africa, have continued to embrace Chinese technology. At least 47 out of the 54 African countries have had “digital engagements” with China in some form, including “telecom network cables, digital partnerships with universities, surveillance, cloud computing data centers, manufacturing facilities, or R&D research labs.”<sup>88</sup> At the center of China’s technological influence is its exportation of advanced surveillance technology, dubbed “digital authoritarianism” by Freedom House.

In 2021, China was ranked by Freedom House as the most restrictive Internet environment in the world for the seventh straight year.<sup>89</sup> China’s model of Internet governance, reliant on high-tech surveillance, censorship, and online manipulation, is an increasingly popular model for authoritarian regimes around the world. Through the DSR, China makes its model available by actively exporting the required technologies (e.g., mass surveillance networks, advanced social media monitoring, and safe-city projects) to East Africa and the world.<sup>90</sup>

China recently led a “charm offensive against Internet freedom,” holding seminars for high-level government and media officials around the world in forums (like the 2017 World Internet Conference) that seek to set new technical standards and norms for the Internet.<sup>91</sup> In 2018, China held two-week-long “Seminar[s] on Cyberspace Management for Officials of Countries along the Belt and Road Initiative”, which discussed “big data public-opinion management systems, tools for real-time monitoring of negative public opinion and a positive energy public-opinion guidance system.”<sup>92</sup> Representatives from three East African countries—Ethiopia, Kenya, and Rwanda—attended these seminars.<sup>93</sup>

## **Conclusion**

### **US Response and US-China Great Power Competition**

China has mounted a major challenge to the US in East Africa and the developing world at large. While the BRI does not necessarily pose an imminent threat to the United States, the US has a vested interest in preventing China from continuing to carve out spheres of influence in this region in pursuit of a Sino-centric world order. Despite the strides China has made in the

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<sup>85</sup> Truong, White, and Funk, “Freedom on the Net 2018”, 10.

<sup>86</sup> Truong, White, and Funk, “Freedom on the Net 2018”, 10.

<sup>87</sup> Truong, White, and Funk, “Freedom on the Net 2018”, 10.

<sup>88</sup> Feldstein, “China’s Strategic Aims in Africa”, 1.

<sup>89</sup> Grant Baker et al., “Freedom on The Net 2021: The Drive to Control Big Tech”, *Freedom House*, 2021, 1, [https://freedomhouse.org/sites/default/files/2021-09/FOTN\\_2021\\_Complete\\_Booklet\\_09162021\\_FINAL\\_UPDATED.pdf](https://freedomhouse.org/sites/default/files/2021-09/FOTN_2021_Complete_Booklet_09162021_FINAL_UPDATED.pdf)

<sup>90</sup> Feldstein, “China’s Strategic Aims in Africa”, 1-2.

<sup>91</sup> Truong, White, and Funk, “Freedom on the Net 2018”, 8.

<sup>92</sup> Truong, White, and Funk, “Freedom on the Net 2018”, 8.

<sup>93</sup> Truong, White, and Funk, “Freedom on the Net 2018”, 9.

region, the United States model remains the preferred development model in the majority of Africa.<sup>94</sup> An Afrobarometer report indicates respondents who preferred the Chinese development model still overwhelmingly support democratic norms and institutions. For instance, those who preferred the Chinese model still “reject one-party rule,” “support democracy,” and “support presidential term limits” at rates of 79, 70, and 78 percent.<sup>95</sup>

Meanwhile, the US recently established multilateral development initiatives of its own in response to the BRI. In 2018 Congress passed the Better Utilization of Investments Leading to Development (BUILD) Act, which established the US International Development Finance Corporation (DFC). One of the DFC’s missions is to “provide the developing world with financially sound alternatives to unsustainable and irresponsible state-directed initiatives.”<sup>96</sup> Later in 2019, the US, Australia, and Japan established the Blue Dot Network (BDN). The Blue Dot Network assesses and certifies infrastructure projects based on metrics absent from the BRI such as project transparency, debt sustainability, and quality.<sup>97</sup> The BDN champions international norms for infrastructure development and lending practices drawn from the G20 Principles for Quality Infrastructure Investment and the Organization for Economic Cooperation and Development (OECD).<sup>98</sup>

These US-led initiatives are indicative of America’s revitalized commitment to development in the developing world, to include East Africa. In a broader geopolitical context, these initiatives demonstrate intensifying great-power competition between the US and China. Ultimately, it is doubtful the US will ever match Beijing dollar-for-dollar on international development or soft power campaigns. Rather, the US and its partners should continue to focus their efforts on providing a BRI alternative to the developing world with a brand that champions core American values: a rules-based solution characterized by quality, transparency, and respect for sovereignty.

## Outlook

The strategic implications of the BRI are clear. Combined with China’s current foreign policy posture, China’s primary motivations behind BRI are primarily strategic rather than economic in nature. Although China’s presence in East Africa falls short of debt-trap diplomacy, state concessions allow a neocolonial China to penetrate societies around the world in many ways. The BRI is rooted as much in developing Chinese soft power – via culture, politics, security, and technology – as it is in hard power. China likely will continue to leverage this influence for support on the international level, best illustrated by its strong backing from the East African bloc on key issues such as Xinjiang and the South China Sea. China’s current engagements in East Africa and with all BRI countries draw striking parallels to China’s former tributary system. Like its ancient counterparts, present-day China seeks to be at the center of the international system. But while ancient China maintained the principle of non-interference for the states in its tributary system, China today has done the opposite. In pursuit of a Sino-

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<sup>94</sup> Sanny and Selormey, “Africans Welcome China’s Influence”, 3.

<sup>95</sup> Sanny and Selormey, “Africans Welcome China’s Influence”, 16.

<sup>96</sup> “Who We Are”, U.S. International Development Finance Corporation, n.d., <https://www.dfc.gov/who-we-are>.

<sup>97</sup> Jerre Hansbrough, “From the Blue Dot Network to the Blue Dot Marketplace: A Way to Cooperate in Strategic Competition”, *Daniel K. Inouye Asia-Pacific Center for Security Studies*, September 1, 2020, 180-182, <https://www.jstor.org/stable/resrep26667.16>.

<sup>98</sup> Hansbrough, “From the Blue Dot Network”, 182.

centric world order, China is carving out spheres of influence around the world through the BRI, an overseas neo-colonial network propped up by its economic statecraft. Such an order poses a threat to America's national security and challenges the fundamental fabric of the current American-led, rules-based international order.

# Rethinking Preemption and Prevention: War, Imminence, and Certainty

Ezekiel Vergara<sup>1</sup>

*This paper answers the following two questions: (1) What differentiates preemptive wars from preventive wars? (2) Can prevention ever be a just cause for war? With respect to the first question, it contends that the certainty of unjustified rights violations, as opposed to their temporal imminence, differentiates preemptive wars from preventive wars. To show this, it utilizes two hypothetical cases, which illustrate the certainty-based distinction. It also suggests that Derek Parfit's "bias towards the near" can explain the literature's focus on temporal imminence, as opposed to the certainty of unjustified rights violations. With respect to the second question, it argues that preventive justifications for armed conflicts, understood in terms of the certainty of unjustified rights violations, do not justify armed conflicts.*

## Introduction

Following the terrorist attacks of September 11<sup>th</sup>, 2001, President George W. Bush clarified America's position on preemptive warfare. In a speech at the United States Military Academy, Bush stated that American security forces needed "to be ready for preemptive action when necessary to defend our liberty and to defend our lives."<sup>2</sup> In 2003, a policy of preemptive warfare was then utilized to justify the American invasion of Iraq. Commentators objected that the policy of preemptive warfare in the Iraq War bled into a policy of preventive warfare – starkly opposed to preemption.<sup>3</sup>

As Jeff McMahan has noted, it "is highly contentious whether the prevention of future aggression can be a just cause for war."<sup>4</sup> Questions pertaining to preemptive warfare and preventive warfare abound, including: What differentiates preemption from prevention? Can prevention ever be a just cause for war? This paper attempts to answer both these questions.

The first section provides some clarifications and discusses the study methodology. The second section reviews the distinction between preemption and prevention as it is currently understood. It turns on the temporal imminence of an unjustified rights violation. The third section provides two hypothetical cases in which the current distinction fails. It is unable to account for cases in which certainty and temporal distance come apart. To account for these cases, the study advances a new distinction between preemption and prevention. It turns on

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<sup>1</sup> Many thanks are owed for making this project possible. Special thanks go to James B. Murphy, who supervised my honors thesis, from which this paper comes. I am grateful to Lucas A. Swaine and Benjamin A. Valentino for serving as members on my thesis committee. Thanks also go to Janina Cuneo, Claire Finkelstein, Gabriel Vergara, Jeremy Waldron, and the audience at West Point's 2021 Conference on the Ethics of War and Peace.

<sup>2</sup> George W. Bush, "President Bush Delivers Graduation Speech at West Point," June 1, 2002, <https://georgewbush-whitehouse.archives.gov/news/releases/2002/06/print/20020601-3.html>.

<sup>3</sup> See David Luban, "Preventive War", *Philosophy and Public Affairs* 32, no. 3 (2004): 207–48.

<sup>4</sup> Jeff McMahan, "Just Cause for War", *Ethics and International Affairs* 19, no. 3 (2005): 14.

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the certainty of unjustified rights violations. Although determining the certainty of temporally distant affairs may be difficult to achieve in practice—requiring epistemic access to the future and perhaps commitments to determinism—the certainty of unjustified rights violations helps to account for our intuitions.

The fourth section attempts to explain why preemption literature has mistakenly focused on imminence. It examines Derek Parfit's bias towards the near and explains the relationship between certainty and temporal imminence. The fifth section argues that preventive justifications for warfare do not adequately justify armed conflicts. This is because there exist no certain threats or unjustified rights violations that could justify the use of force. The sixth section closes the paper by noting lingering questions that pertain to the examination of preemption and prevention, as other factors and interpretations might be important to operationalizing these concepts. As such, this paper is meant to be a starting point in rethinking preemption and prevention rather than the final say on such a matter.

By presenting these arguments, the paper seeks to clarify when conflicts are morally justified—or at least morally permissible, with some defeasible reasons counting in their favor. Such clarifications are needed for at least three reasons. Security threats are ubiquitous in the contemporary environment. Modern-day cases of cyberwarfare and drone warfare, along with the conflict between Russia and Ukraine and tensions between China and Taiwan, highlight the prevalence of international conflict. Understanding when morality sanctions the use of force can help address practical questions regarding military action.

Understanding when a justified conflict can be waged—when “killing and maiming” is justified—is important to ensuring a stable peace.<sup>5</sup> International action that appears morally unjustified may undermine any achieved security goals. They will appear illegitimate, grounding future threats in the global domain. Ensuring that international action is morally justified supports the permanence of security goals. There are thus prudential reasons to focus on the ethics of warfare.

The assumption that individuals have rights against unjustified harm is fairly uncontroversial in moral theory. Yet, warfare inflicts such harms on various populations on a massive scale. Combatants bear physical and psychological harms. Civilians bear harms associated with food scarcity and the risks associated with military targeting. Because there are *prima facie* considerations that count against such harms, it is important to understand when they can be inflicted. Warfare poses large problems to those who care about morality. It sanctions wide-ranging harms. Identifying when these harms are justified is crucial to acting morally and ensuring that others are not morally wronged.

### **Clarifications and Method**

Three important clarifications frame this paper, along with a note about its methodology.

This paper speaks of unjustified rights violations, which are a moral wrong because one's rights are violated without an adequate justification or excuse. If John shoots a random

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<sup>5</sup> For the point on “killing and maiming,” see McMahan, “Just Cause for War,” 11. The idea that all just wars aim at peace is seen in the writings of Augustine and Thomas Aquinas. See Augustine, *Augustine: The City of God against the Pagans*, ed. R. W. Dyson (Cambridge, UK: Cambridge University Press, 1998), book 19; Thomas Aquinas, *Summa Theologica* (Notre Dame, IN: Christian Classic, 1981), IIa-IIae, Q40.

individual, Jessica, without an adequate justification or excuse, it is reasonable to say that John has morally wronged Jessica. This is because he has unjustifiably violated her right against harm.

A justified rights violation is not a moral wrong. This is because one's rights are violated in the presence of an adequate justification or excuse. Consider the following case. James robs a bank and attempts to flee the crime scene. Alice, attempting to stop James, shoots him in the leg, immobilizing him. In this case, it is reasonable to say that Alice did not morally wrong James, even though his right against harm was violated. This is because Alice had the justification of stopping James, the robber.<sup>6</sup>

The study will often refer to threats and unjustified rights violations. For the purposes of this paper, it uses these terms interchangeably. But it must be acknowledged that these two might come apart in interesting and important ways.<sup>7</sup>

This paper utilizes cases from domestic, interpersonal morality to clarify our intuitions about the morality of warfare. This is consistent with contemporary work on the ethics of warfare, which is oftentimes reductive individualist. Reductive individualists maintain that the ethics of international relations is reducible to interpersonal morality, and interpersonal morality is about the rights and duties of individuals.<sup>8</sup> Prominent reductive individualists include Jeff McMahan, Helen Frowe, and Cécile Fabre.<sup>9</sup>

Some philosophers, like Michael Walzer, object to this reductive individualist comparison.<sup>10</sup> They argue that warfare differs from interpersonal morality in important ways. For instance, in interpersonal morality, there is an overarching authority such as a state. Alternatives to violence also exist. This study stresses that comparison between interpersonal morality and warfare can clarify and strengthen understanding of the relevant concepts.<sup>11</sup> What is more, attempts to differentiate the ethics of warfare from interpersonal morality face various difficulties. Among these, they struggle to account for the feature that makes the two disanalogous.<sup>12</sup> Therefore, there are positive and negative reasons to favor reductive individualism.

Finally, a note about methodology. Like many in the ethics of warfare, this paper employs

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<sup>6</sup> It is a further question as to whether James actually retained his right against harm, which was then outweighed by other considerations, or if his actions caused his right to be waived. In either interpretation, there exists a distinction between justified and unjustified rights violations.

<sup>7</sup> See Adam Hosein, "Are Justified Aggressors a Threat to the Rights Theory of Self-Defense?", in *How We Fight: Ethics in War*, ed. Helen Frowe and Gerald Lang (Oxford, UK: Oxford University Press, 2014), 87–103.

<sup>8</sup> Helen Frowe, *The Ethics of War and Peace: An Introduction*, 2nd ed. (New York, NY: Routledge, 2016), 263.

<sup>9</sup> For examples, see Jeff McMahan, *Killing in War* (Oxford, UK: Clarendon Press, 2009); Helen Frowe, *Defensive Killing* (Oxford, UK: Oxford University Press, 2014); Cécile Fabre, *Cosmopolitan War* (Oxford, UK: Oxford University Press, 2012).

<sup>10</sup> Michael Walzer, "Response to McMahan's Paper," *Philosophia* 34, no. 1 (2006): 43–45.

<sup>11</sup> For more on the potential disanalogy between warfare and interpersonal morality, see Seth Lazar, "Method in the Morality of War", in *The Oxford Handbook of Ethics and War*, ed. Seth Lazar and Helen Frowe (Oxford, UK: Oxford University Press, 2015). I would like to thank Jeremy Waldron for specifically mentioning the point about authority. In international relations, the United Nations is one such potential authority. Yet, it lacks the coercive power of a state.

<sup>12</sup> Frowe, *The Ethics of War and Peace*, 126; Jonathan Parry, "Legitimate Authority and the Ethics of War: A Map of the Terrain", *Ethics and International Affairs* 31, no. 2 (2017): 176–77.

Rawlsian reflective equilibrium.<sup>13</sup> The goal of this method is to reach equilibrium between individual cases and broad moral principles. To begin, this method draws upon pre-theoretic intuitions about examples—for instance, whether a given act is justified in a given scenario. Intuitions are generalized and used to establish moral principles. Principles are tested against further intuitions and revised to capture as many intuitions as possible. If a principle fails to account for intuitions, the principle is revised, rejected, or the given intuition is revised. Reflective equilibrium thus aims to establish moral principles that account for our individual intuitions.

This paper draws such intuitions from hypothetical cases. The use of hypothetical cases keeps in line with much of the reductive-individualist ethics of warfare. However, one might object to the use of hypotheticals. Instead, one might favor using real-world cases. Indeed, some in the ethics of warfare do use real-world cases.<sup>14</sup> Using these real-world cases runs the risk of relying on further facts about the world. They may be unable to isolate the relevant feature pertinent to a given moral principle. Historical details may obscure the moral principle at play. Therefore, this paper uses hypothetical cases, which help us isolate our intuitions apart from any confounding variables. As Helen Frowe writes, the main purpose for using hypotheticals is their “ability to clarify our ideas and our thinking...enabl[ing] us to identify general principles that can be obscured.”<sup>15</sup>

### **The Current Literature and Its Focus on Imminence**

Before advancing a new distinction between preemption and prevention, it is necessary to understand how these terms are currently used in the literature. In the just war literature, authors who differ on a variety of substantive points, such as Walzer and McMahan, differentiate preemption and prevention similarly. They center the imminence of an unjustified threat or rights violation. Generally, preemptive reasons for the use of force refer to reasons that count in favor of the use of force because an unjustified threat or rights violation is “imminent but not actual.”<sup>16</sup> Contrarily, preventive justifications for war “address a threat of unjust attack that is neither in progress nor imminent, but temporally more remote.”<sup>17</sup>

#### **Traditional Preemptive War**

Historically, the Arab-Israeli Six Day War is often cited as an example of a preemptive war. Yet, to illustrate the notion of a preemptive war more clearly, consider the following hypothetical.<sup>18</sup> Following years of tension, State A knows that State B will attack it in a week’s

<sup>13</sup> John Rawls, *A Theory of Justice: Revised Edition* (Cambridge, MA: Belknap Press, 1999), 18–19, 42–45.

<sup>14</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York, NY: Basic Books, 2006).

<sup>15</sup> Frowe, *Defensive Killing*, 5.

<sup>16</sup> Walzer, *Just and Unjust Wars*, 74.

<sup>17</sup> McMahan, “Just Cause for War”, 14.

<sup>18</sup> It, along with other examples to come, assumes that states have a right to territorial and political sovereignty. That states have a right to territorial and political sovereignty is a controversial claim in revisionist just war theory. Walzer argues that states do have this right in his *Just and Unjust Wars*. Prominent dissidents include Seth Lazar and David Rodin: see David Rodin, *War and Self-Defense* (Oxford, UK: Oxford University Press, 2002), 48; Seth Lazar, “National Defence, Self-Defence, and the Problem of Political Aggression”, in *The Morality of Defensive War*, ed. Cécile Fabre and Seth Lazar (Oxford, UK: Oxford University Press, 2014). However, because the intuition that states have a right to territorial and political sovereignty is a weighty one, it is assumed *in arguendo*.

time. State B has made final preparations, about which State A has learned. State A can stop the invasion by attacking first. Doing so, State A rightly believes, will secure crucial tactical advantages that will shape the war's outcome.<sup>19</sup>

In traditional preemptive war, it appears that State A is going to suffer an unjustified rights violation at the hands of State B. The threat of an unjustified rights violation seems imminent, given that State B has made final preparations for this invasion.

Is State A therefore justified in attacking State B first? Generally, in the just war literature, the answer is affirmative. The threatened party can preemptively resort to the use of force against a threatener because the threatened have a right to protect themselves against unjustified harm.<sup>20</sup> Because of this right, the threatened party need not wait until their rights have been violated to use force against imminent threats. Because a threatener poses an unjustified threat, the threatener can permissibly be harmed.<sup>21</sup> From this, the just war literature concludes that State A can launch a morally permissible, preemptive attack on State B.

This view of preemption—which focuses on “imminent but not actual” threats or unjustified rights violations—has intuitive appeal in a variety of domestic cases.<sup>22</sup> If a knife-wielding attacker threatens an innocent individual, the latter can permissibly use force to stop the attack, even if they have not been stabbed. It is usually held that the knife-wielding attacker's threat, if it is imminent, justifies the use of force before the direct attack occurs.

### **Traditional Preventive War**

In contrast to the preemptive justification for use of force, there are preventive justifications for armed conflict. Oftentimes, the United States' 2003 invasion of Iraq is considered a preventive war. To more clearly elucidate this concept, take the following example. Tensions exist between State A and State B. State A believes that if State B gains military supremacy, it will invade State A. State B has taken several steps to pursue military advancement and gain military supremacy over State A in several decades. Would State A be justified in attacking State B now to prevent the latter from gaining military supremacy in several decades?

According to the just war literature, State A would not be justified in invading State B. This is because there was no imminent unjustified threat or rights violation. State B has not utilized any military force to advance its ends. Instead of aiming at State B's imminent military capacities, State A uses force to reduce State B's future military capabilities. This is how preventive wars function. They use force against temporally distant, unjustified threats or rights violations. These threats have not violated any rights at a given time, but they threaten to violate rights at a future time.

### **A New Distinction? A Turn to Certainty**

The just war literature distinguishes between preemptive justifications for war and preventive

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<sup>19</sup> For an empirical account of the so-called “first-strike advantage,” see Steven Beard and Joshua A. Strayhorn, “When Will States Strike First? Battlefield Advantages and Rationalist War,” *International Studies Quarterly* 62, no. 1 (2018): 42–53.

<sup>20</sup> Rodin, *War and Self-Defense*, 88.

<sup>21</sup> In real-world cases, the history of rights violations seems to affect intuitions about preemption and prevention. This paper acknowledges this concern and proceeds at a level of idealization that abstracts away from the history of such rights violations.

<sup>22</sup> Walzer, *Just and Unjust Wars*, 74.

justifications for war according to imminence. On this view, preemption seeks to arrest threats or unjustified rights violations that are imminent. Prevention aims at stopping unjustified rights violations that are “temporally more remote.”<sup>23</sup> However, the distinction between preemption and prevention hinges on the certainty (or lack thereof) of unjustified rights violations. It does not turn on imminence. Below are two hypothetical examples to illustrate how certainty underlies the difference between preemption and prevention. These hypothetical examples help to “identify the general principles that can be obscured” by real-world cases.<sup>24</sup>

**Table 1: Hypothetical Examples of Differing Certainty**

Unlikely but Near Threat	Likely but Distant Threat
Echoa and Echor are both states. Echoa has intelligence that there is a five percent chance that Echor will launch a military attack in three days. The leaders of Echoa know that if they are to repel Echor’s attack they must launch a strike immediately and gain the advantage.	Echoa and Echor are both states. Echoa has intelligence that there is a 95 percent chance that Echor will launch a military attack in ten years. The leaders of Echoa know that if they are to repel Echor’s future attack they must launch a strike immediately (that is, ten years in advance) and gain the advantage.

In **Unlikely but Near Threat**, the threat to Echoa is unlikely, yet temporally proximate. In **Likely but Distant Threat**, the threat to Echoa is likely, yet temporally distant. According to existing just war arguments, violence would be allowed in the first example but not in the second. This is because the violence is “imminent” in the former. Yet, in the latter, violence is “neither in progress nor imminent, but temporally more remote.”<sup>25</sup>

The problem is that it seems wrong to hold that violence in the case of **Unlikely but Near Threat** is justified. Even though the threat is temporally proximate, the chance of the unjustified rights violation is relatively unlikely. This uncertainty casts doubt on whether violence should be sanctioned in this scenario. There remains a 95 percent chance that the threat will not actualize, even though the threat is temporally near. The use of force against the imminent threat seems impermissible. Such an intuition, though, runs *contra* the imminence-focused view.

Moreover, it seems questionable that violence in the case of **Likely but Distant Threat** is unjustified. After all, despite the temporal distance of the threat, the threat is nearly certain. Given that the threat is nearly certain, it seems that violence could reasonably be used despite its temporal distance from the present. The use of force seems justified. Yet, if one focuses on imminence, it would be unjustified. Force would be impermissible on the imminence-focused view because the threat is not imminent. Clearly, the current literature focused on the imminence of threats cannot capture our intuitions about **Unlikely but Near Threat** and **Likely but Distant Threat**.

<sup>23</sup> McMahan, “Just Cause for War”, 14.

<sup>24</sup> Frowe, *Defensive Killing*, 5.

<sup>25</sup> Walzer, *Just and Unjust Wars*, 74; McMahan, “Just Cause for War”, 14.

The difference between preemption and prevention therefore hinges on the certainty of unjustified rights violations. Preemption refers to the use of force against an unjustified threat or rights violation that is highly certain. Contrarily, prevention refers to the use of force against an unjustified threat or rights violation that is uncertain. In cases of preemption, the threat or unjustified rights violation is more certain; in cases of prevention, the threat or unjustified rights violation is less certain.

If one focuses on the certainty of unjustified rights violations, then one can better explain the difference between **Unlikely but Near Threat** and **Likely but Distant Threat**. In **Unlikely but Near Threat**, violence would be unjustified because the unjustified rights violation in question is highly unlikely. In **Likely but Distant Threat**, the violence would be justified because the unjustified rights violation in question is nearly certain. This new distinction better accommodates intuitions about these cases than accounts in contemporary literature.

Unlike definitions offered by Walzer and McMahan, this distinction does not make recourse to temporal distance. It only focuses on the certainty of unjustified rights violation. It leaves open what level of certainty differentiates preemption from prevention. One might view this ambiguity as a downside of this approach. However, imminence theorists leave open the same question. For certainty, it is a question of what counts as “certain”; for imminence, it is a question of what counts as “imminent.” Therefore, the lack of a clear cutoff should not count against the certainty-based view.

One might object that this focus on certainty, in examples like **Likely but Distant Threat**, is impractical. It requires impossible epistemic certainty and perhaps a commitment to determinism. Things could take place during the relevant span of temporal distance that might hinder a state’s future attack, including economic, natural, or political crises. This practical concern does not represent a failure of the model. It may be difficult, if not impossible, to determine the certainty of a threat in some cases. This does not change whether the distinction between preemption and prevention is correct. Focusing on certainty best captures human intuitions.

In fact, a similar problem faces imminence theorists. For them, it is a question of determining when an attack is imminent, as opposed to whether it is certain. But surely there are cases in which determining imminence is difficult or nearly impossible. In such cases, determining imminence may require more than our epistemic capacities can provide. If such cases exist, then surely the imminence-focused view is no better off than the certainty-based view. At worst, both theories are on a par. And given that the certainty-based view captures more of human intuitions, it ought to be favored.

### **Why Does the Literature Focus on Imminence? A Possible Explanation**

The competing theories of certainty and imminence can explain why the literature has erred in distinguishing preemption and prevention. The reliance on temporal imminence underlies a bias in the literature, which Derek Parfit refers to as the “bias towards the near.”<sup>26</sup> The bias towards the near refers to the attitude in which one “care[s] less about the further future.”<sup>27</sup> This tendency reveals itself in everyday examples, like the fact that “we often bring pleasures

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<sup>26</sup> Derek Parfit, *Reasons and Persons* (Oxford, UK: Oxford University Press, 1984), 159.

<sup>27</sup> Parfit, *Reasons and Persons*, 160.

into the nearer future and postpone pains.”<sup>28</sup> While Parfit applies the bias towards the near to individuals. It also seems applicable to group agents, like states. Parfit argues that when deciding, “we should discount for *uncertainty*, but not for mere [temporal] *remoteness*.”<sup>29</sup>

The bias towards the near hinges on the fact that the future is open and that the distant future is more uncertain. To put the point differently, “nearer pleasures are in general more certain.”<sup>30</sup> Because of this, nearer pleasures should be prioritized, and farther pains unprioritized. However, such an attitude is irrational, as “mere temporal position, or distance from the present, is not a reason for favoring one moment over another.”<sup>31</sup>

This helps to explain the literature’s focus on imminence: doing so discounts for temporal remoteness. Sometimes, this is rational. The certainty of a rights violation is oftentimes correlated with imminence. Because the farther future is more open and less clear than the nearer future, imminence often serves as a proxy for the certainty of right violations. However, imminence and certainty can come apart. This was seen through **Unlikely but Near Threat** and **Likely but Distant Threat**. As a result, it is irrational to discount for imminence. What is rational is to discount for certainty.

In the context of the ethics of warfare, the bias towards the near manifests itself in the literature’s distinction between preemption and prevention. Because certainty and imminence are often correlated, it is understandable that the literature has focused on imminence. However, this view is philosophically unsound, as certainty and imminence can come apart. What distinguishes preemption and prevention is the *certainty* of the unjustified rights violations in question.

### **Preemption, Prevention, and Justification**

This paper advances a new distinction between preemption and prevention, one which focuses on the certainty of unjustified rights violations. This revised distinction does not decide whether preemptive or preventive justifications count in favor of armed conflicts. Given that most philosophers believe that preemptive justifications count in favor of war action, this section focus on whether preventive justifications – those that reference uncertain, unjustified rights violations – count in favor of justifying armed conflict.

One can imagine a preventive war such as the following example, where  $t_1$  represents a distant timeframe and  $t_2$  presents a nearer timeframe. Tensions exist between State A and State B. State A thinks that there is a ten percent chance that State B will invade State A at  $t_1$ , violating State A’s territorial and political sovereignty. Fearing this, State A invades State B at  $t_2$ , so that State B has no opportunity to invade State A.

In preventive war, the unjustified threat to State A’s sovereignty is unlikely. Nevertheless, State A uses violence to prevent State B’s unlikely invasion. In this case, the preventive war would be unjustified – that is, the preventive justification for the war would not morally justify

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<sup>28</sup> Parfit, *Reasons and Persons*, 160.

<sup>29</sup> Parfit, *Reasons and Persons*, 162. Emphasis added by author.

<sup>30</sup> Quotation from Jeremy Bentham in Parfit, *Reasons and Persons*, 158.

<sup>31</sup> Quotation from John Rawls in Parfit, *Reasons and Persons*, 163.

the conflict. In this case, preventive reasons do not count in favor of war because no rights violations have occurred at  $t_2$ , so State B's right against unjustified harm imposes a duty on State A not to harm State B.

Furthermore, because the rights violation is highly unlikely, using force seems risky. It is generally held that humans have a duty to avoid acting riskily when such acts would potentially harm others. Think, for instance, of the disapprobation to drunk driving. Even if no one is harmed, most people think that such acts are wrong because they are risky.<sup>32</sup> Violating this duty to not act riskily constitutes a second reason to think that preventive justifications do not count in favor of armed violence.

The notion that one should not use force against highly uncertain threats has intuitive appeal in domestic cases. Take the case of an individual who attempts to buy a knife. Some may fear that the individual who tries to buy a knife may become a knife-wielding attacker. They might thus advocate for using force or sanctions against this individual, perhaps in the form of preventing the person from making the purchase. But this individual will not necessarily become a knife-wielding attacker. It is not the case that one will become a knife-wielding attacker solely because one purchases a knife. Therefore, it seems erroneous to claim that preventive force can be exercised in this case, as no unjustified rights violations have occurred and because such right violations are highly uncertain (and underdetermined).

The example of the knife-purchasing individual brings out an additional feature of the certainty view: different actions carry with them differing certainties of a threat or an unjustified rights violation. In many non-ideal contexts, people use heuristics, proxies, and signals to discern the certainty of a threat or an unjustified rights violation.<sup>33</sup> The strongest, most useful signals are those that are associated with increased certainty due to psychological reinforcement mechanisms.<sup>34</sup>

Returning to the previous example, it may be noted that purchasing a knife is not a strong signal that one is a knife-wielding attacker. This signal is not associated with high certainty, as most individuals who purchase knives do not become knife-wielding attackers. But other signals—such as grabbing for a knife and yelling threats—may be a strong, near-certain signal that someone is an attacker, and thus that the use of force could be preemptively justified.

To apply these points to a general account, different signals or actions will carry with them differing levels of certainty, either of a threat or of an unjustified rights violation. Ultimately, differing signals and their certainty in differing contexts will be important to determining whether the use of force would be preemptive or preventive. Those signals, and their certainty, matter for the justification of the use of force in the respective situations.

Moreover, it seems that people and states have obligations to one another—notably, to pursue peace thoroughly in the absence of a likely threat or unjustified rights violation.<sup>35</sup> In preventive war, this obligation is acknowledged by pursuing peaceful means of change instead of resorting to violence in the face of uncertain rights violations. In doing so, these individuals

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<sup>32</sup> Rahul Kumar, "Who Can Be Wronged?", *Philosophy and Public Affairs* 31, no. 2 (2003): 103.

<sup>33</sup> Renée Jorgensen Bolinger, "The Moral Grounds of Reasonably Mistaken Self-Defense", *Philosophy and Phenomenological Research* 103, no. 1 (2021): 146–47.

<sup>34</sup> Bolinger, "The Moral Grounds of Reasonably Mistaken Self-Defense," 147–48.

<sup>35</sup> I am grateful to James B. Murphy for pressing me on this point.

and states fulfill their obligation to others. However, in cases where sufficient justifications maintain—where there is a just cause—warfare can be justified. In the absence of these justifications, though, peaceful means ought to be pursued, especially in the face of uncertainty.

### **Conclusion**

This paper argued that what differentiates preemption from prevention is not the imminence of an unjustified threat or rights violation. Instead, preemption and prevention differ according to the certainty of the threat or the unjustified rights violation in question. The literature's focus on imminence, however, is explainable by Parfit's bias towards the near and the relationship between certainty and imminence. Finally, the paper maintained that preventive justifications for armed conflict do not justify killing and maiming.

A closing note is important. This paper is meant to be a starting point in rethinking about preemption and prevention. Several questions remain. For example, what level of certainty differentiates preemption and prevention? What type of epistemic certainty is required? What signals matter for preemption and prevention? How should non-ideal agents approach uncertainty? How should this distinction affect our views about terrorism? How should preemption and prevention relate to peace? What, if anything, distinguishes preemption from anticipatory self-defense? While this paper leaves these questions unexamined, rethinking preemption and prevention serves as a starting point for these further analyses.



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