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FOREWORD

BY DR. KATHERINE UNTERMAN

A yellow fever outbreak. The creation of new mind-altering drugs. The invention of social media. The articles in this inaugural volume of the Texas A&M Undergraduate Journal of Law and Society (*TAMUJLS*) all grapple with the important question of how the law attempts to address unexpected, unpredictable, or novel changes in society.

As this issue comes out, in April 2025, the United States is witnessing an unprecedented exercise of executive power, and the world is facing new tariffs at levels that few would have predicted at the start of the year. Yet, the first half of the 2020s—the years that the authors of these articles attended Texas A&M University—have been full of startling outbreaks, from a global pandemic to war in Europe. As the old saying goes, the only thing to expect is the unexpected.

The articles in this volume cover a range of disciplines, methodologies, and topics, yet they all address the strengths and weaknesses of the law in adapting to novel social circumstances. Should the public forum doctrine apply to government actors on social media? This is the question that Madison Evans analyzes in her article “Navigating the Future of Town Halls,” which tests the limits of applying old laws to 21st-century dilemmas. When the public forum doctrine was devised in 1939—not to mention when the First Amendment was ratified in 1791—in their wildest dreams, no one could have imagined the Internet. Lily Nolan’s article, “The Unseen Slavery that Surrounds Us,” also addresses unforeseen impacts of the internet and social media—in this case on the phenomenon of sex trafficking. Despite barriers to law enforcement, Nolan finds reason to feel optimistic that through law, policy, and education, modern-day human trafficking can be combatted.

Yet sometimes the law is an obstacle to effectively responding to new social challenges. Benjamin Ford’s “The Poignant Public and the Paramount Private” provides a historical example of this. During the 1878 yellow fever epidemic in Memphis, state organizations found themselves hamstrung and unable to respond to the disease, whereas private organizations operated much more flexibly and effectively. After the cessation of the epidemic, new public health regulations were passed—yet these laws lagged behind the threats they addressed. Likewise, in “Valium and Beyond,” Emily Sabbagh recounts the slowness of the Food and Drug Administration (FDA) in designating new mood-altering drugs of the post-World War II years (such as Valium) as “controlled substances.” These highly addictive pharmaceuticals, which were largely marketed to women, were therefore minimally regulated and widely accessible into the 1970s.

On the other hand, sometimes the law can be flexibly and successfully adapted to new circumstances. One example of this is the adoption of the

1947 Japanese Constitution, described by Wesley Pohluda in his article “The American Constitution of Japan.” Modeled on the U.S. Constitution, yet with some distinctly Japanese elements, this post-World War II framework helped Japan successfully transition from an empire into a stable democracy. In “Guardians of Prosperity or Overreach?” Joshua Hillman demonstrates that laws are not one-size-fits all when it comes to countries trying to attract foreign direct investment. Greater legal protections of property rights are appealing to investors in African and Middle Eastern countries, while the same reforms might deter investors in Europe because they appear to be overregulation.

The authors in this issue are generally optimistic that law and civil society can complement each other in rising to address new or unexpected situations. Since these young scholars are the leaders of the future, they give us reason to feel hopeful about our ability to face the unanticipated challenges ahead, whatever they may turn out to be.

I would like to conclude this Foreword with an anecdote about some unexpected serendipity that began in my office in the Glasscock Building of Texas A&M during the spring of 2023. During a meeting with an undergraduate student, Catherine Meisenheimer, I encouraged her to publish an outstanding legal history paper that she had written in one of my classes. Yet none of the existing undergraduate journals at Texas A&M could accommodate papers as long as hers. Rather than sacrifice the depth and nuance of her research, Catherine and her classmate Lauren Currie—another highly talented researcher and writer—decided to start their own undergraduate research journal instead. Their vision was to create a forum to feature high-quality undergraduate scholarship from many majors, but all focused in some way on the law. They asked me to distribute a survey of interest to my upper-level legal history class, and two of the students who responded with enthusiasm were Diego Sepulveda-Allen and Luke Scheel.

Two years later, Catherine and Lauren have both graduated and are thriving law school students—Catherine at the Texas A&M School of Law and Lauren at South Texas College of Law in Houston. Diego is the Editor-in-Chief of *TAMUJLS*, the journal that grew out of their joint efforts, and Luke is the Executive Editor. Fourteen other Texas A&M undergraduates who share their passion for the law, government, and public policy have joined them to form the Editorial Board of this first issue of *TAMUJLS*. It has been a wonderfully unforeseen series of events since that day in spring 2023, culminating in the volume that you read here—an outstanding achievement that exceeds all of my expectations.

—

Dr. Katherine Unterman
Associate Professor
Department of History
Texas A&M University

LETTER FROM THE EDITOR

BY DIEGO SEPULVEDA-ALLEN

Welcome to the inaugural edition of the *Texas A&M Undergraduate Journal of Law & Society*. A lot of time, effort, and care went into making this publication a reality. Our authors and board members have worked tirelessly, perfecting each line on each page for every article. This issue is a celebration of their work. But the journey to get to this point has been much longer and has involved the dedication of many more people.

None of this would have been possible without the vision and initiative of cofounders Catherine Meisenheimer '23, who recognized the need for an undergraduate law journal and acted to make it happen, and Lauren Currie '23, whose tact was essential to getting it off the ground. I will be forever grateful to them for choosing to include me two years ago, and I thank them for their dedication to turning their idea into a reality.

I would also like to extend my gratitude to the hardworking and attentive people at the Office of Undergraduate Research for welcoming the idea of an undergraduate law journal and agreeing to found *TAMUJLS* as one of their many programs. Their belief in us and this journal's mission is indicative of their unwavering dedication to making Texas A&M University the best place in the country for undergraduate research. Without their support, *TAMUJLS* would not have a home and certainly would not be what it is today. I would like to specifically thank our staff coordinators, Dr. Matthew Bizzell and Lindsey Wente, and the Associate Program Director for Undergraduate Research, Annabelle Aymond, for everything they have done, and continue to do, for *TAMUJLS*.

The guidance and mentorship of our faculty advisor, Dr. Katherine Unterman, has likewise been instrumental to the journal's success from the beginning. Always willing to go above and beyond for her students, Dr. Unterman has generously given us advice, lent us a hand, and promoted the journal and its activities at every opportunity. I would also like to thank Dr. Linda Radzik of our advisory board, who has similarly been a vigorous advocate for the journal since the beginning.

We have been fortunate to receive support from so many others, including the Melbern G. Glasscock Center for Humanities Research, the College of Arts & Sciences, the Bush School of Government & Public Service, the Departments of History, Philosophy, and Political Science, and the Texas A&M School of Law.

Finally, I would be remiss if I did not acknowledge the contributions of the editorial board at the Columbia Undergraduate Law Review (*CULR*). Catherine, Lauren, and I had no idea of what running an undergraduate law journal entailed. The team at *CULR* welcomed our questions with open arms and gave us as much insight into their operations as we could have ever hoped for. With a team of such kind individuals, it is no wonder *CULR* remains one of the largest and longest-running undergraduate publications in the country.

Diego Sepulveda-Allen
Editor-in-Chief

**GUARDIANS OF PROSPERITY OR OVERREACH?
A THEORETICAL AND EMPIRICAL ANALYSIS OF
CONSTITUTIONAL PROPERTY RIGHTS AND FOREIGN
DIRECT INVESTMENT**

BY JOSHUA HILLMAN

ABSTRACT

This research explores the impact of constitutional property rights on foreign direct investment inflows (FDI) in 186 countries from 1995 to 2022 by combining a regression analysis with a real options theoretical framework. FDI benefits a country's economy by providing stable investment into human and other capital inputs and spreading the best corporate governance practices, accounting rules, and legal traditions. These listed advantages have increased FDI's popularity across numerous countries in previous decades, motivating countries to pursue policies to attract such investment. By incorporating a real options theoretical model adapted from Dixit and Pindyck, the article clarifies why expropriation risk acts like an extra discount rate, thereby deterring foreign investment unless legal protections are sufficiently robust.¹ This study aims to derive the significance of an efficient legal system in attracting foreign investment with a geographical region analysis and a property rights index, which is employed to measure the risk of expropriation. When controlling for macroeconomic conditions, infrastructure quality, and openness to trade, the study finds a positive causal relationship in Sub-Saharan Africa and Middle East/North Africa (MENA) and a negative causal relationship in Europe. Given these findings, this study offers empirical and theoretical evidence for African and Middle Eastern countries to adjust their legal framework to offer stronger protection for property rights, while the same reforms may inadvertently discourage investment in Europe by creating an overregulated environment. Connecting with the current legal literature, the study finds that strong property rights protection may enhance the country's ability to attract international resources and stimulate domestic economic development only when effectively enforced.

¹ Avinash Dixit and Robert Pindyck, *Investment Under Uncertainty* (Princeton University Press, 1994).

INTRODUCTION

In economic development, the significance of property rights cannot be overstated. Scholars such as Hernando de Soto and Ronald Coase have extensively explored the pivotal role of a structured property rights system and how it fosters economic growth and prosperity in nations. However, while considerable attention has been devoted to understanding the internal dynamics between legal systems and domestic economic markets, there remains a gap in research concerning external economic factors that contribute toward a nation's economic prosperity, particularly foreign direct investment.

Foreign direct investment (FDI) emerged as a spur for economic development in recent decades, offering countries access to diverse financial resources, technology transfer, and market expansion opportunities. Despite recognizing the importance of foreign investment, empirical research that concretely quantifies the relationship between constitutional provisions safeguarding property rights and foreign direct investment inflows remains limited. While implementing robust property rights structures may bolster consumer confidence domestically, its implications on international investor sentiment remain less explored. This research aims to fill this gap by examining both empirically and theoretically the relationship between constitutional provisions of private property and foreign direct investment inflows.

This study advances the literature on foreign direct investment and property rights in two key aspects. First, this paper employs an instrumental variable regression model—using legal origin as an exogenous determinant of property rights protection—to identify the causal effect property rights protections have on FDI while controlling for macroeconomic conditions, infrastructure levels, and trade openness. Second, the study grounds the empirical findings in a real options theoretical framework, adapted from Dixit and Pindyck's work on investment under uncertainty.² This approach clarifies why expropriation risk acts like an extra discount rate, thereby depressing the value of future cash flows and discouraging firms from sinking capital unless property rights are sufficiently robust.

2 *Ibid.*

BACKGROUND INFORMATION

FOREIGN DIRECT INVESTMENT

Foreign direct investment has grown in importance with the emergence of the global economy in recent decades. Studies have found that countries are shifting the composition of international capital inflows from bank loans to foreign direct investment and portfolio investment. From 1978 to 1981, 80% of inflows were loans but fell to 36% between 1990 and 1995; meanwhile, portfolio investment and FDI grew to 44% and 20% of capital inflows, respectively.³

Foreign direct investment often takes the form of investments in human and physical capital, which, due to contractual protections and the nature of these assets, cannot be withdrawn on short notice. This characteristic distinguishes FDI from other international cash flows, which tend to be more volatile.⁴ For instance, during the East Asian Financial Crisis of 1997–1998, the Mexican Crisis of 1994–1995, and the Latin American debt crisis of the 1980s, FDI demonstrated greater stability compared to portfolio equity and debt flows, which experienced large reversals.⁵ This stability underscores the relative resilience of FDI during financial crises.

Feldstein studied the economic intuition behind the free flow of private capital across international borders, revealing that this freedom enables capital to seek and earn the highest potential rate of return without restriction.⁶ For the investor, it provides diversification in lending and investment accounts, proving to hedge against risk. The global integration of these markets will also spread the best corporate governance practices, accounting rules, and legal traditions to help developing economies. Also, the incentive to attract investment limits the ability of governments to pursue suboptimal economic policies, which is an emphasis of this paper.

While these listed advantages apply to all private capital inflows, foreign direct investment offers unique advantages, including the transfer of technology and advanced capital inputs, enhanced competition in domestic input markets, the development of human capital through employee training, and potential increases in corporate tax revenue for the host country. FDI

3 Barry Bosworth and Susan Collins, “Capital Flows to Developing Economies: Implications for Saving and Investment,” *Brookings Papers on Economic Activity*, no. 1 (1999): 143–180.

4 Prakash Loungani and Assaf Razin, “How Beneficial Is Foreign Direct Investment for Developing Countries?” *Finance and Development* 38, no. 2 (2001): 6–9, <https://search.proquest.com/docview/57009389>.

5 Loungani and Razin, “How Beneficial is Foreign Direct Investment for Developing Countries?”; Uri Dadush et al., “The Role of Short-Term Debt in Recent Crises,” *Finance & Development* 37, no. 4 (2000): 54–57.

6 Martin Feldstein, “Aspects of Global Economic Integration: Outlook for the Future,” *NBER Working Paper*, no. 7899 (2000): 1–15, <https://www.nber.org/papers/w7899>.

facilitates the transfer of technology, introducing a diverse range of high-quality capital inputs that domestic financial investment in goods and services cannot achieve alone. This infusion of advanced resources fosters productivity and breeds competition in the domestic input market. Also, employee training implemented through necessary business operation develops human capital within the host country. Additionally, in theory, the profits generated from FDI will benefit the host country and its corporate tax revenue. However, historical evidence concludes that countries have chosen to bypass this corporate tax revenue when they decrease corporate tax rates to attract foreign direct investment. Studies show that members of the Organization for Economic Cooperation and Development have lowered their corporate tax rates because of the competition.⁷

PROPERTY RIGHTS

Defining, allocating, and protecting property rights are recognized among the most challenging issues faced by nations.⁸ Property rights—commonly defined as exclusive ownership over resources and their use—represent a bundle of rights, which include rights to possess and transfer property.⁹ Demsetz was among the first to highlight the costliness of protecting this bundle of rights and the significant variance in outcomes across jurisdictions.¹⁰ For example, in many developing countries, property rights are illusory due to the absence of legal documentation; therefore, property protection is characterized by uncertainty, complex sales processes, and stringent regulations on adjustments.¹¹ In contrast, developed nations typically offer well-defined and legally enforceable property rights, streamlined property transfer processes, and robust institutional frameworks that minimize transaction costs and enhance investor confidence.

A primary component of property rights is the right of possession, which ensures the exclusion of others from seizing property. While this right is typically safeguarded by courts, police, and administrative institutions, protection often relies on self-defense in less-developed countries. Enforceable property rights foster efficiency by replacing violent competition with peaceful negotiation.¹² In a well-defined market for property rights, resorting to violence is unnecessary as exchange value matters more than an

7 *Ibid.*

8 “Property Rights,” *The Concise Encyclopedia of Economics*, <https://www.econlib.org/library/Enc1/PropertyRights.html>.

9 Robert Ellickson, “Property in Land,” *Yale Law Journal* 102, no. 6 (1993): 1315–1400.

10 Harold Demsetz, “Towards a Theory of Property Rights,” *American Economic Review* 57, no. 2 (1967): 347–59.

11 Simeon Djankov et al., “Measuring Property Rights Institutions,” *NBER Working Paper*, no. w27839 (2020): 1–49. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3696206.

12 The Concise Encyclopedia of Economics, “Property Rights.”

individual's personal status or dominance; consequently, any discrimination can be offset by an adjustment of the price.¹³ Yet, in many developing countries, formal rights of possession may offer an illusory sense of security, as weak judicial systems, elite capture, and predatory state actions can render them ineffective in practice—what Goldfinch critiques as a legal framework that exists on paper but fails to protect the poor in reality.¹⁴

Another crucial aspect of property rights is the ability to transfer these rights as exchange value, which promotes efficiency and facilitates access to capital. De Soto argues that formal property rights, including land titles and the legal recognition of real property ownership, are essential for economic growth because they provide assets as collateral for loans and an incentive for land development and investment.¹⁵ Without proper legal recognition, obstacles exist for people to access credit, investment, and other economic opportunities. Unlocking this “dead capital” is vital to stimulating economic growth and alleviating poverty.¹⁶ However, Goldfinch warns that mere formalization does not guarantee effective transfer if the institutions regulating sales or mortgages remain mired in corruption or excessive bureaucracy.¹⁷ Also, there can be an overabundance of legalistic constraints—an “anticommons” dynamic as identified by Heller—where overlapping regulations or fragmented entitlements inadvertently deter market transactions and discourage foreign investment.¹⁸ This proliferation of rules governing transfers, intended to protect various stakeholders, may, if overly fragmented, curtail the efficient use of property by creating barriers to entry for outsiders, including foreign investors.¹⁹ Thus, fully realizing the benefits of the right of transfer requires not only codified ownership and clarity of title but also a balanced regulatory framework that avoids stifling exchange and preserves investor confidence.

13 *Ibid.*

14 Shaun Goldfinch, “Property Rights and the Mystery of Capital: A Review of de Soto’s Simplistic Solution to Development,” *Progress in Development Studies* 15, no. 1 (2015): 87–96, <https://doi.org/10.1177/1464993414546971>.

15 Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Basic Books, 2000).

16 *Ibid.*

17 Goldfinch, “Property Rights and the Mystery of Capital: A Review of de Soto’s Simplistic Solution to Development.”

18 Michael Heller, “The Tragedy of the Anticommons: Property in the Transition from Marx to Markets,” *Harvard Law Review* 111, no. 3 (1998): 621–688, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=57627.

19 *Ibid.*

LITERATURE REVIEW

SABIR ET AL. (2019) STUDY

Existing economic research captures the relationship between institutional quality and foreign direct investments. Sabir et al. explored this nexus using panel data from 1996–2016, measuring the relationship in 148 countries.²⁰ To measure institutional quality, Sabir et al. used data from six proxies of institutional quality: government effectiveness, voice and accountability, regulatory quality, rule of law, political stability, and control of corruption.²¹ The control variables in the study included infrastructure level, trade openness, GDP, and inflation. The infrastructure level serves as a proxy for “efficiency-seeking FDI,” as robust infrastructure garners more foreign direct investment because it reduces operational costs.²² The relationship between infrastructure and foreign direct investment exists because efficient investment targets countries with reduced costs of communication and transportation.²³ Infrastructure was measured by the number of mobile phone subscriptions per 100 people. Trade openness acts as a proxy to “market-seeking FDI;” foreign investors favor unrestricted trade because acting in countries with restricted trade increases the cost of conducting business, thus disincentivizing investment.²⁴ This theoretical relationship is confirmed by Kravis and Lipsey, Culem, and Shah and Khan.²⁵ GDP per capita measures the country’s level of development because it captures the population’s ability to purchase more goods and services, which will attract greater levels of foreign direct investment.²⁶ Inflation indicates domestic economic troubles and control of the central bank or

20 Samina Sabir et al., “Institutions and FDI: Evidence from Developed and Developing Countries,” *Financial Innovation* 5, no. 8 (2019): 1–20, <https://doi.org/10.1186/s40854-019-0123-7>.

21 Massimo Mastruzzi et al., “Governance Matters VI: Aggregate and Individual Governance Indicators,” *NBER Working Paper*, no. 4280 (2007): 1–93, <https://doi.org/10.1596/1813-9450-4280>.

22 Jameel Khadaro and Boopen Seetanah, “Transport Infrastructure and Foreign Direct Investment,” *Journal of International Development* 22, no. 1 (2010): 103–123, <https://doi.org/10.1002/jid.1506>.

23 John Dunning, “Towards a New Paradigm of Development: Implications for the Determinants of International Business Activity,” *Transnational Corporations* 15, no. 1 (2006): 173–227, <https://search.proquest.com/docview/20466157>.

24 Sabir et al., “Institutions and FDI: Evidence from Developed and Developing Countries.”

25 Irving Kravis and Robert Lipsey, “The Location of Overseas Production and Production for Export by U.S. Multinational Firms,” *Journal of International Economics* 12, no. 3 (1982): 201–223; Claudy Culem, “The Locational Determinants of Direct Investments Among Industrialized Countries,” *European Economic Review* 32, no. 4 (1988): 885–904; Mumtaz Shah and Yahya Khan, “Trade Liberalisation and FDI Inflows in Emerging Economies,” *Business & Economic Review* 8, no. 1 (2016): 35–52.

26 Sabir et al., “Institutions and FDI: Evidence from Developed and Developing Countries.”

government over the money supply, and therefore it is measured as a proxy for a country's macroeconomic stability.²⁷ Previous research has shown a theoretical negative relationship between inflation and economic growth.²⁸

Sabir et al. used the legal origins of the country as an instrument for the institutional quality index because the legal origin is a significant factor in institutional quality and financial market size.²⁹ This can be attributed to the level of law enforcement, which may determine the security of property rights and implementation of such legal rights; however, the degree of enforcement varies across countries, depending on its legal origins from the English, German, Scandinavian, or French legal systems.³⁰ For example, research shows institutions of French legal origin are inclined toward weak legal protection to investors, resulting in narrower capital markets, whereas countries based in English legal origin provide strong legal protection to investors, resulting in much larger capital markets.³¹ As a result, legal origin is included in the study as an instrument variable along with the lagged values of explanatory values.

The Sabir et al. study confirmed that institutional quality has a statistically significant positive relation with foreign direct investments; however, the size of coefficients and statistical significance of the controls varied depending on the income level of the country. Namely, the magnitude of the coefficients for the institutional quality index is greater in developed countries than in developing countries. Therefore, Sabir et al. concluded that institutional quality is a more significant determinant for foreign direct investments in developed countries than in developing countries.

27 Friedrich Schneider and Bruno Frey, "Economic and Political Determinants of Foreign Direct Investment," *World Development* 13, no. 2 (1985): 161–175; Bonnie Buchanan et al., "Foreign Direct Investment and Institutional Quality: Some Empirical Evidence," *International Review of Financial Analysis* 21, no. 1 (2012): 81–89.

28 Michael Bruno and William Easterly, "Inflation and Growth: In Search of a Stable Relationship," *Federal Reserve Bank of St. Louis* 78, no. 3 (1996): 139–151, <https://search.proquest.com/docview/38988374>.

29 Buchanan et al., "Foreign Direct Investment and Institutional Quality: Some Empirical Evidence."

30 Sabir et al., "Institutions and FDI: Evidence from Developed and Developing Countries."

31 Rafael La Porta et al., "The Economic Consequences of Legal Origins," *Journal of Economic Literature* 46, no. 2 (2008): 285–332, <https://doi.org/10.1257/jel.46.2.285>.

SAHA ET AL. (2022) STUDY

Saha et al. performed a similar study seeking to derive the empirical relationship between foreign direct investment inflows and institutional quality with an emphasis on countries with lower incomes.³² The researchers studied panel data from 28 lower-middle-income countries from six regions from 2002 to 2018 and implemented a dynamic panel estimation.³³ The six regions included in the study were South Asia, East Asia and Pacific, Europe and Central Asia, Middle East and North Africa, Sub-Saharan Africa, and Latin America and the Caribbean.

To measure institutional quality, the study relies on six proxies of good governance first employed by Kaufman et al.: voice and accountability, rule of law, regulatory quality, political stability and absence of violence, government effectiveness, and control of corruption.³⁴ The researchers control several variables that act as macroeconomic indicators. Trade openness measures the deregulation of trade, which is cited in Asian countries to enhance a country's production capacity and general economy, attracting more foreign investment.³⁵ GDP per capita serves as a measure of a country's market size and economic status, both of which can influence FDI.³⁶ Empirical studies out of South Africa indicate a degree of causality that areas with stable inflation experience enhanced foreign direct investment inflows, so the study included data on inflation rates.³⁷ The study incorporated population as a control, citing its ability to capture the effect of increased production because of a larger workforce.³⁸ The lagged variable of foreign direct investment inflow acted as a control to detect a dynamic relationship over time.³⁹

32 Sadhon Saha et al., "Effects of Institutional Quality on Foreign Direct Investment Inflow in Lower-Middle Income Countries," *Heliyon* 8 (2022): 1–13, <https://doi.org/10.1016/j.heliyon.2022.e10828>.

33 *Ibid.*

34 Daniel Kaufmann et al., "Governance Matters," *Policy Research Working Paper*, no. 2196 (1999): 1–61, <https://ssrn.com/abstract=188568>.

35 Qamar uz Zaman et al., "Trade Openness and FDI Inflows: A Comparative Study of Asian Countries," *European Online Journal of Natural and Social Sciences* 7, no. 2 (2018): 386–396, <https://european-science.com/eojnss/article/view/5289/pdf>.

36 Kazunobu Hayakawa et al., "How Does Country Risk Matter for Foreign Direct Investment?" *Developing Economies* 51, no. 1 (2012): 60–78, <https://doi.org/10.1111/deve.12002>.

37 Mohammed Valli and Mansur Masih, "Is There Any Causality Between Inflation and FDI in an 'Inflation Targeting' Regime? Evidence from South Africa," *MPRA Paper*, no. 60246 (2014): 1–42, https://mpra.ub.uni-muenchen.de/60246/1/MPRA_paper_60246.pdf.

38 Saha et al., "Effects of Institutional Quality on Foreign Direct Investment Inflow in Lower-Middle Income Countries."

39 *Ibid.*

Saha et al. found that certain indicators of institutional quality significantly impact foreign direct investment inflows.⁴⁰ The results conclude that regulatory quality and control of corruption positively impact foreign investment, while the voice and accountability and rule of law measures negatively impact foreign investment; the relationship between political stability and absence of violence and government effectiveness with foreign investment is not statistically significant.⁴¹ The study also derived a significant positive relationship with trade openness, previous foreign investment, population, and GDP per capita.⁴² Additionally, the regional analysis in the study found institutional quality to have statistical significance in the East Asia and Pacific region.⁴³

STATEMENT OF CONTRIBUTION

Unlike prior works, which employed composite measures of institutional quality encompassing multiple governance indicators, this study focuses on a single property rights index to isolate how enumerated protections for private property drive foreign investment. By drawing on updated data through 2022 and employing a regional analysis, this study provides more granular insights into how countries at different levels of development respond to shifts in property rights protections beyond the broad institutional quality proxies used previously.

Additionally, this study integrates a real options framework to explain why robust property rights reduce expropriation risk and incentivize foreign investors to commit funds earlier. Treating expropriation risk as an extra discount rate clarifies how even moderate property rights reforms can produce significant gains in high-risk regions, while the marginal benefit may dwindle or turn negative once a jurisdiction has already reached a high level of statutory protection. This approach refines and extends the empirical findings on property rights and FDI, offering a clearer picture of how legal safeguards intersect with global capital flows.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

THEORETICAL FRAMEWORK:
A REAL OPTIONS MODEL OF PROPERTY RIGHTS & FDI

EXPROPRIATION AS AN EXTRA DISCOUNT

Legal scholars like Heller often debate whether enumerated property rights meaningfully constrain governmental authority or merely add formalities.⁴⁴ In an economic sense, property rights protections reduce the probability that a multinational enterprise's (MNE) assets will be seized or rendered worthless through government action. This expropriation risk acts as an extra discount rate on prospective cash flows because there is a risk the investor might lose everything before reaping returns, showcasing how government uncertainty can chill capital flows.

In corporate finance, “real options” refer to the choice an investor has to commit to or delay a costly, irreversible project. Dixit and Pindyck argue that uncertainty over future returns, combined with the irreversibility of investment, can lead investors to “wait and see” until conditions are favorable.⁴⁵ Adding expropriation risk—the likelihood that the government seizes assets—magnifies these dynamics.

This model builds on the framework developed by Dixit and Pindyck, particularly their application of real options theory to investment under uncertainty.⁴⁶ Their approach is adapted here to incorporate a probabilistic discount factor that reflects the impact of expropriation risk on MNE's investment valuations, providing a more tailored analysis of property rights and capital flows.

SETUP: AN MNE FACING UNCERTAINTY

Let V_t represent the net present value of the project's future cash flows operated at time, t . Under a deterministic assumption, the model assumes that these cash flows grow at a constant rate so that

$$V_t = V_0 e^{\mu t},$$

where $\mu > 0$ is the average growth rate and V_0 is the net present value today, or $t = 0$.⁴⁷

⁴⁴ Heller, “The Tragedy of the Anticommons: Property in the Transition from Marx to Markets.”

⁴⁵ Dixit and Pindyck, *Investment Under Uncertainty*.

⁴⁶ *Ibid.*

⁴⁷ This paper adopts a deterministic approach in which future cash flows grow at a constant rate. While a stochastic framework incorporating uncertainty (for example, a geometric Brownian motion) would be more realistic and would involve solving a second-order partial differential equation, the deterministic model is chosen here for its analytic simplicity and clarity. Importantly, both approaches yield the same qualitative insight that expropriation risk acts as an additional discount factor, reducing the net present value of the project.

Let $\theta \in [0,100]$ denote the property rights index and suppose expropriation hazard can occur at an instantaneous rate $\lambda(\theta)$, which decreases as θ increases.⁴⁸ This means stronger property rights reduce the chance of federal confiscation. The firm must also pay a sunk cost, I , to accept the project. Once invested, if the project is expropriated, the irreversible investment becomes worthless (i.e., $V_i = 0$).

REAL OPTIONS PROBLEM: CHOOSING WHEN TO INVEST

Incorporating real options logic, the firm can wait or invest immediately. Formally, it solves:

$$\max_{\tau > 0} E \left[e^{-r\tau} \left(V_\tau - I \right) 1_{\tau < T_{\text{exprop}}} \right],$$

where r is the discount rate, τ is the chosen time of investment, T_{exprop} is the random time expropriation may occur, and $1_{[\tau < T_{\text{exprop}}]}$ is an indicator function that takes a value of 1 if the firm invests before expropriation occurs or 0 otherwise. If expropriation precedes τ , the payoff is zero, but if the firm invests first, it obtains $(V\tau - I)$ discounted continuously back to time zero.

POST-INVESTMENT VALUE

Once the MNE invests, it holds an asset subject to expropriation denoted by the hazard function $\lambda(\theta)$. This post-investment value of the project, $\Pi(V)$, is calculated as the present value of a continuously growing cash flow under the deterministic assumption, where the effective discount rate is $r + \lambda(\theta)$. That is,

$$\Pi(V) = \int_0^\infty e^{-(r+\lambda(\theta))t} V e^{\mu t} dt.$$

To solve this integral, we first factor out the constant V and combine the exponents:

$$\Pi(V) = V \int_0^\infty e^{-(r+\lambda(\theta)-\mu)t} dt.$$

Solving the indefinite integral, we obtain

$$\Pi(V) = \frac{V}{(r + \lambda(\theta)) - \mu},$$

This expression makes clear that an increase in expropriation risk raises the effective discount rate, thereby lowering the project's net present value.

48 Goldfinch underscores, however, that formal property rights alone might not suffice if enforcement or judicial mechanisms are absent, indicating that $\lambda(\theta)$ might not actually fall in practice.

PRE-INVESTMENT OPTION

Let $F(V)$ be the firm's pre-investment option. Before the firm commits funds, it simply holds a real option to invest. In a standard real-options model, $F(V)$ is governed by an ordinary differential equation. Since no expropriation can occur before investment, the pre-investment model does not consider the impact of expropriation risk, $\lambda(\theta)$.

$$rF(V) = \mu VF'(V)$$

To solve the differential equation, divide both sides by $F(V)$:

$$\frac{F'(V)}{F(V)} = \frac{r}{\mu} \frac{1}{V}.$$

Then, we integrate both sides with respect to V :

$$\int_0^\infty \frac{F'(V)}{F(V)} dV = \int_0^\infty \frac{r}{\mu} \frac{1}{V} dV.$$

After integrating and combining the constants to the right side, we obtain:

$$\ln |F(V)| = \frac{r}{\mu} \ln |V| + C.$$

Exponentiating both sides and simplifying the constant $A=e^C$, we obtain the general solution:

$$F(V) = AV^{\frac{r}{\mu}}.$$

The value of the project V reaches an optimal threshold V^* , where the firm is indifferent between waiting and investing. When the firm invests, it pays I but gains $\Pi(V^*)$. Following Dixit and Pindyck, this model imposes “value-matching” [$F(V^*) = \Pi(V^*) - I$] and “smooth pasting” [$F'(V^*) = \Pi'(V^*)$] to solve for V^* .⁴⁹ Formally,

$$V^* = I \frac{r(r + \lambda(\theta) - \mu)}{\mu}.$$

This result implies that as expropriation risk $\lambda(\theta)$ rises, the threshold V^* increases. This means that the firm will delay investment until the project's value is sufficiently high to offset the increased risk of expropriation.

LEGAL TRADITIONS IN THE HAZARD FUNCTION

An additional component of the theoretical model is the understanding that different legal origins shape expropriation risk's responsiveness to θ . Under this conjecture,

$$\lambda(\theta, l) = \lambda_0(l) - \phi(l)\theta,$$

where l is the legal tradition, $\lambda_0(l)$ is the baseline hazard under minimal

49 Dixit and Pindyck, *Investment Under Uncertainty*.

property rights enforcement, and $\phi(l)$ is the responsiveness of hazards to improvements in θ . Empirically, this corresponds to the notion advanced by La Porta et al. that some legal structures offer more robust protection once statutory reforms are enacted, while others do not respond as strongly.⁵⁰ This paper’s empirical model leverages these cross-country differences in legal origin to identify exogenous variation in property rights θ .

DATA

DATA OVERVIEW

The unit of observation is 186 countries with data ranging from 1995 to 2022, a span of 28 years. **Table 1** describes the assigned labels for the data on variables studied in this research. Data for FDI inflows, GDP per capita, inflation rates, and mobile phone subscriptions per 100 people was gathered from The World Bank database. Categorical data denoting a country’s continent and an index determining the level of trade freedom across time for each country were accessed from The Heritage Foundation’s 2023 Index of Economic Freedom study.

Table 1: Variable Description

Variable Name	Description
ln FDI inflow	Natural logarithm of foreign direct investment inflow
Property rights	Property rights index (Scale: 0-100)
GDP per capita	Gross domestic product per capita
Inflation	Inflation rate
Mobile phones	Mobile phone subscriptions per 100 people
Trade freedom	Trade freedom index (Scale: 0-100)

DATA CLASSIFICATIONS

Countries are classified into five categories based on their geographic region: Asia-Pacific, Europe, Middle East/North Africa (MENA), Sub-Saharan Africa, and Americas, as labeled in **Figure 1**. Categorical data on the legal origins of a country is from a study performed by La Porta et al.⁵¹ Countries are assigned into one of five legal origin categories: English, French, German, Scandinavian, and Socialist.

⁵⁰ Rafael La Porta et al., “Legal Determinants of External Finance,” *Journal of Finance* 52, no. 3 (1997): 1131–1150, <https://doi.org/10.1111/j.1540-6261.1997.tb02727.x>.

⁵¹ La Porta et al., “The Economic Consequences of Legal Origins.”

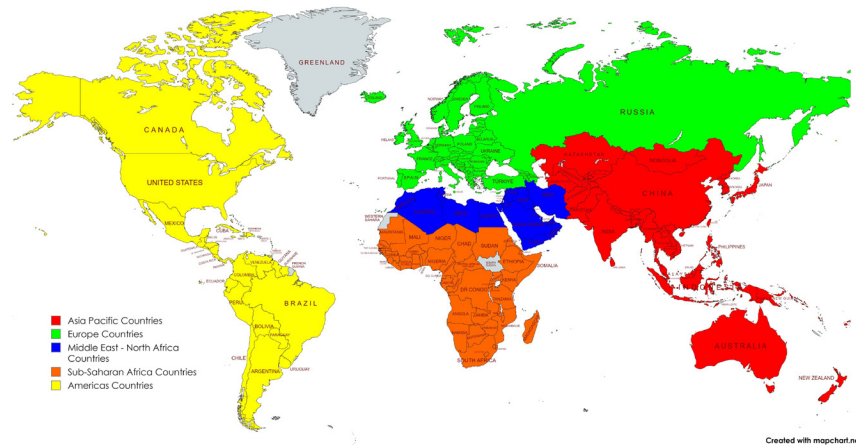


Figure 1: Map by Geographic Region

PROPERTY RIGHTS INDEX

A property rights index in each country is accessed from the 2023 Index of Economic Freedom published by The Heritage Foundation. The index draws upon survey data and assessments from reputable sources, including Credendo’s “Country Risk and Insights,” the United States Chamber of Commerce Global Innovation Policy Center’s “International IP Index,” and the World Bank’s “Worldwide Governance Indicators.” Using a range from 0 to 100, three subfactors evaluate 186 countries based on their capacity to establish an environment where individuals can secure and utilize private property protected by clearly outlined and enforced laws.

The first subfactor assesses the likelihood of expropriation by considering the judiciary’s independence and the level of corruption within the country. The second subfactor measures the degree of respect for intellectual property rights. The third subfactor evaluates the country’s statutes and constitution and measures the country’s capability to protect private property by enforcing the laws. Additionally, the third subfactor accounts for the country’s local court system’s ability to enforce contracts efficiently and measures the ability of the justice system to punish those who infringe on others’ right to property. A higher index score reflects an enhanced confidence in the country’s ability to protect property rights based on its historical actions, while a lower score reflects an enhanced risk of expropriation. The index score is determined by averaging standardized scores from the three equally weighted subfactors.

SUMMARY STATISTICS

Table 2 provides a summary statistics table comparing the mean and standard deviation of the data across geographic regions. The European region receives the largest quantity of foreign direct investment inflows, while the Sub-Saharan Africa region receives the least foreign investment. It follows that European countries boast the strongest property rights protections and Sub-Saharan African countries offer the least protected property rights. GDP per capita, infrastructure control, and trade freedom index are highest in European countries and lowest in Sub-Saharan African countries. The inflation rate is the highest in Sub-Saharan Africa, signifying this region contains the least stable economies. The Asia-Pacific region experiences the lowest inflation rates, denoting economic stability relative to the other geographic regions.

Table 2: Geographic Analysis Summary Statistics

	Asia-Pacific	Europe	Middle East/ North Africa	Sub-Saharan Africa	Americas
ln FDI inflow	20.1478 (3.03045)	21.93353 (2.025303)	20.80392 (1.826947)	18.68406 (2.184015)	20.65099 (2.348328)
Property rights	46.4879 (25.23525)	63.97221 (22.81077)	45.59473 (20.47459)	37.16408 (15.30982)	48.52139 (22.54377)
GDP per capita	9109.998 (15384.04)	25509.23 (28218.55)	13816.9 (17107.11)	1869.026 (2731.084)	9230.665 (11198.82)
Mobile phones	61.99294 (61.59009)	87.65045 (47.6111)	73.85161 (59.23866)	41.47754 (43.73923)	66.72534 (50.33142)
Inflation	5.730005 (9.506007)	8.893998 (43.26142)	7.309467 (22.62115)	17.84621 (148.4065)	7.208137 (15.54548)
Trade freedom	67.37245 (19.41252)	80.20762 (8.34239)	67.13028 (16.06479)	61.07538 (13.76295)	69.31833 (12.65173)
Observations	781	1073	368	969	717

HYPOTHESIS RELATING TO THE VARIABLE OF INTEREST AND CONTROLS

Numerous cross-country correlation studies, such as those conducted by Knack and Keefer, highlight the pivotal role of property rights in driving economic development.⁵² Establishing a robust property rights framework is consistently associated with economic advantages, such as enhancements in GDP per capita. These findings provide compelling empirical evidence for the benefits of enumerated property rights.⁵³ Relying on insights from Sabir et al. and Saha et al. regarding foreign investment, this study proposes a hypothesis of a positive statistical relationship between property rights and

52 Stephen Knack and Philip Keefer, "Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures," *Economics and Politics* 7, no. 3 (1995): 207-227, <https://doi.org/10.1111/j.1468-0343.1995.tb00111.x>.

53 Joshua Lewer and Mariana Saenz, "Property Rights and Economic Growth: Panel Data Evidence," *Southwestern Economic Review* 32 (2005): 157-166, <https://swer.wtamu.edu/sites/default/files/Data/157-166-91-346-1-PB.pdf>.

foreign direct investment.⁵⁴

The control for GDP per capita measures a country's development by gauging its population's purchasing power. As confirmed by Sabir et al., a theoretical positive relationship between development and foreign investment results from foreign investors looking to allocate a greater amount of resources towards larger financial markets.⁵⁵ Additionally, wealthier populations can support improved labor productivity through better education or technological advancement, attracting higher levels of foreign direct investment; therefore, a positive correlation is hypothesized between GDP per capita and foreign investment.

The inflation rate serves as a proxy for a country's macroeconomic stability by indicating domestic economic troubles and reflecting the control of the central bank or government over the money supply. Bruno et al. derive a negative relationship between inflation rates and economic growth.⁵⁶ Similarly, this study expects to derive a negative correlation between inflation rate and foreign direct investment, as countries are dissuaded from investing in a country with an unstable macroeconomic condition.

The mobile phones per 100 variables serves as a proxy for the level of infrastructure within a country. Dunning derives a positive relationship between infrastructure and what is labeled "efficiency seeking" foreign direct investment.⁵⁷ Robust infrastructure attracts more foreign investment by reducing operational costs from transportation and communication. The study hypothesizes a positive correlation between the infrastructure level and foreign investment, as countries with a more developed infrastructure are likely to have lower costs, attracting profit-driven multinational corporations.

The openness to trade index measures a country's relative standing towards free trade on a scale of 0 to 100. Shah and Khan find that the liberalization of the regime over trade and investment results in a significant positive effect that influences private foreign investment.⁵⁸ Again, these firms are motivated to maximize profits, and restricted trade increases business costs, discouraging investment. Therefore, since foreign investors prefer unrestricted trade, a positive correlation is predicted between the openness to trade index and foreign direct investment.

⁵⁴ Sabir et al., "Institutions and FDI: Evidence from Developed and Developing Countries."

⁵⁵ *Ibid.*

⁵⁶ Bruno et al., "Inflation and Growth: In Search of a Stable Relationship."

⁵⁷ Dunning, "Towards a New Paradigm of Development: Implications for the Determinants of International Business Activity."

⁵⁸ Shah et al., "Trade Liberalisation and FDI Inflows in Emerging Economies."

METHODS

GEOGRAPHIC ANALYSIS

Every country is assigned one of five categorical variables denoting its geographical region. These regions include Sub-Saharan Africa, Asia-Pacific, the Americas, Europe, and MENA. A geographical analysis is performed to compare the effect of the geographic region on the relationship between foreign direct investment, the property rights index, and the control variables. The analysis compares the statistical and economic significance of the parameter estimates across different geographic regions to identify where the variations in foreign investment, property rights, and control variables are the most pronounced. This approach provides a comprehensive understanding of how geographical regions influence the observed patterns and deviations in the economic indicators, helping to identify regional-specific factors that may influence the relationship between FDI, property rights, and control variables.

INSTRUMENTAL VARIABLE REGRESSION

The study implements the legal origins of a country as an instrumental variable to model the property rights index to address potential endogeneity issues. The country's legal origin is an exogenous source of variation in property rights, reducing the risk of bias from reverse causality or omitted variables. A two-stage least squares regression is implemented to ensure the validity of the presented coefficients. First, this method estimates the effect of the instrumental variable on the endogenous regressor in a first-stage regression. With the predicted values from the first stage regression, the ordinary least squares regression model is estimated. By accounting for endogeneity concerns, the two-stage least squares regression aims to provide a credible estimate of the causal effect of property rights on foreign direct investment.

TESTING THE VALIDITY OF THE INSTRUMENTAL VARIABLE

To test instrumental validity, the variable must be relevant (i.e. $\text{corr}(Z, X) \neq 0$) and exogenous (i.e. $\text{corr}(Z, \varepsilon) = 0$). To first establish the exogeneity of legal origins on FDI, it is imperative to note that the legal origin of a nation is determined by historical factors, including colonial legacy and cultural influences. These attributes have persisted through time and remain unaffected by current economic conditions, including FDI. Legal origin, meaning whether a country's legal framework originated from a common law, civil law, or another system, has deep historical roots and is largely unaffected by contemporary economic conditions like foreign investment. Thus, the legal origin of the country acts as an exogenous source of variation in FDI.

To now consider the instrument's relevance, a review of previous studies confirms a nation's legal origin has significant implications on the system of property rights within a nation. A study published by La

Porta et al. finds that legal origins affect the size of capital markets across countries, citing that a sound legal system “protects potential financiers against expropriation . . . [and] raises their willingness to surrender funds in exchange for securities.”⁵⁹ The study concludes that countries with origins in French civil law offer the weakest protection to investors and the least developed capital markets; meanwhile, countries with origins in English common law offer greater protection and boast larger capital markets.⁶⁰

To statistically verify the relevance of the instrumental variable, the endogenous variable is regressed on the instrumental variable in the following first-stage regression model in which $\hat{Y}$ is the endogenous property rights index, X is the instrumental legal origin dummy variables, and other control variables, including GDP per capita, annual inflation rates, infrastructure controls, and openness to trade are included.

$$\hat{Y} = \beta_0 + \beta_1 X + \beta_2 \text{GDP} + \beta_3 \text{Inflation} + \beta_4 \text{Phones} + \beta_5 \text{Trade} + \varepsilon$$

The results in **Table 3** indicate that the coefficients for the effect of legal origin on the property rights index are positive and statistically significant at the 99% confidence interval, except in the European region. This suggests the legal origin of a country influences its property rights framework, as different legal traditions lead to varying levels of property rights protection. The F-statistic to test joint significance is relatively high across all geographic regions, signifying the joint significance of the instrument variables in explaining the endogenous variable: property rights. The findings in **Table 3** suggest that the legal origin dummy variables are correlated with the property rights index, supporting its validity as an instrument for addressing endogeneity and enhancing the credibility of the econometric analysis in this study.

Table 3: First Stage Regression Results Across Geographic Regions

Region	Sub-Saharan Africa	Asia-Pacific	Europe	Americas	Middle East / North Africa
Positive coefficient	Yes	Yes	No	Yes	Yes
Statistically significant	Yes	Yes	Yes	Yes	Yes
F-statistic	40.71	179.32	200.37	116.86	46.75

⁵⁹ La Porta et al., “Legal Determinants of External Finance.”

⁶⁰ *Ibid.*

MODEL SPECIFICATION

The following instrumental regression equation derives the theoretical relationship between the presence of property rights and foreign direct investment inflows by isolating the effect of property rights using legal origin as an instrumental variable:

$$\ln(\text{FDI}) = \beta_0 + \beta_1 \widehat{Y} + \beta_2 \text{GDP} + \beta_3 \text{Inflation} + \beta_4 \text{Phones} + \beta_5 \text{Trade} + \varepsilon$$

INSTRUMENTAL VARIABLE REGRESSION OVERVIEW

This study aims to estimate the effect of property rights on foreign direct investment. A direct estimation may be unreliable due to unobserved factors that influence the model. Instead, an instrumental variable approach is utilized because it allows the study to focus on variations in property rights that are not directly affected by outside factors that may introduce bias into the empirical model.

The model works in two stages; in the first stage, property rights, $\widehat{Y}$, are predicted based on legal origin and the control variables. This step isolates the portion of property rights variations that can be attributed to legal origins and not to other economic influences. In the second stage, the predicted property rights $\widehat{Y}$ from the first stage is implemented as a variable in a new regression to analyze its relationship with foreign investment. This process measures how property rights influence foreign investment, using only the exogenous variance in property rights.

By reducing the effects of endogeneity, the instrumental variable model enables this study to estimate the isolated impact of property rights on foreign investment using the coefficient β_1 . This approach strengthens the robustness of the study's findings, indicating not just a correlation but a likely causal effect between property rights and foreign investment.

RESULTS

Table 4 exhibits the instrumental variable regressions for each geographic region. Both African regions displayed a positive causal relationship between the property rights index and foreign direct investment when instrumented on the country's legal origin. A one-unit increase in the property rights index caused a 14.7% increase in foreign investment inflows in Sub-Saharan African countries and a 20% increase in foreign direct investment in MENA countries. No significant relationship between property rights and foreign direct investment exists in the Asia-Pacific and American countries, and a negative statistically significant relationship is demonstrated in the Europe region.

Table 4: Instrumental Variable Regressions by Geographic Region

Variables	(1) Sub-Saharan Africa	(2) Asia-Pacific	(3) Americas	(4) Europe	(5) Middle East/ North Africa
Property rights	0.147*** (0.0291)	-0.0126 (0.00979)	0.0121 (0.0144)	-0.182*** (0.0276)	0.200*** (0.0580)
GDP per capita	-6.70e-05 (4.30e-05)	3.43e-05*** (1.10e-05)	3.11e-05*** (9.29e-06)	0.000305*** (3.30e-05)	-5.06e-05*** (1.84e-05)
Inflation	0.00123** (0.000501)	-0.0406*** (0.0123)	-0.00215* (0.00119)	-0.103*** (0.0246)	0.0610** (0.0260)
Mobile phones	-0.0152*** (0.00567)	0.0204*** (0.00258)	0.0117*** (0.00319)	0.0539*** (0.00904)	-0.0142* (0.00813)
Trade freedom	-0.0440*** (0.0125)	0.0266*** (0.00703)	-0.00468 (0.0149)	0.0576*** (0.0111)	-0.0882*** (0.0295)
Constant	12.95*** (1.113)	19.99*** (0.841)	20.13*** (0.660)	26.70*** (2.074)	10.78*** (2.334)
Observations	969	781	1,073	717	368

Standard errors in parentheses
 *** p<0.01, ** p<0.05, * p<0.1

The GDP per capita control is positive and statistically significant in the Asia-Pacific, Europe, and Americas regions, while it is negative and statistically significant in the MENA region and insignificant in Sub-Saharan Africa. The inflation rate control is negative and statistically significant in the Asia-Pacific, Europe, and Americas regions but positive and statistically significant in the Sub-Saharan Africa and MENA regions. The infrastructure control, measured by mobile phones per 100 people, is statistically significant across all regions; it is positive in the Asia-Pacific, Americas, and Europe regions but negative in Sub-Saharan Africa and the MENA regions. The openness to trade control is positive and statistically significant in the Asia-Pacific and Europe regions, negative and statistically significant in the Sub-Saharan Africa and MENA regions, and insignificant in the Americas.

DISCUSSION

This study utilizes legal origin as an instrumental variable to isolate the effect of property rights on foreign direct investment across different geographic regions. The findings, presented in Table 4, reveal relationships providing insights into how variations in property rights protection influence foreign direct investment inflows.

GEOGRAPHIC DISPARITIES AND CAUSAL RELATIONSHIPS

The results confirm that stronger property rights significantly raise FDI where baseline enforcement is weak, as we see a positive and statistically significant relationship between property rights and foreign direct investment in Sub-Saharan Africa and MENA. The coefficient of 0.147 for Sub-Saharan Africa and 0.200 for MENA suggests that improving property rights infrastructure in these regions could be a critical factor in enhancing their investment climate.

This finding supports de Soto's argument about the importance of well-defined property rights in unlocking "dead capital" and stimulating economic development.⁶¹ Additionally, the findings extend Saha et al.'s focus on lower-middle-income countries by affirming the positive impact of property rights in regions with lower institutional baselines, as displayed by the results in Sub-Saharan Africa.⁶² The MENA region similarly shows large gains, likely reflecting the real options principle that the expropriation hazard falls markedly once investors see credible constitutional guarantees.

Conversely, Europe exhibits a statistically significant negative relationship between property rights and foreign investment with a coefficient of -0.182. From the summary statistics, European countries boast the highest levels of property rights protection, GDP per capita, and infrastructure quality, yet they also experience a unique investment landscape. Europe's negative coefficient, though surprising, aligns with the notion of overregulation. As Heller warns, an "anticommons" arises when property entitlements become fragmented or cumbersome.⁶³ In advanced economies with stable institutions, incremental expansions in property rights might overburden investors, outweighing minimal additional security benefits. While Sabir et al. found a stronger nexus between foreign investment and institutional quality in developed countries, this study's results for Europe complicate that narrative, suggesting that overregulation or diminishing marginal returns to institutional quality may weaken the nexus.⁶⁴ This interpretation aligns with La Porta et al., who highlighted the complexity of capital market regulations in developed economies, particularly those influenced by the legal origins of their institutions.⁶⁵

The Americas region presents an ambiguous picture, with an insignificant coefficient for property rights, 0.0121. Despite relatively strong property rights and high GDP per capita, foreign direct investment inflows remain low compared to other regions, suggesting inefficiencies that limit foreign direct investment. This observation aligns with La Porta et al., who argue that many Latin American countries, influenced by French civil law, may offer weaker investor protections despite strong property rights, potentially deterring FDI.⁶⁶

61 de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*.

62 Sabir et al., "Institutions and FDI: Evidence from Developed and Developing Countries."

63 Heller, "The Tragedy of the Anticommons: Property in the Transition from Marx to Markets."

64 Sabir et al., "Institutions and FDI: Evidence from Developed and Developing Countries."

65 La Porta et al., "Legal Determinants of External Finance."

66 *Ibid.*

Similarly, in the Asia-Pacific region, the insignificant coefficient for property rights suggests that improvements in property rights alone may be insufficient to attract foreign direct investment. The insignificant coefficient is possibly due to individual countries acting as outliers in this study. For example, China features some of the lowest property rights index scores but consistently attracts some of the largest foreign investment inflows over time. This negative relationship appears counterintuitive and may have complicated the association between property rights and foreign investment in other Asia-Pacific countries. Taken together, findings in the Americas and Asia-Pacific suggest that while property rights are necessary, they may be insufficient to attract foreign direct investment in regions with complex institutional and economic environments.

MACROECONOMIC CONTROLS AND THEORETICAL CONSISTENCY

The coefficients for GDP per capita illustrate region-specific dynamics. In the Asia-Pacific and Americas regions, GDP per capita positively correlates with foreign direct investment, consistent with the expectation that economic development attracts foreign investment. However, Europe exhibits the largest positive coefficient for GDP per capita, indicating that higher levels of development significantly attract foreign direct investment in this region despite the negative property rights relation. The negative coefficient in the MENA countries further disrupts this narrative, suggesting that other institutional factors may override the benefits of economic development in attracting foreign direct investment.

Inflation demonstrates a significant and heterogeneous impact on foreign direct investment. Consistent with theoretical expectations, inflation negatively affects foreign direct investment in Asia-Pacific and Europe, signifying that economic instability deters investment. However, the significant positive relationship between inflation and foreign direct investment in Sub-Saharan Africa and MENA may indicate that moderate inflation in these regions is either associated with economic growth or reflects a higher risk tolerance among investors seeking new opportunities. These mixed findings align with Schneider and Frey's work on the role of inflation in investment decisions.⁶⁷

Infrastructure, proxied by mobile phones per 100 people, consistently shows a positive relationship with foreign direct investment in Asia-Pacific, the Americas, and Europe, supporting Dunning's efficiency-seeking foreign direct investment hypothesis.⁶⁸ However, the negative relationship in Sub-Saharan Africa suggests that, despite infrastructure improvements, other institutional barriers may still impede the full realization of foreign direct investment benefits. This finding supports the theory that infrastructure alone may be insufficient without comprehensive legal and institutional

⁶⁷ Schneider and Frey, "Economic and Political Determinants of Foreign Direct Investment."

⁶⁸ Dunning, "Towards a New Paradigm of Development: Implications for the Determinants of International Business Activity."

reforms.

The trade freedom index further reveals regional disparities. The significant positive relationship between trade freedom and foreign direct investment in Asia-Pacific and Europe corroborates the literature that emphasizes the importance of liberal trade policies.⁶⁹ However, the negative relationships in Sub-Saharan Africa and MENA suggest that trade liberalization without concurrent institutional reforms may fail to attract or even repel foreign investors. The relationship in these regions reflects the nuanced interaction between economic policies and institutional quality.

COMPARATIVE INSIGHTS WITH EXISTING LITERATURE

This study's findings add depth to the work of Sabir et al. and Saha et al. by providing a geographic perspective to view the relationship between institutional quality and foreign direct investment.⁷⁰ Sabir et al. identified a stronger link between foreign investment and institutional quality in developed countries; however, this study's findings in Europe challenge that view, hinting that overregulation or diminishing returns to institutional quality could be factors confirming Heller's theory.⁷¹ Similarly, Saha et al. focused on lower-middle-income countries, and this study expands on their work by showing that Sub-Saharan Africa also benefits positively from enhanced property rights, particularly in regions with historically weaker institutional foundations.⁷²

IMPLICATIONS FOR POLICY AND FUTURE RESEARCH

The policy implications of these findings are profound. For Sub-Saharan Africa and MENA, strengthening property rights should be a priority, as it will likely yield significant economic benefits through increased foreign direct investment. Though as Goldfinch warns, reforms must extend beyond constitutional language, as actual enforceability and anti-corruption measures are critical. Statutory or constitutional language is insufficient if local authorities fail to implement reforms. For Europe, Asia-Pacific, and the Americas, policymakers should consider whether further expansions of property rights legislation inadvertently discourage investment by creating an overregulated environment: Heller's anticommons.

Future research should continue to identify the specific property rights provisions that are most effective in enhancing domestic economic benefits. Potential studies could examine whether improved property rights indices correlate with reduced frequency or severity of expropriation disputes,

⁶⁹ Kravis and Lipsey, "The Location of Overseas Production and Production for Export by U.S. Multinational Firms."

⁷⁰ Sabir et al., "Institutions and FDI: Evidence from Developed and Developing Countries."

⁷¹ *Ibid.*

⁷² *Ibid.*

clarifying how hazard $\lambda(\theta)$ changes in response to policies that affect property rights protection, such as land titling, contract enforcement, and intellectual property protections.

This study highlights the heterogeneity of the property rights and foreign investment relationship across regions and underscores the importance of tailoring economic and legal reforms to the unique contexts of each geographic area. This work builds on prior research's theoretical and empirical foundations, contributing to a more nuanced understanding of how constitutional property rights shape global investment flows.

CONCLUSION

The empirical results demonstrate regional variation in the relationship between property rights and foreign investment. In the Sub-Saharan Africa and MENA regions, property rights exhibit a strong, positive, and statistically significant causal relationship with foreign direct investment inflows. This suggests these countries gain substantially from tighter expropriation safeguards, and moderate legal reforms yield large reductions in risk, thus boosting capital inflows. Specifically, a one-unit increase in the property rights index in Sub-Saharan Africa and MENA leads to a 14.7% and 20% rise in foreign investment. Conversely, Europe displays a significant negative relationship, where a one-unit increase in property rights is associated with an 18.2% decline in foreign direct investment. Europe's negative coefficient highlights the anticommons problem: once a market is well-secured, additional rules may stifle rather than attract foreign capital.

The macroeconomic controls yield varying impacts across regions. GDP per capita shows a significant positive relationship with foreign direct investment in the Asia-Pacific and Americas regions but a negative effect in MENA. Inflation rates are negatively related to foreign investment in Europe and the Asia-Pacific, whereas they exhibit a positive effect in Sub-Saharan Africa and MENA. Infrastructure, measured by mobile phones per 100 people, has a significant positive effect across most regions, with the strongest impact in Europe. Trade openness presents mixed effects, with a negative relationship in Sub-Saharan Africa and MENA but a positive relationship in Asia-Pacific and Europe.

The study's findings reveal compelling theoretical and empirical evidence supporting the reinforcement of property rights protections among countries in Sub-Saharan Africa and MENA. For emerging economies, enhancing constitutional property rights is a powerful lever for attracting foreign capital—provided reforms are genuinely enforced and not merely formal. Implementing such legislative measures would spur an increase in foreign direct investment inflows, facilitating the realization of domestic economic benefits. These advantages include technology transfer, domestic workforce development, and heightened corporate tax revenues. For already advanced nations, the challenge is to calibrate property regimes to avoid legislative clutter that imposes undue burdens on prospective investors. Ultimately, the interplay between constitutional reforms, enforcement

fidelity, regional dynamics, and investor perception underscores the complex and context-dependent nature of property rights as a mechanism for fostering economic security and attracting foreign investment.

Understanding the relationship between property rights and foreign direct investment is of paramount importance for policymakers and business leaders. The findings of this study aim to inform policy decisions directed at enhancing a country's investment climate and fostering sustainable economic development. By bridging the gap between theoretical insights and empirical evidence, this research contributes to a broader discourse on the role of legal frameworks in shaping economic outcomes in an interconnected global economy.

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***VALIUM AND BEYOND: EXPLORING THE
GENDERED DYNAMICS OF MOOD-ALTERING DRUG
PRESCRIPTIONS FOR WOMEN IN THE 1960S AND 1970S***

BY EMILY SABBAGH

ABSTRACT

The rising rates of psychoactive drug prescriptions for women in the decades following World War II, set against the cultural and social climate of this time, raise significant concerns about the legitimacy of these prescriptions. It calls into question whether these women were truly in need of medical treatment for psychological issues or if societal pressures and gender norms influenced the widespread medicalization of women's emotions and experiences. Examining how capitalism exploited prevailing gender norms and stereotypes—such as domesticity and the perceived emotional instability of women—we explore how drugs were marketed as solutions to these culturally constructed issues, effectively reinforcing and profiting from these beliefs. Benzodiazepines, particularly Valium, became the most widely prescribed psychoactive drug, resulting in high rates of prescribed addiction. This research investigates the role of pharmaceutical companies in fostering this addiction, focusing on the strategies they used to avoid regulation from the Federal Drug Administration (FDA). Through an analysis of drug advertisements in medical journals with the consideration of the cultural climate at this time, I explore how women and men were portrayed in these ads. In a final discussion, findings are related to the present-day drug crisis, modern psychoactive drug advertisements, and current treatment of women in healthcare, highlighting ongoing ethical concerns about women's healthcare and the accountability of pharmaceutical companies in the medical sphere.

In the latter half of the twentieth century, the alarming rate of mood-altering drug use among women was a notable issue in America, prompting debates on the gender differences in using prescription drugs like barbiturates, tranquilizers, antidepressants, opioids, and stimulants. Mood-altering drugs were prescribed to treat a range of psychological and physical conditions, but out of all Americans receiving prescriptions for mood-altering drugs, “women outnumbered men at a ratio of two to one.”¹ Notably, the post-war era was a time of many societal stressors, including the demobilization of millions of servicemen and servicewomen, inflation, economic recession, the dawn of the Cold War, and a severe housing shortage. Women faced sudden pressure to return to domesticity, and this era, characterized by heightened societal unease, was coined the “age of anxiety.” Advertisements for mood-altering drug promised to treat the typical stressors of everyday life, and treatments for women were often set and advertised in the context of improving their daily function in domestic spheres. Considering the cultural context of post-war America, the pharmaceutical industry exploited and capitalized on the societal stresses of women in a domestic society. And more importantly, women were disproportionately prescribed these drugs due to societal expectations shaped by gender norms and roles.

During and after World War II, American women witnessed rapid social and cultural changes, including advancements in science and technology and the rise of consumerism. America’s traditional patriarchy had been shaken by the war. As men left their jobs to go fight in the war, a significant labor shortage emerged. This labor shortage prompted more women to enter the workforce and take on traditional male roles, which granted some women a new sense of autonomy and freedom. However, after the war had ended, the government “[marshaled] women out of the factories and [encouraged] a return to domestic life with the expectation that women should . . . serve as the emotional center of family and home.”² These expectations of women were often reinforced during and after the war through advertisements in popular media outlets. During the war, traditional gender roles were subtly reinforced in propaganda posters, which, for example, depicted women with red nails or styled hair and makeup. These posters conveyed an underlying message that women’s wartime roles were temporary. The posters would “preserve the foundation of established gender roles and make the postwar return to them easier,” as historian Adison Beals writes.³

And yet, following the years after the war, there was confusion about a woman’s proper place in society. In response, advertisements reemerged

1 Michael Castleman, “Men get cured . . . Women get drugged.” *Her-Self* 3, no. 1 (1974): 12–13.

2 Sarah B. Odland, “Unassailable Motherhood, Ambivalent Domesticity: The Construction of Maternal Identity in Ladies’ Home Journal in 1946,” *Journal of Communication Inquiry* 34, no. 1 (2010): 63.1.

3 Adison Beals, “The Anatomy of Patriotism: The Commodification of American Gender Roles and the Female Body in World War II Print Media.” *Voces Novae* 11, no. 1 (2019): 8.

in media outlets, such as women's magazines, reinforcing domesticity as the feminine ideal, particularly for white, middle-class women. These magazines often featured advice columns that served as how-to guides for female behavior, and advertisements for feminine and domestic products, such as hair, cooking, and laundry items, reinforced this ideal.⁴ For example, a 1946 advertisement for Oxydol laundry detergent in *Ladies' Home Journal* "showed a mother, accompanied by her daughter, washing and ironing clothes."⁵ The imagery in the Oxydol advertisement reinforces domestic ideals by depicting the woman performing domestic chores. It further perpetuates domesticity and feminine ideals by depicting the woman doing laundry with her daughter, implying that the mother is preparing her daughter for her expected role in the domestic sphere. Sociologist Marjorie Ferguson suggests "the overall directive of the [women's] magazines is as follows: 'Dear reader, choose your female roles, learn your parts well, and then perform par excellence!'"⁶ In other words, women's magazines enforced certain standards of behavior for mothers and wives. In her analysis of domestic ideals represented in *Ladies' Home Journal*, gender communication researcher, Sarah Odland, states, "In setting the standards and ideals of postwar life, White, middle-class America—as depicted in the pages of *Ladies' Home Journal*—dictated what would be considered appropriate behavior, maternal and otherwise."⁷ Women's magazines were a way to influence society's perceptions of feminine ideals with the broader intention of reinstating domesticity in the years following World War II.

Dramatic transformations in post-war America also included advancements in medicine, psychology, and the spread of consumer culture, each of these often working hand in hand. Cultural anxiety in post-war America stemmed from a "crisis in gender roles"⁸ and provided grounds for advancements in psychological research. The crisis emerged from gender upheavals during the war, and anxieties around the proper relation of men and women abounded. According to pharmaceutical historian David Herzberg, "For psychiatrists, politicians, scholars, and many others, anxiety provided a medical logic supporting this broader social agenda."⁹ This logic was largely due to the widespread influence and acceptance of Freudian psychoanalytic theories, which often emphasized "the ubiquity of anxiety even among otherwise healthy people."¹⁰ As psychiatrist Jonathan Metzl suggests, Freudian psychoanalytic theories conceptualized anxiety as an

4 Odland, "Unassailable Motherhood," 65.

5 *Ibid.*

6 *Ibid.*

7 *Ibid.*

8 David Herzberg, *Happy Pills in America: From Miltown to Prozac* (Johns Hopkins University Press, 2009), 54.

9 Herzberg, *Happy Pills*, 54.

10 *Ibid.*

outward expression of repressed unconscious feelings towards mothers in childhood.¹¹ Consequently, Herzberg conveys that “anxiety” associated with the gender crisis provided an outlet so significant that Freudian psychiatrists officially agreed to label women as neurotic and psychotic if they “deviated from their submissive domestic roles.”¹² In other words, Freudian theory manifested when ambitious women triggered feelings of emasculation in men by pursuing roles beyond traditional domestic spheres. These feelings led men to unconsciously project their anxieties as a fear of being dominated by women.

This new approach to psychological thinking complemented ongoing advancements in medical research, which introduced new medicines and facilitated a rise in psychotropic prescription medications. Additionally, there was a surge in consumer culture and mass marketing of various goods to Americans. The drug industry seized the opportunity presented by consumerism to market drugs as consumer goods and ultimately commercialize medicine. Herzberg states, “Like suburban houses, new cars, and washing machines, medicine became a part of new consumerist ‘American dream’ that reconfigured conceptions of what a good middle-class life—what happiness itself—ought to be like.”¹³ These advancements in society, along with the post-war culture, provided the perfect storm for a mood-altering drug crisis to occur.

The media exposed the controversial advertisements, which often used a targeted approach by portraying these drugs as the solution to women’s “problems.” For example, a 1973 advertisement for an antipsychotic stated, “If she calls you morning . . . noon . . . and night—day after day [. . .] To allay her chronic neurotic anxiety try her on Stelazine,” citing excessive telephone use as a sign of chronic neurotic anxiety (**Appendix Figure 1**).¹⁴ These advertisements often made exaggerated claims, linking everyday behaviors to supposed psychological disorders to promote their products. Advertisements, like Stelazine’s, which describes a woman calling a man constantly to complain because she’s helpless, exploited common stereotypes of women being neurotic and an emotional burden to men. This stereotype taps into societal anxieties and perceptions of women, enabling the expansion of the market for these drugs. Advertisements even “highlighted housewives’ misery only to suggest ‘curing’ it with pills,” for example, an ad for the tranquilizer Serax stated, “You can’t set her free. But you can help her feel less anxious” (**Appendix Figure 2**).¹⁵ As Herzberg suggests, many drug

11 Jonathan Metzl, “‘Mother’s Little Helper’: The Crisis of Psychoanalysis and the Miltown Resolution.” *Gender & History* 15, no. 2 (2003): 231–243.

12 Herzberg, *Happy Pills*, 55.

13 *Ibid.*

14 Stelazine advertisement, *Health & Community Psychiatry* 24, no. 7 (1973), sourced from Bonkers Institute (2011).

15 Herzberg, “Pill You Love.” 90; Serax advertisement, *Journal of the American Medical Association* 200, no. 8 (1967).

advertisements, like that of Serax, usually acknowledged women's anxiety within domesticity but promoted coping or "adapting to the environment rather than changing it."¹⁶

Denunciations soon emerged from public leaders such as Betty Friedan, author of *The Feminine Mystique*, who declared the seriousness of the habitual use of mood-altering drugs. Friedan—concerned with the messages mood-altering drug advertisements were sending—warned that "while a housewife's 'anxiety can be soothed by therapy, or tranquilized by pills or evaded temporarily by busy work . . . her human existence is in danger.'"¹⁷ Former First Lady Betty Ford, who, alongside millions of other American women, had become addicted to Valium in the 1970s, made a shocking public statement in 1978 detailing her battle with addiction, which helped raise awareness of this widespread issue. Ford stated in her press conference, "It's an insidious thing, and I mean to rid myself of its damaging effects. There have been too many things that I have overcome to be forever burdened with this."¹⁸ News headlines acknowledged Ford for setting a "courageous precedent" by dealing with her drug dependency so openly and setting an example for the millions of other women addicted to prescription drugs.¹⁹ Friedan, Ford, and other outspoken women showed that prescription drug abuse was a significant problem that was more common than many realized. Their openness helped challenge the narrative that this drug use was "normal" for women.

In his article, "The Pill You Love Can Turn on You': Feminism, Tranquilizers, and the Valium Panic of the 1970s," David Herzberg analyzes the various aspects of prescribed addiction among women in America. Herzberg highlights sensationalist panics of the past, like the temperance movement and the "war on narcotics" but emphasizes that the Valium panic of the 1970s was uniquely different because it centered on prescribed drug addiction and brought a new and unexpected demographic into light: white, middle-class women.²⁰ He contends that second-wave feminist activists "[revised] classic drug-scary narratives to sensationalize Valium addiction among affluent white women as a central symbol of sexism and its consequences."²¹ Feminist activists perceived women's dependence on Valium to cope with their lives as a manifestation of sexist ideology, leading them to use the scandal of respectable female drug addicts, such as Betty Ford, to draw attention to the crisis and challenge traditional gender norms and societal pressures. Herzberg points out that typical drug use was

16 Herzberg, *Happy Pills*, 80.

17 Herzberg, "Pill You Love," 90.

18 "Nation: Betty's Ordeal." *Time*, April 24, 1978.

19 "News." *Archives of Sexuality and Gender* 2, no. 5 (1978): 12.

20 David Herzberg, "The Pill You Love Can Turn on You': Feminism, Tranquilizers, and the Valium Panic of the 1970s." *American Quarterly* 58, no. 1 (2006): 80.

21 Herzberg, "Pill You Love," 80.

unexpectedly common among the middle class, citing a 1971 *Ladies' Home Journal* article that said "the typical woman who uses drugs to cope with life is an average, middle-class American—one of the folks next door. She could even be you."²² By sensationalizing the drug crisis and distinguishing between stereotyped drug users and those genuinely affected, this article emphasized the unique challenges and highlighted the plight of women.

Herzberg emphasizes Roche Pharmaceutical's successful lobbying and mass marketing of Valium as a safe and effective drug, helped them avoid regulation, which contributed to its widespread use and addiction.²³ The company avoided regulation by including approved texts from the Federal Drug Administration (FDA) in the advertisements that "continued to emphasize only the risks of prescribing for 'dependence-prone' individuals, and conventional medical authorities still viewed the drug's addictive dangers skeptically," which is evident by Valium reviews in widely cited medical journals praising the drug for its rarity of addiction.²⁴ Ironically, the rarity of addiction was only recognized because there was limited research proving otherwise, which helped preserve its reputation among medical professionals. Additionally, Roche asserted the distinction between a medical addict and a street addict, insisting real addiction was only a problem for the latter group.²⁵ The Drug Abuse Amendment of 1965 allowed "the FDA [to] categorize a drug as having a 'potential for abuse' if it encountered evidence that 'individuals are taking the drug . . . in amounts sufficient to create a hazard to their health or the safety of other individuals or the community.'"²⁶ Additionally, the House of Representatives included in the record of the 1965 law that "a drug's 'potential for abuse' should be determined on the basis of its having been demonstrated to have . . . depressant or stimulant effect on the central nervous system as to make it reasonable to assume that there is substantial potential for [abuse]."²⁷ This amendment did not mention specific drug names or immediately regulate Valium. However, the FDA, using this legal framework, proposed a bill for Valium in 1970 that aimed to categorize the drug as a controlled substance, which, if passed, would place it on a regulated list of drugs with addictive properties. Remarkably, Roche Pharmaceuticals appealed the bill and "lobbied hard to ensure that the new legislation did not preemptively regulate [Valium] before the legal appeals had been exhausted."²⁸ In other words, Roche sought to delay the regulation of Valium, which would diminish the drug's accessibility, until their patent expired, in which case the potential for generic alternatives and stricter

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 Herzberg, *Happy Pills*, 117.

26 *Ibid.*

27 *Ibid.*

28 *Ibid.*

regulations could no longer threaten their profits. In their appeals, Roche argued that the addiction potential for Valium is not the same as a street drug, for a tranquilizer addict cannot “produce real social harm,” compared to a street addict, and emphasized that Valium users were largely respectable men and women.²⁹ By framing Valium this way, Roche implies that any addiction or dependency that would result from taking Valium would be a personal problem and not concerning, as it does not threaten public health in any way.

Roche Pharmaceuticals engaged in a decade-long battle with the government, repeatedly appealing against regulatory attempts. Roche often secured victories due to minor technicalities or lack of consensus among medical professionals stemming from ambiguities over Valium’s addiction potential. Consequently, the Drug Enforcement Administration eventually declared Valium a controlled substance in 1975 after Roche made an unexpected settlement with them to “[enroll] Valium on the Schedule of Controlled Substances.”³⁰ In the same year, a federal drug abuse network recognized Valium as the leading drug among overdose victims nationwide.³¹

Roche’s dismissal of national concerns regarding the risks associated with Valium underscores the company’s relentless pursuit of profit at the expense of consumer well-being. Roche consistently prioritized financial interests over public health considerations, as evidenced by its downplaying of Valium’s potential risks. By strategically exploiting regulatory loopholes and uncertainties surrounding Valium’s addictive properties, Roche prolonged the drug’s accessibility and actively fueled the escalating rates of addiction and overdose among consumers.

Furthermore, Herzberg highlights Betty Friedan’s prominent role in the feminist crusade against Valium through her famous concept of the “problem that has no name.”³² Friedan emphasizes that affluent “women were misled into believing that [their] problems were medical rather than political.”³³ She points out that drug companies’ marketing tactics capitalized on housewives’ suffering by misleading them to believe that mood-altering drugs solved their problems. Feminists sought to change the narrative of the women’s drug epidemic from the belief that women were ill-stricken or morally depraved to a focus on women’s rights and equality. Herzberg highlights the feminists’ arguments when he states, “Housewives did not turn to drugs out of emotional weakness or pathology, but because pharmaceutical companies had ‘medicalized’ these grievances to sell drugs, working hand-

29 *Ibid.*

30 Herzberg, “Pill You Love,” 89.

31 Herzberg, *Happy Pills*, 138.

32 Herzberg, “Pill You Love,” 90.

33 *Ibid.*

in-hand with a sexist society resistant to women's liberation."³⁴ By describing the crisis as a "problem that has no name" feminists "dramatize the hardships faced by essentially innocent Valium-using women in a sexist society."³⁵ Feminists use this argument to help them gain publicity and raise awareness on the drug issue affecting women at this time, hoping to evoke real change in political, social, and medical spheres.

Jonathan Metzl wrote his article, "Mother's Little Helper: The Crisis of Psychoanalysis and the Miltown Resolution," to analyze research conducted on women and their connections with psychotropic medications during the 1960s and 1970s. The title refers to the Rolling Stones song "Mother's Little Helper," itself an indication of the extent to which mood-altering drugs had entered popular culture and become a normalized phenomenon.³⁶ Metzl highlights differing perspectives that argue why women in the domestic sphere use mood-altering drugs in this era. He acknowledges medical sociologist Ruth Cooperstock's 1979 study, which "[links] the propensity for women to be 'far more likely than men to describe their problems in psychological or social terms,' to wide availability of [mood-altering drugs] . . . in the 1970s."³⁷ As a result, there was a subsequent likelihood of women being diagnosed with psychological illnesses. Metzl contends that despite many observations from social scientists like Cooperstock, who linked women's use of mood-altering drugs to societal conventions and culture, biological research tried to dismiss their notions by instead promoting a biological paradigm, which medicalized women's problems by attributing them to a chemical imbalance in the brain.³⁸ However, Metzl rejects the idea that biology alone accounts for women's use of mood-altering drugs. Rather, he argues that psychoanalysis rightfully intersects with social conventions because "popular representations employ . . . assumptions regarding the role of women in maintaining individual and communal well-being."³⁹ While Metzl rejects conventional biological understandings, he acknowledges that biological psychiatry is not entirely useless. He offers a different perspective, highlighting that "psychoanalytic gender formulations are given new life by biological cures for a host of ailments diagnosed in mothers, but of which fathers and sons are conceived to be the ultimate victims."⁴⁰ This perspective aligns with Metzl's interpretation of the song "Mother's Little Helper," where the woman uses mood-altering drugs to help cope with the demands of her household duties, which reflects broader "Freudian ideas [that] were used to

34 *Ibid.*

35 *Ibid.*

36 Metzl, "Psychoanalysis and the Miltown Resolution," 228.

37 *Ibid.*

38 *Ibid.*

39 *Ibid.*

40 *Ibid.*

justify an entirely domestic femininity.”⁴¹ Drug advertisements from this era reinforce this notion by promoting these drugs as a coping tool for women to passively accept their domestic realities.

WOMEN’S DRUG CRISIS EXPOSED: PRESS COVERAGE, CRITICAL ESSAYS, AND ADVERTISEMENTS

The central question concerns whether women being primary users of mood-altering drugs arises from the demands of their traditional gender roles, often centered on domestic duties, or if it is influenced by social norms that encourage women to be more emotionally expressive with doctors, thus increasing their likelihood of being prescribed drugs of this nature. Historians like Beals, Odland, Herzberg, and Metzl offer similar narratives on post-war societal changes in America, with Herzberg and Metzl specifically emphasizing the reinforcement of gender roles and subsequent gender divisions in contributing to the women’s drug crisis. Two women’s newspapers from the 1970s provide firsthand accounts of the crisis, expressing skeptical concerns about prescribed addiction, physician prescribing habits, questionable advertisements, and the role pharmaceutical companies play in reinforcing societal norms. Additionally, a critical essay from 1980 and an analysis of individual drug advertisements from the 1960s and 70s examine the concerns of sexism associated with mood-altering drug advertisements and highlights the messages they portray regarding women in the domestic sphere. Analyzing articles, critical essays, and advertisements from these decades offers firsthand perspectives on the plight of women in this drug crisis.

In a *New Directions for Women* newspaper article titled “Women victimized by Valium,” sociologist Anne Kasper discusses the “Valium hearings,” which “focused on long ignored addictive properties and withdrawal agonies . . . of [tranquilizers] and the ignored victims, being women.”⁴² Kasper notes that advertisements for these drugs portray unmedicated women as “an annoyance to her husband, a downer to her children, and a repeated irritation to her doctor.”⁴³ This exemplifies Herzberg’s analysis of Friedan’s “problem that has no name,” where women were perceived to be the “problem” in society. What was even more concerning about the overwhelming prescribed use of tranquilizing drugs was that drug companies marketed them as treatments for depression and neurosis, but that was not the intended use of the drug, which Kasper finds highly questionable. Doctors primarily prescribed Valium for “anxiety and tension associated with stress;” drug companies fed on this and cultivated their marketing practices to target every aspect of women’s lives.⁴⁴ Kasper’s

41 *Ibid.*

42 Anne Kasper, “Women Victimized by Valium.” *New Directions for Women*, Winter 1979–1980, Archives of Sexuality and Gender.

43 *Ibid.*

44 *Ibid.*

view aligns with Herzberg's emphasis on the pharmaceutical industry's role in perpetuating the over-prescription of drugs, like Valium, to women by "defining new areas of stress"⁴⁵ and portraying these issues as medically treatable problems. Defining new areas of stress in every aspect of women's lives implies that drug companies were defining domesticity as a source of stress, which highlights how they capitalized on gender roles.

In an article for the Ann Arbor, Michigan, women's newspaper *Herself*, Michael Castleman addresses an additional aspect of the drug epidemic in an article titled "Men get cured . . . Women get drugged," where he asserts that "[d]rug companies bear a great deal of the responsibility in the sedation of American womanhood,"⁴⁶ which mood-altering drug advertisements exemplify by primarily depicting distraught women. Castleman suggests that the intention of drug companies lies in capitalist logic. Drug companies understood that mood-altering drugs brought massive amounts of money to the market, and to monetize the drug the companies relied on advertising as the main component of financial success. One notable aspect of mood-altering drug advertisements was the direct use of sexism by drug companies to sell their products.⁴⁷ For instance, Castleman also uses the Stelazine advertisement example, which stated, "If she calls you morning . . . noon . . . and night . . . day after day . . . To allay her chronic neurotic anxiety, try her on Stelazine," (Appendix Figure 1) to illustrate how pharmaceutical companies positioned these drugs as a solution to alleviate the perceived burdens women placed on others.⁴⁸ This advertisement portrays the woman as an annoyance to her doctor and husband and markets the drug as a solution to all three of their problems. Another aspect of sexism in the women's drug crisis circles back to a point Herzberg makes about doctors prescribing mood-altering drugs for "seemingly random reasons."⁴⁹ In an interview conducted by Castleman, psychotherapist Ann Wright explains that she has encountered this very instance. Wright stated "[she] had two women in the last year and a half who were given Elavil (an antidepressant) for depression . . . it had turned out they had low blood sugar."⁵⁰ Wright conveys that doctors were quick to label women's problems as "psychological," without considering other potential causes, a tendency reflected in drug advertisements that often portrayed women as emotionally unstable. Castleman suggests that all the advertisements "have strong Freudian overtones: women are hysterical; it's all in their heads; women can't cope; they don't know what's good for them. Luckily their god-like male doctors do."⁵¹ Castleman illustrates how drug

45 *Ibid.*

46 Castleman, "Women get drugged."

47 *Ibid.*

48 *Ibid.*

49 Herzberg, *Happy Pills*, 96.

50 Castleman, "Women get drugged."

51 *Ibid.*

advertisements reinforce Freudian notions of female hysteria and perpetuate gender stereotypes, echoing Metzl's argument that Freudian ideas have long been used to justify the subjugation of women.

Questionable drug advertisements can be attributed to marketing tactics used during the rise of consumer culture in the post-war era. Marketing tactics of consumerism typically included identifying the needs of consumers, developing a product, and carefully crafting ads that would appeal to target customers. Success in marketing everyday consumer goods inspired drug companies to use similar tactics with medicine, where they hoped to achieve comparable economic success. The case with psychotropic medications is unique because they offered a promise to meet needs that no other product could fulfill, ultimately paving the way for their success. Herzberg states, "intense marketing would ensure that every physician knew about the . . . wonder drugs produced by the postwar pharmaceutical system."⁵² During this time, drug companies marketed their medicines directly to doctors, who would then prescribe to the patient, so their main priority was to appeal to doctors first and patients second. To reach a wide range of potential consumers, drug advertisements "tended to conflate psychological illness with the familiar daily problems that populated the cultural landscape of consumerism."⁵³ Drug companies medicalized everyday problems by implying that they were not normal and a sign of psychological illness. Given the societal context of anxiety and confusion surrounding gender roles and the reemergence of domesticity in post-war America, women became the prime subjects of mood-altering drug advertisements.

Drug marketing for mood-altering drugs appealed to doctors, who were typically male, by tapping into generalized concerns about women abandoning domestic roles and pathologized them. The message in advertisements suggested that prescribing a woman these drugs would enable her to perform her household duties more effectively and resolve the discontent they had with a mundane domestic lifestyle. The marketing indirectly appealed to women primarily because they trusted their doctors, but also because it alluded to the idea that these drugs would help them return to normalcy and fulfill the roles that society expected of them. By appealing to both the doctor and patient, Herzberg argues, "[drug companies'] messages enjoyed a wide, almost pervasive circulation in medical and popular circles, playing a central role in establishing the nature and meaning of the new medicines."⁵⁴ Miltown, a popular tranquilizer, was notably one of the first to participate in this narrative of commercialized medicine and ultimately set the stage for its predecessors to follow.

Furthermore, advertisements for mood-altering drugs had a notable sex bias and portrayed a higher proportion of women in ads than men, which may explain the higher usage of these drugs among women. In

52 Herzberg, *Happy Pills*, 23.

53 *Ibid.*

54 *Ibid.*

1980, Ellie King conducted a study to investigate whether this sex bias in psychotropic drug advertisements was genuine or merely perceived. King noted that Lawrence Linn's 1971 study "found that physicians' attitudes about prescribing psychoactive drugs were more strongly related to their social values and moral standards than to their scientific backgrounds."⁵⁵ Linn's findings underscore the drug industry's marketing tactics, which exploited existing social conventions to appeal to doctors. This targeted and pervasive approach aimed to capitalize on the belief that a woman's discontent with conventional gender roles was a personal problem, not a social one, and therefore, it was an illness that required treatment with a drug.⁵⁶ King also suggested that a doctor's willingness to prescribe tranquilizers to women, especially housewives, reflected their acceptance of traditional gender roles.⁵⁷ This was already an accepted idea for psychiatrists, and it resonates with Herzberg's and Metzl's later discussions of Freudian ideas in psychology during the post-war era. Essentially, drug companies capitalized on what doctors already believed in and accepted.

Additionally, King's study aimed at addressing two parts of the sex bias: disproportions in the number of women appearing in ads and the differences in how they were presented when compared to men. The findings revealed that women were portrayed in a more demeaning way and typically as "anxious, neurotic, distorted, and ridiculous; with imagined symptoms and doubted complaints; as repeated nuisances and irritants to the busy physicians; and in need of repair or adjustment if not able to happily carry out stereotyped sex-role duties."⁵⁸ Meanwhile men were often represented in ads "as having temporary, job-related stresses, and coping with them intelligently."⁵⁹ King noted that these portrayals were consistent throughout most ads she studied, suggesting that drug companies were trying to exploit societal conventions. Lastly, King measured the difference between women appearing in ads compared to men, and she found that 40% of mood-altering drug advertisements depicted women as the primary subject while only 30% depicted males.⁶⁰ She reports that sex bias in advertising encourages physicians to identify women's symptoms as emotional illness and men's as organic illness, despite a man's and woman's symptoms and illness being identical.⁶¹ King concludes her study by suggesting that the disproportion of women compared to men in drug advertisements may have influenced doctors prescribing habits, therefore contributing to women's higher usage

55 Ellie King, "Sex Bias in Psychoactive Drug Advertisements." *Psychiatry* 43, no. 2 (1980): 130.

56 *Ibid.*

57 *Ibid.*

58 *Ibid.*

59 *Ibid.*

60 *Ibid.*

61 *Ibid.*

of mood-altering drugs.

Advertisements for mood-altering drugs often appeared in the same medical journals that contained critical essays, like King's, on sex bias in drug advertising. As King suggests, mood-altering drug ads had a notable sex bias, with roughly 70% of advertisements being gendered. Examining these ads helps us understand how the narrative is significant to these gender disproportions and how they reinforce gender roles. When analyzing women in different mood-altering drug advertisements, there are several reemerging themes, primarily depicting domesticity. For instance, a pharmaceutical company called McNeil Laboratories marketed their barbiturate, Butisol, in a 1969 drug advertisement titled "Now she can cope." The ad claims the drug is a "daytime sedative" for everyday situational stress and claims that any stress, situational or environmental, "calls for an anxiety-allaying agent."⁶² While the advertisement emphasizes the drug's dependability and safety, citing other doctors' preferences for prescribing Butisol, it also includes a warning about the drug's potential for addiction.⁶³ This is potentially misleading, especially considering the placement of the warning at the bottom of the advertisement and the safety emphasis near the top. The ad implies that women are incapable of coping with their "everyday" stress without the aid of Butisol; citing stress as "everyday" suggests that it is a common experience for women. The woman in the advertisement is pictured in the kitchen, with a stove behind her, standing next to a young child who appears to have her tangled in rope (**Appendix Figure 3**). This imagery reinforces the notion that women are abnormally stressed from managing household duties and caring for young children, further emphasizing the perceived need for Butisol to cope with these challenges.

Ciba Pharmaceuticals marketed their stimulant drug, Ritalin, in a 1970 advertisement for a medical journal. In big, bold letters, the ad claims that Ritalin "Helps relieve chronic fatigue and apathy quickly." To the left of these letters, a woman is pictured leaning on a vacuum cleaner, appearing tired and worn out (**Appendix Figure 4**).⁶⁴ The advertisement describes Ritalin as an "agent that really brightens mood and improves performance, helps restore alertness, enthusiasm, and drive. Patients . . . are able to go all day without becoming tired."⁶⁵ Since there is a woman pictured in a domestic context, the performance and mood-boosting promises allude to the drug treating their disinterest in home chores and allowing them to do their jobs better and for longer amounts of time. The Ritalin advertisement implicitly reinforces traditional gender roles associated with domesticity and perpetuates sexist attitudes. The ad highlights the drug's safety in bold letters that stand out

62 Butisol Advertisement, "Now she can cope..." *JAMA* 207, no. 6 (1969), sourced from Bonkers Institute (2011).

63 *Ibid.*

64 Ritalin advertisement, *Canadian Family Physician* 16, no. 5 (1970), sourced from Bonkers Institute (2011).

65 *Ibid.*

from the rest of the text. Paradoxically, the side effects are listed in fine print, with the last side effect being “psychic dependency.”⁶⁶ The particular emphasis on safety and the potential dependency in fine print contradict each other and highlight the misleading nature of drug advertisements.

Similarly, Smith, Kline & French Laboratories advertised their stimulant, Dexedrine, in a 1956 article for the *Journal of the American Medical Association*. The advertisement headline reads, “why is this woman tired?,” with a black and white image above showing a discontented woman in a messy kitchen with dirty dishes scattered around her (**Appendix Figure 5**).⁶⁷ The woman appears overwhelmed as she has her hand over her heart, suggesting she is stressed from keeping up with domestic chores. Following the question asking why the woman was tired, it reads, “because she is physically overworked,” preceded by an encouragement for doctors to prescribe rest.⁶⁸ Remarkably, the bullet point after stated, “because she is mentally ‘done in.’ Many of your patients—particularly housewives—are crumbled under a load of dull, routine duties that leave them in a state of mental and emotional fatigue (**Appendix Figure 5**).”⁶⁹ The Dexedrine advertisement has a checklist narrative that categorizes two types of fatigue; it prescribes rest for physical exhaustion but encourages doctors to prescribe their drug for “mental and emotional exhaustion,” specifically associating these symptoms with housewives. This is striking for two reasons: first, it implies that domestic labor is not physically demanding work, and second, it labels housewives’ fatigue from domestic labor as a mental and emotional exhaustion. The Dexedrine advertisement reflects sexist attitudes, especially given that it acknowledges the monotonous lifestyle of domesticity and labels fatigue associated with it as psychological. This reflects the pharmaceutical industry’s attempt to medicalize women’s discontent with domesticity in a broader attempt to reinforce traditional gender roles.

Medical advertisements for Hoffman-La Roche pharmaceutical’s drug Valium, the most famous tranquilizer in the women’s drug crisis, made their debut in medical journals shortly after it received approval from the FDA in 1963, and “By the early 1970s . . . [became] the most prescribed medicine in America.”⁷⁰ More than any other drug, it was “mother’s little helper.” Although primarily considered a “woman’s drug,” Valium was also marketed towards men. In a series of three advertisements for Valium—one marketed towards men and two marketed towards women—there are notable differences in the messages they portray for each gender. However, all three ads ultimately reinforce traditional gender roles. A 1970 Valium

⁶⁶ *Ibid.*

⁶⁷ Dexedrine advertisement, *Journal of the American Medical Association* 160, no. 10 (1956), sourced from Bonkers Institute (2011).

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Herzberg, *Happy Pills*, 5.

advertisement targeted at women pathologizes singledom with the bold statement, “35, single and psychoneurotic,” accompanied by twelve polaroid images showing a woman over the course of fifteen years, still without a suitable husband (**Appendix Figure 6**).⁷¹ The pictures show different men that the woman dated over the years, with the last photo depicting the woman alone, looking sad. The advertisement reads, “The purser on her cruise ship took the last snapshot of Jan. You probably see many such Jans in your practice. The unmarried with low self-esteem. Jan never found a man to measure up to her father. Now she realizes she’s in a losing pattern—and she may never marry.”⁷² Describing Jan as “single and psychoneurotic” suggests that she is experiencing psychological symptoms that contribute to her inability to marry. Ironically, women were not entirely confined to domesticity before marriage, as some had more freedom to pursue education or work outside the home at this stage of life. The implication that Valium would improve Jan’s chances of marriage implies that Valium would enable her to fulfill her “ideal” domestic and maternal roles characterized by marriage. This advertisement is yet another example of pharmaceutical companies medicalizing a normal problem in women’s lives, contributing to the broader reinforcement of domesticity.

A 1970 Valium advertisement targeted towards men conveys Freudian themes, emphasizing the dominance of women in their lives and the potential reign of psychic tension, as indicated by the bold statement, “Women dominate his universe—Psychic tension can rule his life.”⁷³ The accompanying image portrays various women towering over the man while the other men in his life are pictured as small, black shadows in the background (**Appendix Figure 7**). The caption for this image explicitly states that the “domination by women has led to psychic tension,” implying that Valium is a good treatment for the man’s tension caused by women.⁷⁴ This ad is unique because it tries to appeal to the woes of men but still credits women as the cause of it, which illustrates Freudian ideas of anxiety where women’s dominance could be perceived as a threat to the male psyche. Additionally, the ad reads, “He doesn’t understand the source of his psychic tension. But you do. He relates well to women with domineering traits. But not to men. Not even his own son.”⁷⁵ This further illustrates the company’s strategy to capitalize on generalized Freudian beliefs about female dominance, which resonates with Herzberg’s and Metzl’s later arguments on the outsized influence of Freudianism. The advertisement implies that the man has accepted the presence of domineering women in his life, causing

71 Valium advertisement, “35, single and neurotic,” *Hospital & Community Psychiatry* 21, no. 5 (1970), sourced from Bonkers Institute (2011).

72 *Ibid.*

73 Valium advertisement, “Women dominate his universe—Psychic tension can rule his life,” *Hospital & Community Psychiatry* 21, no. 4 (1970), sourced from Bonkers Institute (2011).

74 *Ibid.*

75 *Ibid.*

him to become out of touch with traditional gender norms—as indicated by his inability to relate to other men, which would be perceived as a weakness. Valium is portrayed as a solution to restore the gender balance, thereby helping him relieve the tension caused by the inability to fulfill traditional masculine ideals. The attribution of men’s psychological issues to women and the portrayal of medication as a solution reflect the broader societal attitudes and beliefs surrounding gender roles and its intersection with mental health in post-war America.

Like the Valium advertisement for men, a 1971 advertisement targeting women reflects the pervasive influence of Freudian themes in pharmaceutical marketing. It centers the woman’s life around her psychological tension. The advertisement stated in bold letters, “Her world orbits around doctors. Psychic tension rules her universe.”⁷⁶ The image in the ad is illustrated similarly, with her doctors and family members standing in bubbles crowded around her (Appendix Figure 8). The advertisement depicts the woman’s problem by stating, “Her mother’s obvious preference for her older sister has always rankled this patient. The deaths of her father and husband accentuated her alienation and hostility. Hypochondriasis is the way she disowns her conflicts.”⁷⁷ This advertisement paradoxically portrays the woman as a hypochondriac, suggesting an irrational or exaggerated fear of illness while also pathologizing her problems by promoting Valium as a solution to “heal” her. Additionally, Valium raises ethical concerns because advertisements warn against the potential of addiction and dependency, but it is prescribed for “situational stress,” which raises questions about the medical legitimacy of this drug. The 1971 Valium advertisement trivializes women’s concerns and highlights the sexist attitudes presented by pharmaceutical companies.

A striking 1967 advertisement in JAMA for Wyeth Laboratories’ tranquilizer, Serax, headlines, “You can’t set her free. But you can help her feel less anxious.”⁷⁸ Additionally, the advertisement pictures an anxious woman biting her nails beside household cleaning supplies, and behind a set of brooms and mops resembling the bars of a jail cell (Appendix Figure 2). Below the advertisement headline, it addresses doctors by stating,

You know this woman. She’s anxious, tense, irritable. She’s felt this way for months. Beset by the seemingly insurmountable problems of raising a young family, and confined to the home most of the time, her symptoms reflect a sense of inadequacy and isolation. Your reassurance and guidance may have helped some, but not enough. Serax (oxazepam) cannot change her environment, of course. But it can help relieve anxiety, tension, agitation, and irritability, thus strengthening her ability to cope with day-to-day problems.

⁷⁶ Valium advertisement, “Her world orbits around doctors,” *Hospital & Community Psychiatry* 22, no. 4 (1971), sourced from Bonkers Institute (2011).

⁷⁷ *Ibid.*

⁷⁸ Serax advertisement, *Journal of the American Medical Association* 200, no. 8 (1967), sourced from Bonkers Institute (2011).

*Eventually—as she regains confidence and composure—your counsel may be all the support she needs.*⁷⁹

The advertisement's statement acknowledges domestic life as insurmountable and isolating. Despite these acknowledgments, the ad still encourages the doctor to prescribe the tranquilizer. It is significant that the drug industry is aware of and acknowledges the ordinary, unfulfilling life that women are "beset" by. However, the drug industry is not concerned with advocating for social change; they are concerned with helping a woman 'cope'. Herzberg suggests that pharmaceutical companies promoted that "women's unhappiness was a problem to be solved at the individual rather than the social level, by the purchase of a product."⁸⁰ Additionally, given the sedative properties of tranquilizing drugs, Serax will not help a woman gain confidence in a literal sense. Rather, it will give a woman a false sense of well-being, temporarily relieving her concerns to reinforce conformity. Tranquilizing drugs did not resolve a woman's discontent. They masked it and let a woman resume—or cope with—her domestic chores more readily, precisely since these drugs are emotionally numbing. Additionally, the ad suggests that a doctor's guidance is not enough, followed by the claim that a doctor's counsel may be all the woman needs. Counsel is an ambiguous word and could refer to either guidance as advice or authorization for a prescription. Given that it claims guidance and reassurance were not enough, the drug advertisement most likely implied the latter. The Serax drug advertisement was explicitly marketed towards women in the domestic sphere, further highlighting the drug industry's involvement in perpetuating domesticity.

The universal themes presented in the various mood-altering drug advertisements portray dysfunctional women as typical patients. The advertisements suggest that doctors recognize this type of patient all too well, implying that such cases are common and familiar to them. Freudianism was one of the many advertisement themes for both men and women. As Freudian theory suggests, women's supposed emotional instability was believed to be a source of distress for men, as emphasized by the ads for Stelazine and Valium (Appendix Figures 1, 7, and 8).⁸¹ Medicating women with mood-altering drugs was considered a way to alleviate susceptibilities of tension in men by calming or controlling women's behavior. Herzberg states there were many agendas regarding the messages about women in mood-altering drug advertisements, including "selling drugs, to supporting the normative housewifely role, to opposing that same role."⁸² These agendas were evident as the advertisements simultaneously acknowledged and trivialized women's concerns.

79 *ibid.*

80 Herzberg, *Happy Pills*, 81.

81 Metzl, "Psychoanalysis and the Miltown Resolution," 240.

82 Herzberg, *Happy Pills*, 82.

In recent times, manifestations of Freudian ideas in the diagnoses of women's health issues, alongside the portrayal of women in mood-altering drug advertisements, are a clear example of how perceived gender norms and roles persist in American culture, particularly regarding women's ability to function in society. Even today, "research suggests women are twice as likely as men to be [mis]diagnosed with a mental illness when their symptoms are consistent with [other medical conditions],"⁸³ and subsequently more likely to receive mood-altering drug prescriptions. This mirrors Freud's psychosomatic reasoning, where psychological illness manifests as physical symptoms, mirroring the same logic deployed in the women's drug crisis. In other words, if there is no medical explanation for a patient's symptoms, many times, they will get misdiagnosed with a psychological illness under the same Freudian idea that their symptoms are psychosomatic. This is not to discredit the validity of doctors' diagnoses but to highlight the parallel narrative of doctors not taking women's complaints as seriously as men. It also emphasizes the importance of investigating and considering the origin of women's complaints.

Modern-day drug ads do not have the same domestic themes as the post-war era; instead, they evolved into "empowerment" narratives emphasizing "how the drugs helped women pursue their career ambitions."⁸⁴ They do not inherently reinforce domestic roles, but they highlight the same ideas of a woman's inability to perform in her daily life and how medication will help with that. Paradoxically, the advertisements focus on how the drug will enhance women's "performance" rather than emphasizing the condition or specific symptoms the drug will treat.

While the portrayal of women in modern mood-altering drug advertisements reflects ongoing gender norms, it also raises questions about the motives of pharmaceutical companies. This controversy mirrors concerns highlighted by Senator Estes Kefauver's investigative hearings in 1959—a decade before the peak of the Valium crisis—which informed the public and exposed the profit-driven nature of the pharmaceutical industry. Kefauver emphasized that "executives of the drug houses have the same objectives as other businessmen: to make money."⁸⁵ It is not shocking that pharmaceutical companies would be profit-driven, given the extensive advertising and marketing efforts. However, the controversy lies in the idea that pharmaceutical companies—who were supposed to be prioritizing the health and well-being of people—were starting to resemble capitalistic greed. Pharmaceutical companies downplayed the risks of addiction and attributed individual responsibility to chemically addictive drugs, ultimately exacerbating the women's drug crisis to unprecedented levels.

The practices of the pharmaceutical industry and its role in

83 Melinda Moyer, "Women Are Calling Out 'Medical Gaslighting,'" *The New York Times*, March 28, 2022.

84 Herzberg, *Happy Pills*, 188.

85 Herzberg, *Happy Pills*, 127.

contributing to drug crises are not limited to the post-war era, and they persist into the 21st century, as exemplified by the ongoing opioid crisis. The striking parallel is evident in the case of Arthur Sackler, who pioneered the marketing strategies for Roche's tranquilizer Valium and later influenced his family's approach to marketing Purdue Pharma's opioid, OxyContin. The Sackler family, owners of Purdue, drew inspiration from Arthur Sackler's methods and employed similar tactics in promoting OxyContin, striving for comparable economic success.⁸⁶ As a result, OxyContin has emerged as one of the primary contributors to the modern-day opioid crisis, quite like Valium was in the 1970s women's drug crisis.

Beyond the various arguments of why women fell victim to over-prescribed mood-altering drugs, there is one central theme: sexism. Given that sexism has been and is an ever-present concern, there are questions surrounding the possible controversy over whether drug companies, primarily dominated by men at the time, intentionally perpetuated sexism or simply exploited existing social conventions of sexism as a means for financial gains, ultimately knowing it would work. By consistently portraying women as hysterical or emotionally unstable in advertisements, doctors adopted this notion and pathologized everyday problems in women's lives. It is an unfortunate reality that drug companies capitalized on women's emotional, physical, and sociopolitical suffering due to the addictive nature of mood-altering drugs. However, regardless of what the case might be, all scenarios are inherently sexist and reflect the major points that Herzberg, Metzl, Kasper, Castleman, and King make about this drug crisis and its contribution to feminist discourse.

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APPENDIX

All advertisement images are sourced from the Bonkers Institute online archive of psychiatric drug advertisements (<http://www.bonkersinstitute.org/medshow/fem.html>) under the Fair Use notice indicated on the website: In accordance with Title 17 U.S.C. Section 107, the material on this site is distributed without profit to those interested in receiving the included information for research and educational purposes. Anyone wishing to use copyrighted material from this site for purposes of their own that go beyond fair use must obtain permission from the copyright owner.

⁸⁶ Petula Dvorak, "Washington Worried about Sackler Drug Tactics Years before Opioids," *The Washington Post*, June 1, 2023.

If she calls you morning...noon...and night day after day after day

To allay her chronic neurotic anxiety try her on

Stelazine
trifluoperazine HCl 2 mg. tablets

Excessive use of the telephone is often symptomatic of chronic neurotic anxiety. Because such patients are often immune to lasting reassurance, in addition to your counsel, supportive medication may be helpful.

For such patients, 'Stelazine' is often a wise choice. Its anti-anxiety action is usually free from excessive drowsiness. The recommended b.i.d. dosage is convenient and economical. And dependence and withdrawal symptoms have not been reported with 'Stelazine' therapy.

• 'Stelazine' has been evaluated as possibly effective for this indication. See Brief Summary.

Before prescribing, see complete prescribing information, including dosage and symptoms and treatment of over-dosage, in SK&F literature or PDR.

• **Indications**
Based on a review of this drug by the National Academy of Sciences—National Research Council and/or other information, FDA has classified the indications as follows:
Effective: For the management of the manifestations of psychotic disorders.
Possibly effective: To control excessive anxiety, tension and agitation as seen in neuroses or associated with somatic conditions.
Final classification of the less-than-effective indications requires further investigation.

Contraindications: Comatose or greatly depressed states due to C.N.S. depressants; blood dyscrasias; bone marrow depression; liver damage.

Warnings: Caution patients about activities requiring alertness (e.g., operating vehicles or machinery), especially during the first few days' therapy.
Use in pregnancy only when necessary for patient's welfare.

Precautions: Use cautiously in angina. Avoid high doses and parenteral administration when cardiovascular system is impaired. Antiemetic effect may mask signs of toxic drug overdosage or physical disorders. Additive effect is possible with other C.N.S. depressants. Prolonged administration of high doses may result in cumulative effects with severe C.N.S. or vasomotor symptoms. If retinal changes occur, discontinue drug. Agranulocytosis, thrombocytopenia, pancytopenia, anemia, cholestatic jaundice, liver damage have been reported.

Adverse Reactions: Drowsiness, dizziness, skin reactions, rash, dry mouth, insomnia, amnesia, fatigue, muscular weakness, anorexia, lactation, blurred vision. Neurovascular (extrapyramidal) reactions: motor restlessness, dystonias, pseudo-parkinsonism, persistent tardive dyskinesia.

Other adverse reactions reported with Stelazine (trifluoperazine HCl, SK&F) or other phenothiazines: Some adverse effects are more frequent or intense in specific disorders (e.g., mitral insufficiency or pheochromocytoma).
Grand mal convulsions; altered cerebrospinal fluid proteins; cerebral edema; prolongation and intensification of the action of C.N.S. depressants; atropine, heat, and organophosphorus insecticides; nasal congestion, headache, nausea, constipation, obstipation, adynamic ileus, inhibition of ejaculation; reactivation of psychotic processes; retinopathic states; hypotension (sometimes fatal); cardiac arrest; leukopenia, eosinophilia, pancytopenia, agranulocytosis, thrombocytopenic purpura, jaundice, biliary stasis, menstrual irregularities, galactorrhea, gynecostasis, false positive pregnancy tests, photosensitivity, itching, erythema, urticaria, eczema up to exfoliative dermatitis, asthma, laryngeal edema, angioneurotic edema, anaphylactoid reactions, peripheral edema; reversed epinephrine effect; hyperpyrexia; a systemic lupus erythematosus like syndrome; pigmentary retinopathy; with prolonged administration of substantial doses, skin pigmentation, epithelial keratopathy, and lenticular and corneal deposits. EKG changes have been reported, but relationship to myocardial damage is not confirmed. Discontinue long-term, high-dose therapy gradually. NOTE: Sudden death in patients taking phenothiazines (apparently due to cardiac arrest or asphyxia due to failure of cough reflex) has been reported, but no causal relationship has been established.

Supplied: Tablets, 1 mg., 2 mg., 5 mg. and 10 mg., in bottles of 100; Injection, 2 mg./ml.; and Concentrate, 10 mg./ml.

Manufactured and distributed by SK&F Co., Carolina, P.R. 00630, under Stelazine® trademark license from SmithKline Corporation, Philadelphia, Pa.

Figure 1 : Stelazine Advertisement, 1973. Hospital & Community Psychiatry.

You can't set her free. But you can help her feel less anxious.

You know this woman. She's anxious, tense, irritable. She's felt this way for months. Beset by the seemingly insurmountable problems of raising a young family, and confined to the home most of the time, her symptoms reflect a sense of inadequacy and isolation. Your reassurance and guidance may have helped some, but not enough. Serax (oxazepam) cannot change her environment, of course. But it can help relieve anxiety, tension, agitation and irritability, thus strengthening her ability to cope with day-to-day problems. Eventually—as she regains confidence and composure—your counsel may be all the support she needs.

Indicated in anxiety, tension, agitation, irritability, and anxiety associated with depression.

May be used in a broad range of patients, generally with considerable dosage flexibility.

Contraindications: History of previous hypersensitivity to oxazepam. Oxazepam is not indicated in psychosis.

Precautions: Hypersensitive reactions are rare, but use with caution where complications could arise from a fall in blood pressure, especially in the elderly. One patient exhibiting drug dependency by taking a chronic overdose developed upon cessation questionable withdrawal symptoms. Carefully supervise dose and amounts prescribed, especially for patients prone to overdose; excessive prolonged use in susceptible patients (alcoholics, etc.) may result in dependence or habituation. Reduce dosage gradually after prolonged excessive dosage to avoid possible withdrawal symptoms. Caution patients against driving or operating machinery until absence of drowsiness or dizziness is ascertained. Warn patients of possible reduction in alcohol tolerance. Safety for use in pregnancy has not been established. Not indicated in children under 6 years; absolute dosage for 6 to 12 year-olds not established.

Side Effects: Therapy-interrupting side effects are rare. Transient mild drowsiness is common initially; if persistent, reduce dosage. Dizziness, vertigo and headache have also occurred infrequently; syncope, rarely. Mild paradoxical reactions (excitement, stimulation or affect) are reported in psychotic patients. Minor diffuse rashes (morbilliform, urticarial and maculopapular) are rare. Nausea, lethargy, edema, slurred speech, tremor and altered libido are rare and generally controllable by dosage reduction. Although rare, leukopenia and hepatic dysfunction including jaundice have been reported during therapy. Periodic blood counts and liver function tests are advised. Ataxia, reported rarely, does not appear related to dose or age.

These side reactions, noted with related compounds, are not yet reported; paradoxical excitation with severe rage reactions, hallucinations, menstrual irregularities, change in EKG pattern, blood dyscrasias (including agranulocytosis), blurred vision, diplopia, incontinence, stupor, disorientation, fever, euphoria and dysmetria.

Availability: Capsules of 10, 15 and 30 mg. oxazepam.

To help you relieve anxiety and tension

Serax®
(oxazepam)

Wyeth Laboratories
Philadelphia, Pa.

Figure 2: Serax advertisement, Journal of the American Medical Association 200, no. 8 (1967).

now she can cope...

thanks to

Butisol[®]

(SODIUM BUTABARBITAL)

"daytime sedative" for
everyday situational stress

When stress is situational—environmental pressure, worry over illness—the treatment often calls for an anxiety-alleviating agent which has a prompt and predictable calming action and is remarkably well tolerated. Butisol Sodium (sodium butabarbital) meets this therapeutic need.

After 30 years of clinical use... still a first choice among many physicians for dependability and economy in mild to moderate anxiety.

Contraindications: Porphyria or sensitivity to barbiturates.

Precautions: Exercise caution in moderate to severe hepatic disease. Elderly or debilitated patients may react with marked excitement or depression.

Adverse Reactions: Drowsiness at daytime sedative dose levels, skin rashes, "hangover" and systemic disturbances are seldom seen.

Warning: May be habit forming.

Usual Adult Dosage: As a daytime sedative, 15 mg. (¼ gr.) to 30 mg. (½ gr.) t.i.d. or q.i.d.

Available for daytime sedation: Tablets, 15 mg. (¼ gr.), 30 mg. (½ gr.); Elixir, 30 mg. per 5 cc. (alcohol 7%); BUTICAPSP (Cupules Butisol, Somnase (sodium butabarbital))

15 mg. (¼ gr.), 30 mg. (½ gr.).

McNEIL

McNeil Laboratories, Inc., Fort Washington, Pa.



Figure 3: Butisol Advertisement, "Now she can cope..." Journal of the American Medical Association 207, no. 6: (1969).

Ritalin[®]

Ritalin gently overcomes mild depression and the fatigue so often associated with it. This is one agent that really brightens mood and improves performance, helps restore alertness, enthusiasm, and drive. Patients often report that fatigue and worry seem to vanish; they are able to go all day without becoming tired.

Acts in minutes Unlike other antidepressants, Ritalin usually brings relief with the very first dose. Your patients need not wait days

or even weeks to begin feeling better. Ritalin also...

Offers outstanding safety Unlike amphetamines, Ritalin rarely affects blood pressure or heart rate. It has not been associated with muscle tremors or urinary retention as have the potent MAO

inhibitors or tricyclic compounds. And toxic or adverse effects on blood, urine, liver or kidney function are not to be anticipated. For these reasons, Ritalin...

Proves especially valuable for the elderly This time-tested agent is well tolerated, even by older patients. It rarely affects appetite or causes rebound depression.



**Helps
relieve chronic
fatigue
and apathy
quickly**

C I B A
DORVAL, QUEBEC

0062

Figure 4: Ritalin Advertisement, 1970. Canadian Family Physician.



why is this woman tired?

She may be tired for either of two reasons:

- * because she is physically overworked. If this is the case, you prescribe rest, because rest is the only cure for this kind of physical tiredness.
- * because she is mentally "done in". Many of your patients—particularly housewives—are crushed under a load of dull, routine duties that leave them in a state of mental and emotional fatigue. For these patients, you may find 'Dexedrine' an ideal prescription. 'Dexedrine' will give them a feeling of energy and well-being, renewing their interest in life and living. Dexedrine* (dextro-amphetamine sulfate, S.K.F.) is available as tablets, elixir, and Spansule* capsules (sustained release capsules, S.K.F.) and is manufactured by Smith, Kline & French Laboratories, Philadelphia.

*T.M. Reg. U.S. Pat. Off. Patent Applied For.

Figure 5: Dexedrine advertisement (1956), "why is this woman tired?" JAMA.



35, single and psychoneurotic

The pursuer on her cruise ship took the last snapshot of Jan. You probably see many such Jans in your practice. The unmarrieds with low self-esteem. Jan never found a man to measure up to her father. Now she realizes she's in a losing pattern—and that she may never marry.

Valium (diazepam) can be a useful adjunct in the therapy of the tense, over anxious patient who has a neurotic sense of failure, guilt or loss. Over the years, Valium has proven its value in the relief of psychoneurotic states—anxiety, apprehension, agitation, alone or with depressive symptoms.

Valium 10-mg tablets help relieve the emotional "storms" of psychoneurotic tension and the depressive symptoms that can go hand-in-hand with it. Valium 2-mg or 5-mg tablets, *t.i.d.* or *q.i.d.*, are usually sufficient for milder tension and anxiety states. An *h.s.* dose added to the *t.i.d.* dosage often facilitates a good night's rest.

Valium® (diazepam)
for psychoneurotic states manifested by psychic tension and depressive symptoms

Before prescribing, please consult complete product information, a summary of which follows:

Indications: Tension and anxiety states; somatic complaints which are concomitants of emotional factors; psychoneurotic states manifested by tension, anxiety, apprehension, fatigue, depressive symptoms or agitation; acute agitation, tremor, delirium tremens and hallucinosis due to acute alcohol withdrawal; adjunctively in skeletal muscle spasm due to reflex spasm to local pathology, spasticity caused by upper motor neuron disorders, atetosis, stiff-man syndrome, convulsive disorders (not for sole therapy).

Contraindications: Known hypersensitivity to the drug. Children under 6 months of age. Acute narrow angle glaucoma.

Warnings: Not of value in psychotic patients. Caution against hazardous occupations requiring complete mental alertness. When used adjunctively in convulsive disorders, possibility of increase in frequency and/or severity of grand mal seizures may require increased dosage of standard anticonvulsant medication; abrupt withdrawal may be associated with temporary increase in frequency and/or severity of seizures. Advise against simultaneous ingestion of alcohol and other CNS depressants. Withdrawal symptoms have occurred following abrupt discontinuance. Keep addiction-prone individuals under careful surveillance because of their predisposition to habituation and dependence. In pregnancy, licitation or women of childbearing age, weigh potential benefit against possible hazard.

Precautions: If combined with other psychotropics or anticonvulsants, consider carefully pharmacology of agents employed. Usual precautions indicated in patients severely depressed, or with latent depression, or with suicidal tendencies. Observe usual precautions in impaired renal or hepatic function. Limit dosage to smallest effective amount in elderly and debilitated to preclude ataxia or oversedation.

Side Effects: Drowsiness, confusion, diplopia, hypotension, changes in libido, nausea, fatigue, depression, dysarthria, jaundice, skin rash, ataxia, constipation, headache, incontinence, changes in salivation, slurred speech, tremor, vertigo, urinary retention, blurred vision.

Paradoxical reactions such as acute hyperexcited states, anxiety, hallucinations, increased muscle spasticity, insomnia, rage, sleep disturbances, stimulation, have been reported; should these occur, discontinue drug. Isolated reports of neutropenia, jaundice; periodic blood counts and liver function tests advisable during long-term therapy.

Roche
LABORATORIES
Nutley, New Jersey 07110

Figure 6: Valium advertisement (1970), "35, single and psychoneurotic," Hospital & Community Psychiatry.

Women dominate his universe
psychic tension can rule his life

He doesn't understand the source of his psychic tension. But you do. He relates well to women with dominating traits. But not to men. Not even his own men.

Whenever psychic tension is a significant component in the clinical picture, consider the use of Valium (diazepam). On proper maintenance dosage, Valium can help reduce the psychoneurotic patient's tension—anxiety, apprehension, agitation, alone or with depressive symptoms—to more comfortable and adaptable levels. The most commonly reported side effects are drowsiness, fatigue and ataxia.

For your passive-dependent, tension-ridden patient dominated by women—and for countless other psychoneurotic—Valium may prove itself a helpful partner to your psychotherapeutic skills.

Please see last page of this advertisement for prescribing information.

for the relief of psychic tension in psychoneurotic states
Valium®
(diazepam)
2-mg, 5-mg, 10-mg tablets
T.i.d. and b.i.d.

Before prescribing, please consult complete product information, a summary of which follows:
Indications: Tension and anxiety states; somatic complaints which are concomitants of emotional factors; psychoneurotic states manifested by tension, anxiety, apprehension, fatigue, depressive symptoms or agitation; symptomatic relief of acute agitation, tremor, delirium tremens and hallucinations due to acute alcohol withdrawal; adjunctively in skeletal muscle spasm due to reflex spasm to local pathology, spasticity caused by upper motor neuron disorders, athetosis, stiff-man syndrome, convulsive disorders (not for sole therapy).
Contraindications: Known hypersensitivity to the drug. Children under 6 months of age. Acute narrow angle glaucoma; may be used in patients with open angle glaucoma who are receiving appropriate therapy.
Warnings: Not of value in psychotic patients. Caution against hazardous occupations requiring complete mental alertness. When used adjunctively in convulsive disorders, possibility of increase in frequency and/or severity of grand mal seizures may require increased dosage of standard anticonvulsant medication; abrupt withdrawal may be associated with temporary increase in frequency and/or severity of seizures. Advise against

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By relieving psychic tension, it can help:
ease patients into therapy, lessen emotional stress reaction to crisis situations, improve communication, reduce tension-induced insomnia, relieve stress-induced psychosomatic symptoms, support the patient between therapeutic sessions.

Supplied: Valium (diazepam) Tablets, 2 mg, 5 mg and 10 mg; bottles of 100 and 500. All strengths also available in Tri-B-Dose[®] packages of 1000.

Roche Laboratories
Division of Hoffmann-La Roche Inc.
Nutley, N.J. 07110

Figure 7: Valium advertisement, "Women dominate his universe—Psychic tension can rule his life." Hospital & Community Psychiatry 21, no. 4 (1970).

Her world orbits around doctors. Psychic tension rules her universe.

This childless widow's interpersonal relationships, sociometrically diagrammed, reveal the patterns of dominance, closeness, absence, and loss created by the principal people in her life.

Before prescribing, please consult complete product information, a summary of which follows:
Indications: Tension and anxiety states; somatic complaints which are concomitants of emotional factors; psychoneurotic states manifested by tension, anxiety, apprehension, fatigue, depressive symptoms or agitation; symptomatic relief of acute agitation, tremor, delirium tremens and hallucinations due to acute alcohol withdrawal; adjunctively in skeletal muscle spasm due to reflex spasm to local pathology, spasticity caused by upper motor neuron disorders, athetosis, stiff-man syndrome, convulsive disorders (not for sole therapy).
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Figure 8: Valium advertisement, "Her world orbits around doctors. Psychic tension rules her universe." Hospital & Community Psychiatry 22, no. 4 (1971).

**NAVIGATING THE FUTURE OF TOWN HALLS: THE
APPLICATION OF THE PUBLIC FORUM DOCTRINE TO
GOVERNMENT ACTORS ON SOCIAL MEDIA**

BY MADISON EVANS

ABSTRACT

The rise of social media platforms has dramatically impacted the methods through which the public communicates by shifting formerly in-person conversations to online discussions. Different social media platforms such as Instagram, Facebook, and X (formerly known as Twitter) are prominent hosts of online dialogue between individuals. Because the masses shifted to using online spaces as prominent venues for discussions, controversial topics such as politics, policy, and culture are now commonly disputed on these platforms. The Supreme Court has even deemed these online mediums as “modern town halls.” Considering the vast amounts of individuals online, government officials have adopted social media as a form of communication with the public. The majority of government officials such as senators and representatives along with government institutions like public universities and federal and state departments maintain accounts across various social media platforms. This newfound pathway of communication with the public has prompted increased discussions on free speech as it applies to these spaces. Generally, the First Amendment protects citizens from the government prohibiting their speech rights. However, with the introduction of social media into government communication, certain officials and institutions have utilized their platforms to block or censor constituents from their pages. This begs the question: does the First Amendment and the doctrine associated with it apply to government officials when they are operating social media platforms to communicate with the public?

INTRODUCTION

From protecting expression to prohibiting government hindrance of speech, the First Amendment of the Constitution and the legal precedent surrounding it have safeguarded Americans' speech rights. With the rise of social media and its use in official and unofficial government communications, issues emerge that cause individuals to question the application of the First Amendment in online spaces. While some argue that social media accounts associated with government entities should be able to regulate content and block users, others argue that these actions violate the marketplace of ideas, which is a principle rooted in the First Amendment that establishes the free exchange of information. In this article, I argue that the public forum doctrine that is rooted in First Amendment protections should apply to government officials and institutions when using private media outlets such as Instagram, Facebook, and X (formerly known as Twitter) to prohibit the government from illegally censoring and blocking users.

To understand the weight of this issue, one must first comprehend the importance of the First Amendment. It reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."¹ The First Amendment to the United States Constitution protects Americans' rights to religion, assembly, press, expression, and speech from government interference. The First Amendment prohibits any government body, institution, officer, or actor from inhibiting one's freedom of speech, except for some limited exceptions established by the Supreme Court. Such exceptions to this general rule include select cases of obscenity, defamation, incitement, fighting words, and true threats. While these exceptions contain specific conditions for the restriction of speech, the rule of law offers the government narrow guidelines to prohibit such speech to ensure this power is not misused. Moreover, the public forum doctrine is a form of protection for speech against the constraints of the government.

Any space that would commonly be deemed as a public place to hold dialogue (such as a sidewalk in a public park) would be considered a traditional public forum under the public forum doctrine. Under this doctrine, these public spaces are designated as areas where one's liberty to speak freely cannot be inhibited by the government—the government is generally prohibited from creating content-based limitations to speech in these spaces. Lyrissa Lidsky, author and faculty member of the University of Florida Levin College of Law, elaborates on the public forum doctrine utilizing the Supreme Court's precedent: "the state may not impose content-based restrictions on speech there unless they are 'necessary to achieve a

1 U.S. Constitution, amend. 1.

compelling state interest and . . . narrowly drawn to achieve that end.”² Lidsky explains that government actors are prohibited from imposing on speech for the purpose of directing the topic, subject, or other additional content, unless the content directly impacts a compelling state interest, such as certain aspects of public safety or national security. Further, content-neutral restrictions, which are commonly referred to as “time, place, and manner” restrictions are acceptable under the condition that they are “narrowly tailored to serve a significant governmental interest and leave open ample alternative channels of communication.”³ These restrictions limit the government’s ability to control the time, location, and manner that certain speech is conducted in particular circumstances. For instance, public universities may limit topics in a classroom, but not on the sidewalk. Further, a court might restrict speech in a courtroom to relevant individuals (such as judges and attorneys), but they cannot restrict discussions in the courthouse parking lot. Compelling government interests that warrant these restrictions could include the welfare of society, the health of the public, commerce, or similar avenues that create interest for the government. These understandings of the public forum doctrine and the First Amendment are essential for the ability to navigate free speech online.

DISCUSSION

The public forum doctrine should transfer to social media when used in a governmental capacity to communicate with individuals; precedent establishing the state action doctrine affirms this viewpoint. Jacob Spicer, an author for the Texas A&M Law Review, argues that social media platforms used by government officials within their official authority should be subject to the public forum doctrine. His argument reveals that the courts should utilize the state action doctrine to determine if individuals are acting on behalf of the state. The state action doctrine, as used in *Lindke v. Freed*, is a test used by the courts to determine if an individual worked as a governmental actor online. The case establishes, “A public official who prevents someone from commenting on the official’s social-media page engages in state action under §1983 only if the official both (1) possessed actual authority to speak on the State’s behalf on a particular matter, and (2) purported to exercise that authority when speaking in the relevant social-media posts.”⁴ If the individual’s governmental duty included the authority to speak on a particular subject and if the individual exercised their government-issued authority to act, then they are considered a state actor subject to the public forum doctrine. In lay terms, if a school superintendent spoke on school related issues on social media with authority from their official capacity, they would be deemed a state actor subject to the public forum doctrine. Spicer

2 Lyrissa Lidsky, *Government Sponsored Social Media and Public Forum Doctrine Under the First Amendment: Perils and Pitfalls* (University of Florida Levin College of Law, 2011), 4.

3 *Ibid.*

4 *Lindke v. Freed*, No. 22-611, 2024 U.S LEXIS 1432 (Mar.115, 2024).

argues that if one can establish that a government official has acted in this manner, then they are bound by the First Amendment on social media. If this test fails, however, he insists one must then apply the purpose and appearance test.

The purpose and appearance test helps establish that the public forum doctrine should be applied to government officials on social media platforms. For example, if the social media account's purpose is to conduct government business, or if it appears or functions like a government-run social media account, then it should be considered a public forum. One case that established the precedent of the purpose and appearance test on social media for government officials is *Knight First Amendment Institute at Columbia University v. Trump*. In this case, Donald Trump blocked users from his Twitter account during his presidency based on the content they expressed in the comments section of his posts. To determine if the comments section of Trump's account was a public forum and subject to the First Amendment, the courts evaluated the purpose of the social media account. The reasoning from the Circuit Court and the District Court follows, "(1) 'there can be no serious suggestion that the interactive space is incompatible with expressive activity,' and (2) the President and his staff hold the account open, without restriction, to the public at large on a broadly accessible social media platform."⁵ The Second Circuit Court of Appeals found that the comments section was undisputedly open to "expressive activity" and that the President used his account for official business without establishing speech restrictions. The court cited that President Trump used his account for functions that "can be taken only by the President as President," therefore the account was under government control at the time of the blocking.⁶ Because the account was being used for the purpose of government functions and the account offered a platform for expressive activity without establishing any limiting restrictions, the court found Trump had created a public forum and was therefore held to the standards of the First Amendment protections. Thus, the purpose and appearance test is important to establish whether a government official or entity has created a public forum.

Davison v. Randall is another case that utilizes the purpose and appearance test in relation to government officials' use of social media platforms. In this case, Phyllis Randall, who was the chair of the Loudoun County Board of Supervisors, banned Brian Davison from her Facebook page, where she posted summaries of school board meetings. Randall banned Davison because of a comment she claimed contained allegations against the school board members. The Fourth Circuit Court of Appeals used the purpose and appearance test to evaluate if the comments section of her post should be considered a public forum subject to First Amendment protections. The court notes how Randall invited citizens to participate in her comments section, and by doing so she created a public forum. The

⁵ *Knight First Amend. Inst. At Columbia Univ. v. Trump*, 928 F.3d 226 (2d Cir. 2019).

⁶ *Ibid.*

appearance of Randall's account called for the expression of citizens by opening "its interactive space—for 'ANY' user to post on 'ANY issues.'"⁷ Because Randall used her account for official government business and opened the comments section to discourse, she violated Davison's First Amendment rights by banning him from her Facebook page. *Davison v. Randall* further affirms the idea that the appearance of the social media platform in question is relevant to free speech discussion.

An essential aspect of Spicer's argument suggests that there must be a new approach to addressing government officials on social media that combines both the state action test and the purpose and appearance test. Currently, the precedent surrounding this issue is not objectively established. The Sixth Circuit Court of Appeals utilized the state action test, while the Fourth Circuit Court of Appeals and the Second Circuit Court of Appeals implemented the purpose and appearance test. In his analysis, Spicer argues that the Supreme Court should combine the two tests presented by the Circuit Courts to create a predictable and transparent precedent to weigh government officials' use of social media. By building a two-part test with the best aspects of the current precedent, the court will be able to create a clear standard for individuals to understand when evaluating public forums on social media platforms. Spicer states, "If 'the text of state [or federal] law requires an officeholder to maintain a social media account;' government funds are used to run the social media account; the 'social media account is run by employees 'on the state's payroll,' then any action involving that account will be considered state action."⁸ According to Spicer, these are the first steps the court should evaluate to determine state action on social media. If state action is affirmed after this part of the test, then one can reason that the official violated their Constitutional duties to not inhibit the speech of citizens.

After state action is applied, Spicer argues that the court should compare four aspects of the purpose and appearance test: First, one must verify if the individual's social media account "displays the official government title."⁹ Second, one must determine if the account is assigned to a particular government official. Third, one must determine whether or not the individual account is associated with a particular office or displays the office's contact information. Lastly, one must evaluate whether the account is used to deliberate official business.¹⁰ Spicer argues that implementing this test across the courts will lead to uniformity and transparency, allowing citizens' rights to be protected. By utilizing the two-part test, which includes the state action doctrine and purpose and appearance test, citizens' right to freedom of speech online will be better protected against government

7 *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019).

8 Jacob Spicer, "Social Media and State Action: Click 'Like' and Follow This Two-Part Test," *Texas A&M Law Review* 11 (2023): 27.

9 *Ibid.*

10 *Ibid.*

actors on social media platforms. With modern town halls moving towards digital mediums, it is increasingly important that the courts establish a clear precedent for valuing the freedom of speech online.

Alternatively, critics argue that the public forum doctrine should not transfer to private media outlets when utilized by government officials or institutions for official use. They believe it is important to establish a difference between individuals acting “under the color of the law” and officially on behalf of the state. Acting “under the color of the law” is defined by the courts as when assumed private actions are connected so closely with the state that they are deemed essentially state actions.¹¹ In reference to the public forum doctrine precedent surrounding this issue, Joseph D’Antonio, author for the *Duke Law Journal*, stated, “It does not establish that the individual official is acting as the state, nor does it ask whether the official has the power to act as the State.”¹² D’Antonio argues that these tests appearing in *Knight Institute v. Trump* and *Davison v. Randall* are not sufficient to prove whether the individual should be viewed as acting on behalf of the government with the power to create a public forum. Further, he argues, “Simply because an official’s actions are ‘governmental in nature’ does not mean that official has assumed the mantle of acting as the government.”¹³ The argument rests on drawing a clear distinction between the government itself and those employed by the government. For instance, an elected official speaking at a committee hearing might be recognized as governmental in practice but would not be viewed as associated with the government as a whole. The law distinguishes the government as an entity and not a person for legal reasons, so a person working in their official capacity would be considered acting as the government under the law, while personal opinions would remain private speech. D’Antonio argues that for a comment section to become a public forum, the government itself must create the forum to properly apply this doctrine.

The argument that the current precedent is not distinct enough for the public forum doctrine to be applied to government officials’ social media pages is faulty logic. When one accounts for the lines of reasoning presented to demonstrate that certain officials surpassed their legal constraint, this fault becomes clear. To demonstrate how the precedent displayed in state action doctrine is distinct, one can focus on the standards presented in the case of *Knight Institute v. Trump*. The case revealed how, in numerous situations, private property can be considered a public forum. While both sides agreed that Trump possessed ownership of the social media account, the court was concerned with under what pretenses he was utilizing the account. Further, “according to the National Archives and Records Administration, the President’s tweets from the Account ‘are official records that must be

11 *Davison*, 912 F. 3d 680.

12 Joseph D’Antonio, “Whose Forum Is It Anyway: Individual Government Officials and Their Authority to Create Public Forums on Social Media,” *Duke Law Journal* 68, no.4 (2019): 274.

13 *Ibid.*

preserved under the Presidential Records Act.”¹⁴ Because the presidential business that was being conducted on his account had overreached the limit of private speech, Trump’s social media page was acting under the color of the government. This warranted his page to become official records under the Presidential Records Act. Additionally, Trump’s social media account contained interactive features that were open to the public, which contributed to the non-private aspect of his account. Because (1) the current precedent requires that the social media platform must be used for official government business, and (2) the account contains a public aspect, it provides a transparent path to produce a public forum.

Next, some argue that the public forum doctrine should not transfer to private media outlets when utilized by government officials or institutions for official use because it could inhibit the officials’ freedom of speech. D’Antonio argues that relying on state action doctrine and the “under color of the state law” test for determining public forums in this situation “encroaches on public officials’ own right to free expression.”¹⁵ He argues that individuals who hold public offices can still act as private individuals without First Amendment limitations. Under the current interpretation of the public forum doctrine, D’Antonio states, “Government officials become unduly constricted by a public forum doctrine that stretches past the point of government-entity conduct and into the sphere of private, personal speech.”¹⁶ For instance, if the official posted personal information on the same page as government business, that post would be constricted to the same extent by the doctrine as the post surrounding government business. D’Antonio warns that this precedent fails to clearly distinguish between public and private speech for these individuals, effectively harming their freedom of expression on online platforms. While D’Antonio holds a valid concern, the basis for this worry—encroaching on public officials’ freedom of speech—can be dismissed by the steps used in the state action test to determine if the conduct was attributed to government business or private business.

To understand the steps of the state action test, one can turn to the case precedent established in *Davison v. Randall*. In this case, the plaintiff was required to establish that the violation of speech rights transpired because of actions by the defendant that were “under the color of state law.” To determine whether the actions met this threshold the court evaluated if the action utilized power “possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.”¹⁷ In other words, the court must determine if the government official’s behavior that caused the silencing of the plaintiff’s speech can be “fairly attributed to the state.” The courts must use their judgment to evaluate if the conduct of government officials is closely linked to the state to provide evidence for

14 Knight, 928 F. 3d 226

15 D’Antonio, “Whose Forum Is It Anyway,” 725.

16 *Ibid.*

17 *West v. Atkins*, 487 U.S. 42 (1988).

state action. Further, the court searches for whether the officials conduct occurred when they were executing an apparent or actual responsibility of their office. If the official is found to be utilizing the power attributed to their office to cause the infringement of speech, their actions are likely to be associated with state action. Once an official reaches the threshold of government action, even on their personal accounts they are bound by the First Amendment.

CONCLUSION

This paper argues that the public forum doctrine rooted in First Amendment protections should apply to private media outlets when used by government officials or institutions. Above all, free speech and the marketplace of ideas should be protected. Since social media is one of the main sources the public uses to communicate, it is imperative that comments sections and pages stay open to all viewpoints. Government officials tasked with or voluntarily distributing government business on social media platforms should be held to the same standard as government officials attempting to prohibit speech in traditional public places. The cases of *Lindke v. Freed*, *Knight Institute v. Trump*, and *Davison v. Randall* provide insight into how to approach the issue of government officials inhibiting individuals' freedom of speech on social media platforms. One must recognize that when government officials utilize their social media accounts in a manner that prohibits the free flow of ideas, it presents a harm to society that the First Amendment was ratified to prohibit. The state action doctrine accounts for when government officials are acting in an official context, and the purpose and appearance doctrine provides an extra level of protection when officials utilize their government influence or authority to restrict the speech of individuals. By establishing the state action doctrine along with the purpose and appearance test as a two-pronged test to determine if a government official has created a public forum, we can protect the sacredness of speech rights online. When both of these tests are applied in the ways that author Jacob Spicer argues, the constitutional rights of citizens are protected, and a clear precedent is set to establish when government officials create public forums online.

The public forum doctrine that is established within First Amendment safeguards should transfer to private media outlets when operated by government officials or institutions because the state action doctrine and the purpose and appearance test combined reveal that these practices best promote public discourse and protect free speech. The importance in this issue lies in the way it impacts individuals' ability to communicate on key issues presented by government entities on social media platforms. Social media has become the new town hall; it is time for the courts to adapt and recognize that public forums can be created in online spaces in addition to physical areas. Government officials should receive a check on their balance of power online by the public forum doctrine resting in the First Amendment of the Constitution.

***THE POIGNANT PUBLIC AND THE PARAMOUNT
PRIVATE: THE FAILURE OF THE GOVERNMENT AND
THE RESCUE OF CHARITABLE ORGANIZATIONS
DURING THE 1878 YELLOW FEVER EPIDEMIC IN
MEMPHIS, TENNESSEE***

BY BENJAMIN H. FORD

ABSTRACT

Yellow fever, caused by the *Aedes Aegypti* mosquito, ravaged the southern United States many times during the 19th century, especially in Memphis, Tennessee. Memphis in the 19th century was marked by a lot of promise before and after the Civil War but continued to be set back by unresolved issues. These unresolved issues included government corruption, the neglect of financial matters, and unattended sanitary concerns, which ultimately caused pestilence to be prevalent in the city. In 1878, Yellow fever struck Memphis, causing the municipal government to collapse and resulting in many people leaving the city behind. For those who couldn't leave, Yellow fever would cause plenty of despair and death. However, not all was lost with the creation of charitable organizations. These included the Howard Association, who focused on medical care, and the Citizen's Relief Committee, who worked as the de facto government. Both organizations worked separately but cooperatively to provide medical care and restore order to the city, ultimately saving many lives and revealing the neglect and need for health reform in Memphis. Much of the research into these organizations comes from Memphis journalist J. M. Keating's *A History of the Yellow Fever: The Yellow Fever Epidemic of 1878, in Memphis, Tennessee*. With the help of Keating's book, newspaper articles written in Memphis during the pandemic, and other journal articles analyzing the pandemic in its entirety, we can begin to understand how these charitable and private organizations were more effective in handling this crisis and how it changed the course of health reform in Memphis.

BACKGROUND

On September 11th, 1878, the Memphis newspaper *Avalanche* produced a chilling report: “A stricken city! Alas, fair Memphis! What sights meet the eye of those who yet remain in your midst!”¹ Almost a month before, on August 23rd, yellow fever had been officially declared an epidemic by the Board of Health in the city of Memphis. The underfunded Board of Health would only continue to meet until the end of the month with it, and most other government institutions, collapsing.² There were even reports of entire families perishing in neighborhoods around the city.³ However, not all hope was lost in Memphis. For the 20,000 people who remained in yellow fever’s midst, awful sights awaited, but many charitable volunteer organizations made up of prominent community members came to the aid of the poor, who could not afford to leave the city. These private groups: the Howard Association and the Citizens’ Relief Committee, were more equipped than state agencies to handle the 1878 yellow fever epidemic because of their focus on organization systems, charitable goals, and understanding of the importance of public health.

Yellow fever originated in the tropics of Africa and South America, and causes fever, chills, muscle aches, vomiting, and yellowing skin and eyes. The disease spreads through infected *Aedes Aegypti* mosquitoes. The Atlantic Slave Trade brought the mosquitoes and already infected people to the Americas in the fifteenth and sixteenth centuries.⁴ Urban areas were hit especially hard by yellow fever due to dense population sectors and sustainable environments for the *Aedes* mosquito to breed.⁵

Memphis, an urban area, offered much promise in the 19th century, before and after the Civil War. Its location on the Mississippi River connected it with the rest of the nation. Being situated in the middle of the country also allowed Memphis to be a gateway to the West, with newly built railroads from New Orleans and Charleston. Additionally, the city’s main produce, cotton, would in total bring Memphis’ city receipts to be around \$40,000,000 by the time of the Civil War.⁶ During this time, the population of the city almost doubled, from 22,623 in 1860 to 40,266 in 1870, with many being

1 John M. Keating, “The Yellow Fever Epidemic of 1878 in Memphis, Tennessee,” *Bulletin of the History of Medicine* 42, no. 3 (1968): 59.

2 Thomas H. Baker, “YELLOWJACK: The Yellow Fever Epidemic of 1878 in Memphis, Tennessee,” *Bulletin of the History of Medicine* 42, no. 3 (1968): 250.

3 Keating, “Yellow Fever,” 161.

4 Elena Gianhecchi et al., “Yellow Fever: Origin, Epidemiology, Preventive Strategies and Future Prospects,” *Vaccines* 10, no. 3 (2022): 372.

5 *Ibid.*

6 John H. Ellis, *Yellow Fever and Public Health* (The University Press of Kentucky, 1992), 15.

Irish immigrants and newly freed African Americans.⁷ The city seemed to be on track for more economic growth and progress but often was held back by mismanagement and pestilence.

The mismanagement stemmed from a power struggle in the years after the Civil War. In 1866, a year after the Civil War ended, riots began between Irish policemen and African American soldiers, resulting in the deaths of about 48 people.⁸ Leading up to the riots, there was a power struggle between the Irish minority, who had taken power of the local government during the Civil War, Union African American soldiers stationed in Memphis, and the newly founded Freedmen's Bureau, created to protect newly freed African Americans.⁹ After the ensuing violence, the state government passed the Metropolitan Police Bill, which took power away from the local government and resulted in the state taking over the police force.¹⁰

Even before the 1878 epidemic, Memphis had a reputation for being a disease-ridden city. Memphis' location on the Mississippi River contributed to the city's swampy environment, which made it a breeding ground for disease, insects, and parasites. Numerous smallpox, cholera, and yellow fever epidemics had already come through the city's history. The worst of these came in 1855, 1867, and especially in 1873, when all three diseases wrecked the city, killing almost 2,000 people.¹¹ An editor for the *Avalanche* wanted Memphians to consider that the prevalence of three epidemics in 1873 alone gave an "unfavorable impression" that the city could "dwindle into nothingness."¹²

CAUSES OF YELLOW FEVER IN MEMPHIS

Through all these epidemics, unchanging sanitary laws had kept the streets of Memphis filthy. This would especially become a concern during the hotter months of the year: August and September. During these months, the issue of "decaying vegetable matter, unremoved garbage, stagnant pools, marshes, [and] filthy streets and alleys" would stick out to the population.¹³ There was not an organized garbage collection system to clean up these

7 John H. Ellis, "Disease and the Destiny of a City: The 1878 Yellow Fever Epidemic in Memphis," *The West Tennessee Historical Society Papers*, no. 28 (1974): 75.

8 Art Carden and Christopher J. Coyne, "An Unrighteous Piece of Business: A New Institutional Analysis of the Memphis Riot of 1866," *George Mason University* (2010): 14.

9 *Ibid.*

10 R. L. McDonnold, "The Reconstruction Era in Tennessee," *The American Historical Magazine* 1, no. 4 (1896): 318-319.

11 Ellis, "Disease and the Destiny of a City," 78.

12 "Daily Avalanche," *The Daily Memphis Avalanche*, Oct 13, 1873, 2.

13 "Keep the City Clean," *Public Ledger*, August 16, 1877, 3.

nuisances, even with countless calls for it from the press.¹⁴

The water in Memphis was no better. Most of the people in the city got their water from wells and cisterns, which were dangerously close to contaminating privies.¹⁵ The waterworks in Memphis were also privately owned by the Memphis Water Company, and by 1877, this company was on the verge of bankruptcy and pumping most of its water from the contaminated Wolf River.¹⁶ This river, which also fed into the Mississippi, was connected to the worst water in the city, the Bayou Gayoso. This bayou, which ran throughout the entire city, was backed up with sluggish waste from sewers, sinks, and vaults.¹⁷ Even during the summer months, the bayou would not flow and many grew to believe that the filth caused yellow fever through miasma, or as disease which spreads in the air.¹⁸ The wells, cisterns, and the bayou undoubtedly assisted in the *Aedes Aegypti* mosquito appearing, the insect that we now know is the real cause of yellow fever.¹⁹

When yellow fever struck in 1873, the problem of overcrowding was exposed in the poor Irish neighborhood of Happy Hollow in two ways:²⁰ The first was the arrival of the Bee steamboat, which brought a family from disease-rattled Shreveport, Louisiana, to the settlement. The second was the emptying of an old cistern, which had not been used since the Civil War, into a nearby pond.²¹ Both of these culminated in yellow fever invading this poor, foreign-born Irish neighborhood where it “began knocking the doors on Promenade Street.”²² Some people in this neighborhood lived in homes of “dilapidated materials,” such as rotting wood.²³ Sometimes these small spaces held 15-20 people in one living space.

The neglect of sanitary implementation from the municipal government may have been expected considering financial implications. The end of the Civil War in 1865 left the city with a severe lack of funds, especially with

14 Keating, “Yellow Fever,” 103.

15 Ellis, “Disease and the Destiny of a City,” 76.

16 Ellis, *Yellow Fever and Public Health*, 29.

17 Peter Murtough, *Condensed History of the Great Yellow Fever Epidemic of 1878* (Memphis: S. C. Toof & Co., Printers and Lithographers, 1879), 60.

18 *Ibid.*

19 Ellis, “Disease and the Destiny of a City,” 76.

20 *Ibid.*

21 Anne Marie McMahon Falsone, “The Memphis Howard Association: A Study in the Growth of Social Awareness” (M.A. diss., Memphis State University, 1968), 58.

22 Daily Avalanche, October 25, 1873, 2.

23 Ellis, *Yellow Fever and Public Health*, 22.

the end of slavery.²⁴ Without proper tax-collecting methods, financing the city government was challenging and drained city funds. The municipal government also continued to default on interest payments, and from the end of the war until 1872, it very rarely redeemed interest coupons until they fully matured.²⁵ By 1878, the situation in Memphis had not improved. In total, the city of Memphis accumulated a debt of about \$4,500,000. The city was failing and was on the way to losing its charter.²⁶

THE BEGINNINGS OF THE 1878 EPIDEMIC

The perfect storm was brewing in Memphis for the 1878 yellow fever epidemic. About five months before the epidemic swept through, Memphis newspapers questioned the City, as it crippled the Board of Health and abolished the sanitary police. This was concerning especially to the people, considering there was a loss of almost \$30,000,000 in trade revenue during the last epidemic in 1873.²⁷ By early June, when the fever started spreading through Havana, Cuba, the Board president, Dr. R. W. Mitchell, requested \$10,000 for strict quarantine measures, but Memphis council members refused the proposal. This was ultimately decided because of the fear of disrupting trade in the already crippled economy and the division of medical opinion between Dr. Mitchell and former Board president, Dr. John Erskine.²⁸ As a result, Dr. R. W. Mitchell decided to resign in protest, saying yellow fever in Memphis would be “our own fault in not taking the known necessary precautions against it.”²⁹

The Board of Health eventually decided on preventative measures. When yellow fever started running up the Mississippi River from New Orleans, Louisiana, and Vicksburg, Mississippi, in late July, the results of the inefficient actions of the government and the Board of Health came to light. The Board, that “only a few days ago . . . gave evidence it was a live organization,”³⁰ presented its first actions from the new president of the Board, Dr. D. D. Saunders. Dr. Erskine, who previously was against quarantine measures, requested for a quarantine of ships from New Orleans on President’s Island and the addition of 100 men for sanitary forces.³¹ The city’s treasury was out of money with no help from the government, so they looked elsewhere for financial help, particularly from the Howard

24 Lynette Boney Wrenn, “The Impact of Yellow Fever on Memphis: A Reappraisal,” *The West Tennessee Historical Society Paper* 41 (1987): 7.

25 *Ibid.*

26 Ellis, “Disease and the Destiny of a City,” 77; Keating, “Yellow Fever,” 101.

27 “Ledger Lines,” *Public Ledger*, Mar 15, 1878, 3.

28 “The Yellow Fever Scare,” *The Memphis Daily Appeal*, July 27, 1878, 1.

29 Baker, “YELLOWJACK,” 243; Ellis, “Disease and the Destiny of a City,” 79–80.

30 “The Yellow Fever Scare.”

31 “Strict Quarantine,” *Public Ledger*, July 30, 1878, 3.

Association of Memphis.³²

THE HOWARD ASSOCIATION

The Howard Association was originally organized in New Orleans, Louisiana, as a direct result of the yellow fever epidemic of 1837. In that year of the epidemic, New Orleans was undergoing a financial crisis, heated political turmoil, and a dysfunctional board of health.³³ In response, The Howard Association, named after the famous philanthropist John Howard of the United Kingdom, was founded by a group of wealthy young men who offered supplies, medical care, and assisted in burying the dead.³⁴ By the 1850s, the Howards of New Orleans had grown their organization to receive fundraising from all around the county, especially in the Eastern United States, which allowed them to expand their charitable actions to social work and open functioning hospitals.³⁵

By the late 1850s and 60s, Memphis, Tennessee, was in a similar situation to New Orleans in the 1830s. As mentioned before, due to mounting financial issues and a complete absence of sanitary laws, yellow fever appeared in Memphis in 1855. In response, the Howard Association of Memphis, a prototype organization almost identical to the one in New Orleans, was organized on October 1st, 1855.³⁶ They stayed around for only as long as epidemics persisted, so they remained dormant until they reorganized on September 29th, 1867 under the same circumstances.³⁷ After their charitable works in 1867, they were officially given a charter by the General Assembly of the State of Tennessee with the goal “to provide nurses and necessities for those who may be taken sick, who without means and funds, and particularly during the prevalence of epidemics.”³⁸ Once again, when pestilence struck around September 14th, 1873, they reorganized with the purpose of distributing charities and the employment of nurses.³⁹

In 1878, the relationship between the Board and the Howards was weak. In a city board meeting, when Dr. D.D. Saunders mentioned Memphis would need \$10,000 for preventative measures, Dr. Paul Otey of the Board of

32 Keating, “Yellow Fever,” 103.

33 Peggy Bassett Hildreth, “Early Red Cross: The Howard Association of New Orleans, 1837-1878,” *Louisiana History: The Journal of the Louisiana Historical Association* 20, no. 1 (1979), 52.

34 Ellis, *Yellow Fever and Public Health*, 32.

35 Hildreth, “Early Red Cross,” 60–61.

36 Falsone, “The Memphis Howard Association,” 29.

37 Keating, “Yellow Fever,” 135.

38 *Ibid.*

39 “Notice. The Howard Association,” *The Memphis Daily Appeal*, September 17, 1873, 1.

Health replied that the Howard Association had \$40,000 in their treasury.⁴⁰ However, the Howard Association refused to give sanitary funds to the city, citing that its charter constitution only allowed its funds to be used for charitable purposes.⁴¹ The Public Ledger wrote to Memphians, stating that the government “ought to pay their city taxes” before taking money used for the poor.⁴² Eventually, the Howards did give \$4,000 for the purpose of prevention; however, incidents, as when the Golden Crown steamboat provided a fake admission slip to enter the city with five New Orleans residents, proved these measures to be ineffectual.⁴³

PANIC BEGINS

Many cases of yellow fever went unreported. The Board of Health was concerned with rumors that yellow fever had arrived in Memphis, and those were promptly investigated. Many reports concluded that these cases were malarial fever, with any other claim being “in many instances malicious.”⁴⁴ The rumors began circulating more in Memphis, when on August 10th in Grenada, Mississippi, there was a call for help related to yellow fever, which Howards Butler P. Anderson and W. J. Smith answered.⁴⁵ After this, the Board of Health and the press assured people that if yellow fever entered Memphis, it would be reported.⁴⁶ However, the same publication issue reported on a doctor who declared a yellow fever case. The doctor backed up his claim with evidence of black vomit, a unique indicator of yellow fever.⁴⁷ Instead, Drs. Saunders and Erskine declared it to be malarial fever.⁴⁸ There were a total of 14 deaths of what they thought was malarial fever from July 28th to August 7th, all of which were later declared to be deaths from yellow fever.⁴⁹

With the failure of quarantine measures and rumors of fever quickly spreading, panic erupted in the city. Almost 25,000 people immediately fled to nearby cities, leaving 20,000 remaining to face the epidemic, with 14,000 of those being impoverished African Americans and the rest mostly foreign

40 “Sanitary Measures,” *Public Ledger*, July 31, 1878, 3.

41 *Ibid.*

42 *Ibid.*

43 Falsone, “The Memphis Howard Association,” 119–120.

44 “There is No Yellow Fever” *Public Ledger*, August 7, 1878, 3.

45 Keating, “Yellow Fever,” 103.

46 “The Health of Memphis,” *Daily Appeal*, August 13, 1878, 4.

47 *Ibid.*

48 *Ibid.*

49 Falsone, “The Memphis Howard Association,” 126.

whites.⁵⁰ On August 13th, when local shopkeeper, Mrs. Kate Bonida, died of yellow fever, the Board of Health officially declared this the first death of an epidemic, announced 10 days after her death.⁵¹ The Howard Association of Memphis, though still active beforehand, officially reorganized on the day of Mrs. Bonida's death, to come to the aid of those who did not flee.⁵² Dr. Mitchell, the former chair of the Board of Health, was called to run the medical corps wing for the Howards.⁵³ Their plan of action was to send Howard members to one of the 10 wards they created in the city to get a count on how many were sick and what supplies they needed. Then, they would collect supplies and employ doctors and nurses to provide care for the individuals and families that needed the support.⁵⁴ In total, the Howards would employ about 111 doctors, each making about \$60 a week.⁵⁵

THE CITIZENS' RELIEF COMMITTEE

While the Howards focused on medical care, another charitable organization, the Citizens' Relief Committee, was created with the goal of organizing relief efforts. This committee, led by Gage & Fisher Cotton Factors partner, Charles G. Fisher, was assembled around the 19th of August after an announcement in local newspapers of a Citizens' Relief Committee meeting.⁵⁶ It was filled with many influential members of the community, including the editor of the *Memphis Appeal*, J. M. Keating, who wrote *The Yellow Fever Pandemic of 1878*, in *Memphis Tenn. in 1879*, which was one of the most compressive reports of the epidemic. Keating is also probably a major reason why these organizations got so much press coverage.

J.M. Keating fled to the United States from Ireland in 1848 after the Young Ireland Rebellion and settled in Memphis in 1858.⁵⁷ He started as an editor of the *Memphis Bulletin* and then after the Civil War ended, he founded the *Memphis Daily Commercial*. Not long after, he became a co-owner and editor of the *Memphis Appeal*, the position he held during the 1878 epidemic in Memphis. Instead of fleeing like other prominent Memphians, Keating, as mentioned before, remained active in relief efforts and continued to cover the epidemic. Keating's writings are credible in

50 Baker, "YELLOWJACK," 245–246

51 Keating, "Yellow Fever," 146.

52 *Ibid.*

53 *Ibid.*

54 Molly Caldwell Crosby, *The American Plague: The Untold Story of Yellow Fever, the Epidemic that Shaped our History* (Penguin Group, 2006), 56.

55 Randal L. Hall, "Southern Conservatism at Work: Women, Nurses, and the 1878 Yellow Fever Epidemic in Memphis," *Tennessee Historical Quarterly* 56, no. 4 (1997): 248.

56 "Citizens' Relief Committee," *Public Ledger*, August 19, 1878, 1.

57 Steve Pike, "Memphis Moment: J. M. Keating," *WKNO* 91.1., July, 24, 2008, <https://www.wknofm.org/news-and-features/2008-07-24/memphis-moment-j-m-keating>.

that they are primarily factual or based on other accounts of the epidemic. Also, Keating's report of the epidemic was published through the Howard Association with the intention of raising money for a statue in Memphis commemorating the doctors and nurses.⁵⁸ There is no reason to believe that Keating's intentions were anything other than to provide information and use his position to help the people of Memphis.

The Citizens' Relief Committee managed and distributed supplies to the city. Pairs of Committee members were assigned into 10 wards in the city to provide aid, similar to the Howards. Each pair was given an African American representative.⁵⁹ Between the months of August and October, the Committee would provide 745,735 rations including but not limited to: around 290,000 pounds of bacon, 68,000 pounds of hay, and 58,000 pounds of sugar.⁶⁰

The immediate goal of the Citizens' Relief Committee was to set up refugee camps outside of Memphis. The goal of these camps, like Camp Williams (named after a doctor who died during the yellow fever epidemic of 1873), was to remove from the city people who were not sick and people who could not afford to go elsewhere.⁶¹ The press urged all people to go, with the promise of furnishing and supplies with a train leaving daily to take residents to Camp Williams.⁶² These supplies were provided by the federal government and included rations and tents, with even President Rutherford B. Hayes reassuring citizens that "the secretary of war will do all in his power."⁶³ Although this camp would care for over 1,000 people, many in the city decided to remain at home, most being poor African Americans and Irish immigrants.⁶⁴

Back in the city, the Citizens' Relief Committee acted essentially as the municipal government in Memphis. In early September, government institutions and the Board of Health began to cease to function, with many members fleeing to camps or beyond.⁶⁵ Even before this occurred, the Committee had already been coordinating supplies to be distributed at commissaries.⁶⁶ People could submit applications for aid at one of the 10 wards established in the city. In these wards, the Citizens' Relief Committee gave aid when necessary and cared for the welfare of the ward they were

58 Keating, "Yellow Fever," i.

59 *Ibid.*

60 *Ibid.*

61 Baker, "YELLOWJACK," 251.

62 "Special Notice," *Public Ledger*, August 20, 1878, 2.

63 "The Citizens' Relief," *Daily Appeal*, August 22, 1878, 2.

64 Ellis, "Disease and the Destiny of a City," 82.

65 *Ibid.* 83

66 "The Fever at Home," *Daily Appeal*, August 29, 1878, 2.

located in.⁶⁷ For that purpose, the Committee was given control of the police force and fire department.⁶⁸ Perhaps the most important act of the Committee in this regard is the unheard-of integration of African Americans into the police force. When most of the force had been stricken ill or simply left, Police Chief Philip Athey, who stayed behind, “point[ed] at a crowd of negroes across the street,” and under the Committee’s discretion, hired 13 African American policemen.⁶⁹ The work of the Committee “with such auxiliary, under the protection of such strength” allowed the Howards to do their medical work without interference of trouble and chaos.⁷⁰

CARE ORGANIZATION

Medical work in Memphis continued to be grueling, with many volunteer Howard nurses being expected to care for the thousands of sick and dying. These nurses, a total of 2,995 overall, were paid about \$4.00 a day, including room and board.⁷¹ However, no price could afford the horrifying sights. One report described a residence that housed a dying, breastfeeding mother, with the father and all but one child deceased out of four.⁷² The quality of the nurses was in question as well, considering two front-page advertisements from the Howard Association in the *Daily Appeal*. The first advertisement requested people to report neglectful nurses, considering that their “reputation depends upon their faithful performance,” and the second advertisement displayed a significant need for female nurses.⁷³ By September 9th, there was death “from every mansion, cot, and hovel,” with an estimated 4,500 total deceased.⁷⁴ Even with that fact, volunteer nurses were flocking from around the country from as far as Alabama, Louisiana, and Texas, to name a few.⁷⁵

Continuing their relief efforts, the Howards and Citizens’ Relief Committee coordinated the opening of infirmaries, drug stores, and other needs throughout the community. The Howards opened two hospitals, one for whites at the Market Street School and another for African Americans

67 “Where to Go for Help,” *Public Ledger*, September 9, 1878, 1.

68 Keating, “Yellow Fever,” 130.

69 Dennis C. Rousey, “Yellow Fever and Black Policemen in Memphis: A Post-Reconstruction Anomaly,” *The Journal of Southern History* 51, no. 3 (1985): 366, from the journal article *Public Ledger*, August 18, 1878.

70 Keating, “Yellow Fever,” 133.

71 Falsone, “The Memphis Howard Association,” 149–150.

72 Keating, “Yellow Fever,” 155.

73 “To the Citizens of Memphis,” *Daily Appeal*, August 27, 1878, 1.

74 “The Situation,” *Public Ledger*, September 9, 1878.

75 Falsone, “The Memphis Howard Association,” 150.

on Lipton Street. Both hospitals cared for hundreds of people.⁷⁶ The Howards and the Committee opened supply depots for medical stocks, also located in transformed schoolhouses. Here, designated doctors gave care and handed out required supplies, which were ready to be retrieved if orders were placed.⁷⁷ The Committee also took the pleasure of opening an orphan home for children of deceased or sick parents with the support of local Episcopal nuns.⁷⁸ The results of all their efforts were coming to fruition, as by September 19th, there was the first evidence of a decrease in both deaths and cases.⁷⁹

As cases slowly dwindled, the Howards' and Committee's network of trains and telegraph stations made the ability to send aid elsewhere simple and rapid. By September 26th, the Howard Association received telegrams from towns from 30 to 60 miles away, including Collierville, Germantown, and Brownsville.⁸⁰ The work of the telegraph office cannot be overstated because it provided relief to even more far-away towns and a connection for outsiders to donate. The telegraph office workers were "exposed . . . more than any other class, save the doctors and nurses, to the fever poison."⁸¹ By the end of the epidemic, only one telegraph worker remained.⁸² The Southern Express superintendent, Major W. A. Willis, also a member of the Citizens' Relief Committee, committed to sending people and supplies to and from wherever they needed to go for little to no expense.⁸³ These trains would provide relief to towns along the Louisville railroad, with the intention to expand along the Charleston and Tennessee railroads.⁸⁴

The Howards and the Citizens' Relief Committee led initiatives for burials and even scientific research. With the thousands dying in Memphis creating an awful stench of death spreading throughout the city, the Committee was given the responsibility of printing death certificates. The allocation of burials was decided after a meeting with Mayor Flippin and the chair of the Board, Dr. D.D. Saunders.⁸⁵ This was designed to help the county undertaker, Jack Welsh, who was burying, on average, 68 bodies per week

76 "The Fever at Home," *Daily Appeal*, August 28, 1878, 2; Baker, "YELLOWJACK," 255.

77 "The Howard Association," *Public Ledger*, September 30, 1878, 2.

78 Baker, "YELLOWJACK," 257.

79 "A Gleam of Hope," *Public Ledger*, September 19, 1878, 2.

80 Falsone, "The Memphis Howard Association," 179.

81 Keating, "Yellow Fever," 127.

82 *Ibid.*

83 *Ibid.*

84 "President Langstaff," *Daily Appeal*, October 8, 1878, 1.

85 Falsone, "The Memphis Howard Association," 165.

before September 7th.⁸⁶ With about 300 of the dead, the Howard physicians performed autopsies for the “cause of science” and to better understand yellow fever.⁸⁷

1878 YELLOW FEVER EPIDEMIC ENDS IN MEMPHIS

Finally, by early October, the fever subsided due to incoming frost, and by the 29th, the Board of Health finally declared the epidemic to be over.⁸⁸ The Howards had already been celebrating the finale of the epidemic with a formal dinner on October 23rd.⁸⁹ Their relief efforts would not have been possible without national support. A long receipt of cities gave to the Howard Association, the highest donors including Boston, Philadelphia, and at the top, New York City, with \$82,637.01.⁹⁰ The Howard Association’s prominent reputation, acquired in New Orleans back in 1837, made raising these funds possible. The Howards during this outbreak of yellow fever would spend close to \$500,000, employ around 2,900 nurses, and care and supply for almost 8,000 people in and around Memphis.⁹¹ The final toll included 17,000 cases and 5,150 dead.⁹²

By 1879, Memphis had lost its city charter. The measure was enacted on January 15th as the result of the mounting debt Memphis had suffered from financial mismanagement. The *Daily Appeal* thought highly of the repeal as a measure to prevent Memphians from becoming “perpetual slaves” to the current corrupted financial system.⁹³ In the health department, a new Board of Health had been established, which immediately prompted the department to hire men to clean streets and collect garbage.⁹⁴ When disease returned in 1879, the Howards along with the government, were ready for the fight. By November 6th, there were 473 dead and 1,521 cases, a significant reduction compared to the epidemic the year before.⁹⁵ Though yellow fever had returned after the great epidemic in 1878, this would be the last time yellow fever would come through Memphis.

86 “Ledger Lines,” *Public Ledger*, September 7, 1878, 2.

87 Keating, “Yellow Fever,” 119.

88 Ellis, “Disease and the Destiny of a City,” 87.

89 “Our Noble Physicians,” *Public Ledger*, October 23, 1878, 1.

90 Keating, “Yellow Fever,” 329

91 *Ibid.*

92 Ellis, “Disease and the Destiny of a City,” 87.

93 “Repeal of the City Charter,” *Daily Appeal*, January 15, 1879, 2.

94 Falsone, “The Memphis Howard Association,” 234.

95 “Milan Exchange,” *The Milan Exchange*, November 6, 1879, 4.

HEALTH REFORMS

After this final string of yellow fever, the local Board of Health and the state legislature began surveying the condition of the city while rapidly implementing sanitary reforms. The Board of Health, upon its own local survey, created a plan to clean out or fill privy vaults, which were contaminating cisterns.⁹⁶ The official survey was approved by the governor of Tennessee, with shocking results. The survey first discovered the depleted population, which had dropped to about 30,000, considering death rates and emigration.⁹⁷ The second discovery was the need to replace decaying streets with hard pavement. The final, and the most revealing, was the requirement to empty sewers and underground drainage, and restructure them to not only remove waste, but to also relieve stormwater. The depleted population is telling, but the other two resolutions ultimately would remove the breeding ground of the *Aedes Aegypti* mosquito.⁹⁸

State and national laws were the next step for public health reform. President Rutherford B. Hays openly supported national sanitary administration, because the 1878 epidemic “awakened a very general public sentiment” towards public health legislation. After a thorough investigation at the federal level, the Public Health Association Bill of 1879 was passed, which created a National Board of Health.⁹⁹ Dr. R. W. Mitchell, former Memphis Board of Health chair and leader of the Howard’s Medical Corp, was appointed to be a member.¹⁰⁰ Howard J. W. Cooper desired to organize a national Howard Association,¹⁰¹ but perhaps with the realization of public health reform, these private organizations were no longer needed.

In the coming years, much more was learned on how to better handle epidemics. The absolute failure of the government to protect its citizens from pestilence stood above all else. The Appeal’s analysis of the epidemic states that yellow fever’s toll, financially and in its mortality, was “an awful price to pay for the negligence in sanitary affairs, and for the recklessness which disregarded the lessons of 1873.”¹⁰² Even with the humanitarian work from the Howards, “no amount of heroism . . . will cover that up or hide from us the responsibility or culpability.”¹⁰³ However, the unwavering selflessness of private organizations, made up of local citizens, rescued the city from

96 “A Word in Season,” *Daily Appeal*, November 8, 1878, 1.

97 Ellis, *Yellow Fever and Public Health*, 112.

98 Falsone, “The Memphis Howard Association,” 290–292.

99 W. G. Smille, “The National Board of Health: 1879–1883,” *American Journal of Public Health* 33, no. 8 (1943): 926.

100 Baker, “YELLOWJACK,” 263.

101 “A Proposed National Howard Association,” *Public Ledger*, November 25, 1878, 2.

102 “The Future of Memphis,” *Daily Appeal*, October 27, 1878, 2.

103 *Ibid.*

destruction. These lessons learned in 1878 through the charitable work of the Howards and the Citizens' Relief Committee catapulted Memphis, and ultimately the United States, into a public health movement that never retreated.

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THE UNSEEN SLAVERY THAT SURROUNDS US***BY LILY NOLAN*****ABSTRACT**

This paper looks at the multifaceted and modern-day evil of human trafficking. It starts by focusing on what human trafficking is rather than misconceptions that distract from overall awareness of the widespread issue and the possibility for effective change. An example of this is the belief that traffickers are always strangers or that victims are always kidnapped. Another misconception is that trafficking occurs only in countries outside the United States. While trafficking is persistent throughout the world, this paper will focus on labor and sex trafficking in the United States specifically. The paper discusses the types of human trafficking, as well as the vulnerabilities that traffickers often prey upon, such as financial insecurity, home instability, and lack of social support. This paper addresses some of the complications that can arise with the law and the prosecution of traffickers, as well as the importance of education regarding human trafficking. It concludes by encouraging the reader to do what they can to make a difference. Through educating one's community and voicing these issues to local politicians, individuals can play an important role in preventing human trafficking and supporting the victims affected by it.

WHAT IS HUMAN TRAFFICKING?

Slavery is not just a historical issue; it exists all around us today, hidden in plain sight. Human trafficking is “a form of modern-day slavery in which traffickers use force, fraud, or coercion to control victims for the purpose of those engaging in commercial sex acts or labor services against his/her will.”¹ It is tempting to assume that trafficking is not a problem in the United States, but billions of American dollars are being funneled into this industry. According to the International Labor Organization, this industry profits \$236 billion dollars a year globally, and \$52 billion of that being from the United States.² There are “approximately 314,000 victims of trafficking in Texas at any given time. Of those, 79,000, or 25% of the total population of trafficking victims in Texas, are minors and youth. . .”³ Outside of Texas, there are estimated 27.6 million victims at any given time.⁴ These statistics are shocking to many, especially when many do not know what slavery can look like in modern-day society.

Force, fraud, and coercion are definitional components of human trafficking. It is crucial to know what these tactics look like when trying to identify human trafficking. Force pertains to physical restraint or harm.⁵ For instance, a victim being confined to a trafficker’s home. Fraud “includes false promises regarding employment, wages, working conditions, love, marriage, or better life.”⁶ An example of fraud is a trafficker who promises an immigrant victim better opportunities for themselves and benefits such as a passport. Coercion “includes threats of serious harm to or physical restraint against any person, psychological manipulation, document confiscation, and shame and fear-inducing threats to share information or pictures with others or report to authorities.”⁷ An example of coercion could look like traffickers threatening to leak victims’ nude photos to others if they do not cooperate.

1 “Human Trafficking,” *National Human Trafficking Hotline*, accessed 2025, <https://humantraffickinghotline.org/en/type-trafficking/human-trafficking>.

2 “Annual Profits from Forced Labour Amount to US\$ 236 Billion, ILO Report Finds,” *International Labour Organization*, March 19, 2024, <https://www.ilo.org/resource/news/annual-profits-from-forced-labour-amount-us-236-billion-ilo-report-finds>.

3 Bruce Kellison et al., “‘To the Public, Nothing Was Wrong with Me’: Life Experiences of Minors and Youth in Texas at Risk for Commercial Sexual Exploitation,” *Bureau of Business Research* (2019): 18, <http://dx.doi.org/10.26153/tsw/3228>.

4 “National Human Trafficking Prevention Month,” *U.S. Department of State*, January 20, 2025, <https://www.state.gov/national-human-trafficking-prevention-month>.

5 “Fact Sheet: Human Trafficking,” *Office on Trafficking in Persons*, November 21, 2017, https://nhhtac.acf.hhs.gov/sites/default/files/2018-07/fact_sheet_human_trafficking_fy18_1.pdf.

6 Office on Trafficking in Persons, “Fact Sheet: Human Trafficking.”

7 *Ibid.*

WHAT DOES TRAFFICKING LOOK LIKE?

Human trafficking takes many forms, but it is primarily divided into sex trafficking and labor trafficking. The most common forms of human trafficking are forced labor and sex trafficking; “forced labor, or involuntary servitude, occurs when a person is involuntarily recruited and harbored for work or services under threat of penalty. Sex trafficking involves forced involvement in commercial sex acts.”⁸ Understanding the differences between various forms of trafficking is important, as the methods traffickers use can look different in each situation and can change over time, and awareness increases the likelihood of recognition. Labor trafficking can involve people working in dangerous conditions, underpaid or not paid at all, often in industries like agriculture or in professions with harsh physical labor. A good example of this is illustrated in the case *Unites States v. Patricio* (2021 S.D. Ga.), in which the conspirators “required the workers to pay unlawful fees for transportation, food, and housing while illegally withholding their travel and identification documents, and subjected the workers ‘to perform physically demanding work for little or no pay, housing them in crowded, unsanitary, and degrading living conditions, and by threatening them with deportation and violence.’”⁹

Sex trafficking, on the other hand, can be more prevalent in situations where individuals are coerced into commercial sex acts through threats or manipulation. For example, the case of Dwayne Lawson in Orange County, California discusses the manipulation of minors, leading them to be trafficked. Lawson promised the young girl that he would “make her a ‘star’” and consequently lured her to another state.¹⁰ Police later arrested the young girl for prostitution, only to realize she was being trafficked as well. Sex trafficking cases can be confused with prostitution. Those appearing to be willfully engaging in prostitution could be trafficked individuals. Victims in these situations are often overlooked. Knowing the attributes of the different forms of human trafficking can assist in others being able to recognize and report it.

8 Jeeva Babu, Grace M Boland, and Temilola Salami, “Accurate Identification and Prosocial Behaviors Towards Human Trafficking Victims Among Psychology Students,” *Journal of Human Trafficking* 10, no. 3 (2022): 430, <https://doi.org/10.1080/23322705.2022.2040075>.

9 “Human Smuggling, Forced Labor Among Allegations in South Georgia Federal Indictment,” *United States Attorney’s Office, Southern District of Georgia*, November 22, 2021, <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment>.

10 “Human Trafficking Online: Cases and Patterns,” *University of Southern California*, 2011, <https://technologyandtrafficking.usc.edu/report/human-trafficking-online-cases-patterns>.

HUMAN TRAFFICKING MYTHS

One of the most common things adults encourage children to do is to be wary of strangers. These adults warn about being lured to someone's vehicle with candy or other bribes. Although it is important to be mindful of strangers, in the majority of these cases, individuals are trafficked by people close to them, such as family members or spouses.

According to Polaris Project, one of the biggest national data sources and organizations regarding human trafficking prevention, 42% of sex-trafficked victims are trafficked by family members and 39% are recruited by either an intimate partner or spouse.¹¹ In labor trafficking, 69% are recruited by employers, 15% by family members, and 5% by intimate partners or spouses.¹² People are often trafficked by people they know well or see often. The concept of a family member or spouse being the perpetrator is well known when looking at crimes like homicide but often overlooked in human trafficking. Acknowledging that an individual could be trafficked by a loved one makes it easier to spot a victim. Some indicators for the general public to look out for are signs of physical or mental abuse, submissive behavior, rehearsed way of speech, unsuitable living conditions, and lack of personal possessions.¹³ Additionally, public awareness reduces the likelihood of trafficking, because traffickers use ignorance as a tool to keep their victims trapped.

Another myth often believed is that people are physically trapped when trafficked. In "Sex Trafficking of Minors in the U.S: Implications for Policy, Prevention and Research", the authors identified that "press releases and online media reports from over nine years found that fewer than 10% of cases involved kidnapping."¹⁴ This highlights the insidious nature of human trafficking. Some individuals are kidnapped, but most trafficked victims in America live in their own homes and look as if they live a normal life, often attending school and work as normal. People are often trapped through manipulation, coercion, and threats.

Traffickers use physical and psychological threats, such as withholding a place to live or intimidation. Housing instability is a vulnerability attributed with human trafficking and is "variably defined as having difficulty paying rent, spending more than 50% of household income on housing, having frequent moves, living in overcrowded conditions or doubling up with

11 "Analysis of 2020 National Human Trafficking Hotline Data," *Polaris Project*, 2020, <https://polarisproject.org/2020-us-national-human-trafficking-hotline-statistics>.

12 Polaris Project, "Analysis of 2022 National Human Trafficking Hotline Data."

13 "Indicators of Human Trafficking," *U.S. Department of Homeland Security*, October 12, 2018, <https://www.dhs.gov/blue-campaign/indicators-human-trafficking>.

14 "What We Know About How Child Sex Trafficking Happens," *Polaris Project*, 2020, <https://polarisproject.org/blog/2020/08/what-we-know-about-how-child-sex-trafficking-happens>.

friends and relatives.”¹⁵ Additionally, “64 percent of [survivors of human trafficking] reported being homelessness or experiencing unstable housing when they were recruited into their situation.”¹⁶ One particular example of traffickers taking advantage of those facing housing instability is *United States v Ezekiel Hampton*, where a “14-year-old girl was being trafficked, along with several other young women. The girl, who had recently left Hampton, explained that he made the girls advertise their sexual services on Craigslist. All of the victims turned out to be runaways, and Hampton provided them with housing, food, and drugs.”¹⁷ This case portrays how traffickers will often target victims vulnerable to housing instability and provide them with housing and other resources such as food and drugs.

Emotional threats make the victim feel trapped, causing them to feel like they have nobody else to turn to, or their necessities will not be met if they leave the trafficker. This emotional form of abuse can be difficult to detect and is often seen in domestic violence and abusive relationships. Myths about what “counts” as human trafficking are dangerous, leading others to invalidate the experience of victims. Less than 10% of victims are physically kidnapped, which leads bystanders to misread evidence of human trafficking. Sometimes the victims themselves do not realize they are experiencing human trafficking.

Traffickers do not have a specific profile. They can be men, women, teachers, coaches, religious leaders, co-workers, friends, or family members. Despite these various identities, traffickers prey upon victims with common vulnerabilities. Some individuals are more susceptible to human trafficking than others, further demonstrating the importance of public education.

VULNERABILITIES TO HUMAN TRAFFICKING

Traffickers prey on specific vulnerabilities, knowing how to entrap a victim mentally, emotionally, or physically. Often, people preyed upon are already in difficult life circumstances. Many victims have experienced past physical abuse, are impoverished, or struggle with substance abuse. The top risk factors for sex trafficking, according to the Polaris Project, are substance abuse, runaway/homeless youth, unstable housing, mental health concerns, and recent migration/relocation. The top risk factors for labor trafficking, according to the Polaris Project, are recent migration, self-supported

15 Emma Hock et al., “Exploring the Impact of Housing Insecurity on the Health and Well-Being of Children and Young People: A Systematic Review,” *Public Health Research* 11, no. 13 (2023): 1, <https://www.ncbi.nlm.nih.gov/books/NBK598813>.

16 Brittany Anthony et al. *On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking* (Polaris Project, 2018), <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Housing-and-Homelessness-Systems.pdf>.

17 University of Southern California, “Human Trafficking Online: Cases and Patterns.”

economic hardship, unstable housing, criminal record, and substance abuse.¹⁸ Traffickers prey on these vulnerabilities, whether that be emotionally or physically. Traffickers frequently target individuals suffering from housing instability, because they will offer to supply housing in exchange for a particular service, like sex work or unpaid labor. As such, victims often feel trapped because their housing is contingent on their obedience. Similarly, this can be done with food, clothing, drugs, and other resources. Traffickers force victims to rely on them for resources of basic human survival, and often, it is even more common for family members to traffic victims because a vulnerable individual often relies on family as means for survival and a main support system.

More importantly, many victims do not realize they are even being trafficked: “because of how trafficking works, most people do not identify their experience as trafficking until after the situation is over.”¹⁹ Often, people trafficked are groomed or have experienced past abuse. Grooming is “understood as methods child molesters use to gain access to and prepare future victims to be compliant with abuse.”²⁰ According to Polaris Project, “6% of all the victims who experienced combined sex & labor trafficking experienced sexual abuse prior to their trafficking situation,” and “10% of all sex trafficking victims experienced sexual abuse prior to their trafficking experience.”²¹ If a victim has been abused in the past or has been trafficked for a long time, they are less likely even to recognize they are being trafficked if they have been groomed. So many victims do not leave their trafficking situation because they do not identify themselves as a victim, especially if they have experienced it from a young age. According to one study done by students at the University of Texas at Austin, “the average age of first sex trafficking victimization among study participants was about 15 years old.”²² If victims have been trafficked from a young age or have experienced sexual abuse or manipulation, this can easily be their norm, and they may not be able to recognize that they are being trafficked.

18 Polaris Project, “Analysis of 2020 National Human Trafficking Hotline Data.”

19 “Understanding Human Trafficking,” *Polaris Project*, 2023, <https://polarisproject.org/understanding-human-trafficking>.

20 Natalie Bennett and William O'Donohue, “The Construct of Grooming in Child Sexual Abuse: Conceptual and Measurement Issues,” *Journal of Child Sexual Abuse* 23, no 8 (2014): 957. <https://doi.org/10.1080/10538712.2014.960632>.

21 “Sexual Assault Awareness Month: How Does Human Trafficking Fit In?” *Polaris Project*, 2024, <https://polarisproject.org/blog/2023/04/sexual-assault-awareness-month-how-does-human-trafficking-fit-in>.

22 Kellison et al., “‘To the Public, Nothing Was Wrong with Me’: Life Experiences of Minors and Youth in Texas at Risk for Commercial Sexual Exploitation,” *The University of Texas at Austin: Institute on Domestic Violence & Sexual Assault* (2019): 10.

CHILDREN BEING PREYED UPON

As of 2018, UNICEF states, “approximately 28 percent of identified victims of trafficking globally are children” who are taught to trust the adults in their lives.²³ Traffickers in positions as guardians, coaches, and teachers use this to their advantage. In one recent human trafficking case where officers went undercover as sex workers in a sex trafficking bust “forty-six men were arrested during the operation ... Among those arrested included a high school teacher and coach, a youth pastor, and the operations director of a large hospital network.”²⁴ Traffickers can be and are professionals who work with children, and it is important not to be naive about this unfortunate reality.

Another contemporary component of sex trafficking and sexual exploitation is social media. Social media is a resource that makes interacting with people, both strangers and loved ones, more accessible to people, including children. Social media has many benefits, but it has created another way for traffickers to prey upon minors. With more children and young adults accessing strangers online, there is the risk of facing increased cases of online grooming, inappropriate material, indecent/pornographic exposure, misguided advertising, online gambling, racism, cyberbullying, and sexting.²⁵ As technology and social networking expands, more avenues to endanger children and young adults are opened. “There are an estimated 500,000 online predators active each day. Children between the ages of 12 and 15 are especially susceptible to being groomed or manipulated by adults they meet online,” many of which occur in “internet chat rooms or through instant messaging.”²⁶ In many instances “the online predator will ask a child for sexually explicit photos of themselves.”²⁷

As social media and new platforms advance, there need to be policies and guidelines in place to protect and keep children safe from traffickers. An example of this is pending before the Supreme Court in *Free Speech Coalition v. Paxton*, regarding whether age verification on websites containing explicit

23 “Children Account for Nearly One-Third of Identified Trafficking Victims Globally,” *United Nations International Children’s Emergency Fund*, July 29, 2018, <https://www.unicef.org/press-releases/children-account-nearly-one-third-identified-trafficking-victims-globally>.

24 Katy Blakey, “Lawmakers, Charities React to North Texas Sex Trafficking Bust,” *NBC 5 Dallas-Fort Worth*, January 25, 2023, <https://www.nbcdfw.com/news/local/lawmakers-charities-react-to-north-texas-sex-trafficking-bust/3177800>.

25 Muqaddas Jan et al., “Impact of Social Media on Self Esteem,” *European Scientific Journal* 13, no. 23 (2017): 329–41. <https://doi.org/10.19044/esj.2017.v13n23p329>.

26 “Children and Grooming / Online Predators,” Child Crime Prevention & Safety Center, 2024, <https://childsafety.losangelescriminallawyer.pro/children-and-grooming-online-predators.html>.

27 Child Crime Prevention & Safety Center, “Children and Grooming / Online Predators.”

material and violates First Amendment rights.²⁸ This case examines child exploitation and the ease with which children can access sexually explicit material. *Free Speech Coalition v. Paxton* is an important case, because implementing age verification or other stipulations on pornography sites, or other sexually explicit materials, can help protect children from being exposed to sexually explicit material online or from being groomed into trafficking. Additionally, it has been found that “sexual predators have purposefully exposed young children to pornography for the purpose of grooming the children for sexual exploitation.”²⁹ There are numerous links between the porn industry and trafficking, though the connection between them is not exclusive to children. The Child Prevention and Safety Center states “numerous people are pushed into or forced to perform in porn scenes by way of coercion or threats, thereby making them victims of sex trafficking.”³⁰

BARRIERS TO EFFECTIVE CHANGE

Due to its complexity in identification, human trafficking poses significant challenges for policymakers and law enforcement to address effectively. As described above, and according to the National Institute of Justice, “human trafficking can be hard to detect and harder to stop.

Inherently complex, human trafficking crimes can pose a number of barriers to enforcement. They include victim identification challenges, victim fear of seeking help, and a lack of appropriate agency resources.”³¹ Not only is trafficking often difficult to identify, victims often do not trust law enforcement. This may be because traffickers discourage victims from reaching out, but often victims themselves are at risk of being prosecuted as well. Unfortunately, “many survivors of both sex and labor trafficking are at increased risk of being arrested for a range of crimes related to the circumstances of their trafficking.”³² In many cases, law enforcement fails to identify victims of trafficking when detaining or arresting suspects, leading to “re-victimization when victims are punished for their engagement in

28 “Free Speech Coalition, Inc. v. Paxton,” *Oyez*, accessed 2025, <https://www.oyez.org/cases/2024/23-1122>.

29 “The Impact of Pornography on Children,” *American College of Pediatricians*, last modified August 2024, <https://acpeds.org/position-statements/the-impact-of-pornography-on-children>.

30 “How Traffickers and Child Predators Use Porn to Desensitize and Groom Victims,” *Fight the New Drug*, 2020, https://fightthenewdrug.org/porn-is-used-to-groom-and-desensitize-victims/?_gl=1.

31 “Federally Backed Human Trafficking Task Force Model Yields Progress, Opportunities for Continued Growth,” *National Institute of Justice*, 2022, <https://nij.ojp.gov/library/publications/federally-backed-human-trafficking-task-force-model-yields-progress>.

32 “The Criminalization of Trafficking Victims: Beyond Prostitution (Webinar),” *U.S. Department of Justice Office of Justice Programs*, November 12, 2019, <https://www.ojp.gov/events/criminalization-trafficking-victims-beyond-prostitution-webinar>.

the crimes their traffickers forced them to commit.”³³ The justice system needs to reevaluate ways to prevent further victimization and the collateral consequences caused by the justice system involvement.

Another barrier is the nuances regarding the legalization of prostitution and its impact on human trafficking. According to the Bureau of Public Affairs, “where prostitution is legalized or tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.”³⁴ However, it is also important to consider that “while trafficking inflows may be lower where prostitution is criminalized, there may be severe repercussions for those working in the industry. For example, criminalizing prostitution penalizes sex workers rather than the people who earn most of the profits (pimps and traffickers).”³⁵ Errors in legislation have a strong potential to cause greater harm to the victims of this heinous crime. These contrasting ideas about sex work display the nuances that lawmakers and legislators must navigate to establish effective laws. Although changes in law could be high-risk, this does not mean that changes should not be made, rather it means that more well-rounded and extensive research should be put towards this issue so that there is less chance for policy changes to cause more harm. Education and awareness are crucial to accomplishing this objective.

EDUCATION

Education is crucial in preventing human trafficking. Education on human trafficking, whether it be through training, certifications, or classes, should be implemented into our school systems, universities, and businesses. Education not only helps the individual who learns the information to be less at risk, but it also allows them to recognize the issue in their communities and workplace. A positive example of this is in the study, “The Impact of Human Trafficking Training on Healthcare Professionals’ Knowledge and Attitudes”, in which the training, Learn to Identify and Fight Human Trafficking (LIFT), was implemented with healthcare workers. The study concluded that “[a]mong health professionals, the CME-accredited LIFT training leads to a short-term improvement in knowledge of human trafficking and a sustained improvement in awareness and attitudes about human trafficking.”³⁶ Educational initiatives and related training should be

33 “Protecting Victims from Wrongful Prosecution and Further Victimization,” U.S. Department of State, 2018, <https://www.state.gov/wp-content/uploads/2019/02/283800.pdf>.

34 “The Link between Prostitution and Further Victimization,” Bureau of Public Affairs, November 24, 2004, <https://2001-2009.state.gov/r/pa/ei/rls/38790.htm>.

35 “Does Legalized Prostitution Increase Human Trafficking?” *Harvard Law and International Development Society*, 2014, <https://orgs.law.harvard.edu/lids/2014/06/12/does-legalized-prostitution-increase-human-trafficking>.

36 Hayoung Lee et al., “The Impact of Human Trafficking Training on Healthcare Professionals’ Knowledge and Attitudes,” *Journal of Medical Education and Curricular Development* 8 (2021): 1, <https://doi.org/10.1177/2382120521101652>.

implemented in schools and businesses. Training would benefit as well if more studies and research was done to perfect and expand training to be more specific to that field. This could look like training teachers to recognize human trafficking and victims' behavioral patterns in a school setting, along with human trafficking prevention methods.

JOINING THE FIGHT AGAINST HUMAN TRAFFICKING

Hearing these facts and statistics about human trafficking can feel discouraging but that is not the goal. The more people are aware of this issue, the better equipped we are to fight against the evil of human trafficking. When individuals understand what typifies cases, and the common vulnerabilities, misconceptions, and general statistics of human trafficking, they and their loved ones are less likely to become victims.

Policy changes can make a difference, but there are changes you can make in your own field that can make huge impacts. A great example of this is Shannon Deer and Cheryl Miller's book, *Business Doing Good: Engaging Women and Elevating Communities*. Shannon Deer's knowledge in business and accounting combined with Cheryl Miller's knowledge from a past working with women from challenging backgrounds, is used to write their book addressing business principles that could be implemented to hire women who have had a past with sex work or other challenging pasts, such as: poverty, addiction, or human trafficking. This book addresses how individuals, communities, and businesses can be positively impacted when allowing those with challenging pasts to use their own unique perspectives and positive qualities, such as perseverance, to help companies flourish. This is an example of how someone who may not work in policy can still provoke change by positively impacting their community and bring different perspectives to this fight against human trafficking.

Another example is the organization *Aggies Fighting Human Trafficking*, a university student-led organization, that brings awareness and education about human trafficking to students at Texas A&M University and the Bryan-College Station area. While building awareness is a great first step, the organization also takes positive action by volunteering with local organizations, such as *Different Day*. The *Different Day* Foundation helps survivors of human trafficking not only to escape their traffickers, but also to escape the cycle. For instance, the *Different Day* Foundation helps house victims and encourages healing, both physically and emotionally, through therapy or procuring the medical care victims may need. The *Different Day* Foundation was founded by Marsey Bartula, who worked in social work for over 10 years and saw the gaps that left victims vulnerable, such as unstable housing and lack of healthcare. Helping victims allows them a chance to rebuild their lives rather than rely on traffickers to supply housing or other resources. Bartula used her own personal knowledge of social work to find *Different Day* and make a tangible difference.

Informing a friend, family member, coworker, or local politician and using personal skills and knowledge makes a difference. Traffickers often

target those who are most vulnerable, seeking to fill a void in someone's life. Engaging in conversation alone makes a huge difference. Importantly, human trafficking does not just terrorize the most obvious victims but also creates an environment of crime and neglect. So, informing others help protect communities. If more people put in the effort to be able to recognize the vulnerabilities and prevalence of human trafficking, it can make a huge difference. Inform others. Inform others for the victims currently enslaved, for survivors, for communities, and for loved ones. Join the fight against modern-day slavery.

***THE AMERICAN CONSTITUTION OF JAPAN:
HOW THE UNITED STATES CREATED
THE JAPANESE GOVERNMENT***

BY WESLEY POKLUDA

ABSTRACT

After World War II, the Allies explicitly asserted in the Potsdam Declaration that Japan would become a democracy. Under the supervision of the United States during the military occupation, Japan underwent a profound transformation. The new Constitution of Japan was a significant part of this transformation and established the framework for Japan's postwar democracy. American occupation forces, under General Headquarters (GHQ), led by United States General Douglas MacArthur, and Japanese officials, such as Prime Minister Shigeru Yoshida and head of the Japanese constitutional drafting committee, Jōji Matsumoto, worked together to draft the new constitution. My research helps answer the mystery of postwar reconstruction, showcasing America's transformation of post-WWII Japan, from a military dictatorship, into a stable democracy through sweeping changes to the Japanese Constitution. American motivations are uncovered by the Alfred Hussey Papers, revealing the United States directives during the drafting, the Milo Rowell Papers, outlining the legal recommendations from the GHQ, and documents from the United States State Department, showing how the undertaking was processed in DC. These documents are balanced by Japanese sources that illustrate Japan's preferred constitution, through Jōji Matsumoto's drafts, and Japanese responses to America's constitutional drafts, through the Imperial Diet Debates. The American Occupation of Japan was controversial to many; however, the occupation resulted in one of the most prosperous and free nations, in part due to United States' involvement.

Following the devastation of WWII, the American Army occupied Japan with an explicit mandate to transform the nation into a modern democratic state aligned with the principles of the Potsdam Declaration. This occupation marked one of the most significant moments in Japan's history, as its government shifted from an imperial power to a constitutional democracy in a relatively short span of time. The United States had a clear vision for peace and democratic governance following the Pacific War, yet the implementation of this vision in Japan would prove to be complicated. Against America's democratic impositions, many Japanese conservatives argued for preserving a slightly revised version of the Meiji Constitution, which retained the emperor's monarchical authority, instead of reducing him to merely the head of state.¹ Many conservatives saw the Meiji ideals as intrinsic to Japanese identity and stability. Meanwhile, Japanese liberals advocated for a more progressive constitution that would modernize Japan's government and align it with Western-style democracies.

The resulting reforms primarily reflected American influence driven by the American determination to impose their values upon Japan, but Japanese aspirations toward democracy played a crucial role in maintaining the new government. The United States rejected Japanese proposals, set clear ideological expectations, and ultimately provided Japan with a ready-made constitution that it was expected to adopt, setting the stage for Japan's postwar democratic structure. Within the span of three years, Japan transformed from a military state led by an emperor into a democratic stronghold. This transformation could not have occurred without a foreign power such as the United States mandating political change; however, the popular support for many of the liberal changes made to the Japanese government ensured that backlash would eventually evolve into support and success.

Japan's postwar transition from empire to democracy is often hailed as a political and economic miracle, considering its proximity to other countries in East Asia where democratic transformation failed to take root under American influence.² According to *Inside GHQ*, the occupation was not only pivotal in shaping modern Japan, but he also highlighted that "democratizing occupation" is an oxymoron. This is because the American army enforced democracy, sometimes against the will of the sovereign Japanese people, through their representatives in the Imperial Diet.³ Under the Meiji Constitution, the lower house representatives were directly elected, however, upper house representatives were appointed by the emperor. Furthermore, the emperor was in charge of dissolving the lower house, ensuring that the emperor and his advisors controlled the legislative process and prevented progressive bills from being passed. As a result,

1 National Diet Library, "Gist of the Revision of the Constitution," [February 8, 1946], *Alfred Hussey Papers*, Constitution File No. 1, Doc. No. 1.

2 Korea, Vietnam, and China received American aid or military support, but did not adopt democratic institutions.

3 Eiji Takemae, *Inside GHQ: The Allied Occupation of Japan and Its Legacy*, translated by Robert Ricketts and Sebastian Swann (Continuum, 2002).

the transformation of Japan's system of government can be seen as both a response to conflicting, internal pressures for reform and a manifestation of America's Cold War politics. The American occupation of Japan represents a unique case in postwar history where a foreign power orchestrated a successful long-lasting, democratic constitution for another state.

Japan's acceptance of the foreign-imposed constitution was an extraordinary development in the context of the era and became an essential element in postwar world-building by the United States.⁴ While many Americans reflect on interventions in Vietnam and Korea as unsuccessful or harmful, Japan's transformation stands out as an anomaly. Japan's reform is also often contrasted with the denazification of Germany, which ultimately took four years and required the efforts of the Allied forces in Germany. Furthermore, Germany would not be reunified into a single nation until 1990. The American-led occupation of Japan was one of the few instances where a foreign power swiftly imposed a governing framework on a defeated, East Asian nation and embedded permanent democratic institutions that did not result in social unrest.

While the United States imposed specific structures and values onto Japan's new government, these impositions were not entirely at odds with Japanese aspirations. According to public opinion surveys conducted by the Bureau of Information's Public Opinion Survey Division, a considerable majority of the Japanese populace supported reforming the constitution. Surveys conducted in 1946 by Kyodo News Service revealed that 75% of respondents expressed a desire for constitutional reform. Many explicitly advocated for restrictions on imperial power and increased authority for the Diet.⁵ This popular sentiment demonstrates some popular Japanese sympathy with certain American goals, namely the establishment of a democratic system and the curtailment of the emperor's political power. By instituting these reforms, America was respecting and facilitating the popular sovereignty already brewing among the Japanese people. Because America was able to tap into these reformist sentiments, the United States not only reshaped Japan's political future but also worked to ensure that Japan would emerge as a stable ally in the East, solidifying the United States' influence in Asia and countering the growing power of the Soviet Union.

While the United States genuinely believed in democracy, the concern over Japan's political structure was a reflection of the rising global tensions between the Soviet Union and the United States. General Douglas MacArthur asserted that, in the postwar world, the Soviet Union would endeavor to control the Far East. As a consequence, the United States viewed the security and alliance of Japan, a former military threat, as a necessity. This is buttressed by the words of the President's assistant who worked directly

4 Victor Sebestyen, *1946: The Making of the Modern World*. First American ed. (Pantheon Books, 2014), 118–134.

5 National Diet Library, *Kenpo Kaisei ni Kansuru Yoron Chosa Hokoku*. December 19, 1945, Sato Tatsuo Papers, Document no. 12, National Diet Library.

with General MacArthur in the East:

General MacArthur gave considerable emphasis to the influence of the Soviet Union in Japanese affairs, expressing concern over 'underground Communist agitation' in Japan. 'Many of the so-called liberal elements of Japan are Communist,' he stated, 'Japanese Communism is dominated from Moscow.' He predicted that the Soviets' intent to share in the Supreme Allied Command emanates from a desire to foment Japan's Communist revolution.

The General conveyed the impression that his economic policies toward Japan take into consideration the factor of Russian activity in the Far East. Russia, he commented, is playing the game of power politics 'for all it is worth' and the Far East is now the most important part of the world for America.⁶

If America could secure Japan as a democratic ally in the East, then the United States could create a bulwark for the West in Asia, and also secure valuable strategic advantages. During a time when China, Korea, and Vietnam were hotbeds of communism, the United States' presence in Japan, off the eastern coast of Asia, allowed it to project forceful political influence from new military bases. Indeed, Japan's military relationship with the United States enabled the United States to rescue South Korea from communist invasion in 1950 which would eventually become strategically valuable during the Korean War, as the United States Military bases facilitated easy transportation and logistics.

Additionally, Japan was also a sleeping economic powerhouse. After Japan's surrender in 1945, the country was in ruins, while America was in the position to rebuild Japan through an economic partnership into which both countries would benefit from rigorous trade. The opportunity was diplomatically tempting because the success of the partnership would prove to the Eastern world that communism was in every way inferior to democracy.⁷ Ambitious that Japan could become Asia's "city on the hill," the United States asserted unilateral control of Japan's transition to democracy. Japan was the obvious choice for post-WWII intervention and if the United States could secure Japan, then the rest of the East would follow Japan's example.

Pressure from the occupying forces compelled the defeated Japanese government to establish the Committee for Constitutional Reform, led by Jōji Matsumoto, a scholar and professor from the Tokyo Imperial

6 Edwin Locke, Jr., "Letter from Edwin Locke, Jr. to Matthew Connelly, with Attached Letter from Edwin Locke, Jr. to President Harry S. Truman," October 19, 1945, In *President's Secretary's Files*, Subject Files, Foreign Affairs File, 1940–1953: Japan, Harry S. Truman Library.

7 Jennifer M. Miller, *Cold War Democracy: The United States and Japan* (Harvard University Press, 2019), 118.

University.⁸ Matsumoto and his committee set out to draft a reformed constitution that would appease American demands without radically departing from traditional Japanese governance structures. Markus Thiel, in *Militant Democracy*, argues that a democratic constitution must be careful to balance entrenched cultural traditions with progressive reforms in order to win popular legitimacy.⁹ This thought accurately reflects how Japan's cultural elements throughout pre-war Japan, namely emperor worship, were considered nonnegotiable by the drafting committee. In Japanese society, the worship of the emperor was integral to manufacturing compliance with the government's agenda. To this end, the Matsumoto Proposal sought to retain the emperor's authority by slightly amending his role from "sacred" to "supreme" yet "inviolable," maintaining the imperial institution as one of political supremacy.¹⁰ The Emperor of Japan was seen as a type of "kami" in Shintoism, a living god worthy of worship, so reducing the emperor to a mere political figure was considered a large concession by Matsumoto's team. The commission aimed to provide a compromise, suggesting moderate reforms while preserving the cultural and governmental continuity deeply embedded in the Japanese psyche. However important preserving age-old governmental traditions was to Matsumoto's team, their contributions were nevertheless uncertain of being approved.

Due to the American occupation, all Diet proceedings on constitutional reform required ratification by GHQ, under the authority of General Douglas MacArthur.¹¹ The Matsumoto Draft was summarily rejected when the proposal was presented to the GHQ. American officials viewed the Matsumoto Draft as woefully inadequate; it was criticized for mere surface-level changes rather than establishing a democratic government in line with America's postwar demands and Western standards, namely civil liberties, a strong court system, and an enforceable constitution.¹²

The GHQ perceived this as a deliberate attempt to preserve the power structure of the Meiji Constitution under the guise of reform. Although the GHQ continued to receive updated drafts from Matsumoto and his team, they continued to reject them, viewing them as merely "touch-ups" rather

8 Shigeru Yoshida, *The Yoshida Memoirs: The Story of Japan in Crisis*, edited by Otto D. Tolischus (Greenwood Press, 1973), 73.

9 Markus Thiel, *The 'Militant Democracy' Principle in Modern Democracies* (Ashgate, 2019), 230–232.

10 National Diet Library, "Gist of the Revision."

11 United States Department of State, *Memorandum for the President, Subject: Authority of the Supreme Commander for the Allied Powers*, September 13, 1945, State Department Records Decimal File, 1945-1949, Record Group 59, United States National Archives and Record Administration.

12 Milo Rowell, *Report of Preliminary Studies and Recommendations of Japanese Constitution*. December 6, 1945. Milo Rowell Papers on New Japanese Constitution, Document No. 1, National Diet Library.

than comprehensive overhauls.¹³ GHQ and its representatives regarded the Japanese proposals as insufficiently transformative. While the GHQ initially adopted a wait-and-see stance, allowing the Japanese committee some latitude in drafting the constitution, their patience waned as the committee's proposals consistently fell short of GHQ's democratic expectations. Maki argues that this attitude was driven by their belief that a radical overhaul was necessary for Japan to emerge as a true democracy, even though GHQ did not believe its stance was extreme.¹⁴ Rather than allowing Japan to independently draft its constitutional future independently, the Americans decided that a more assertive approach was necessary to achieve democratization outlined in their initial goals.

While GHQ initially adopted a wait-and-see stance, allowing some leeway, Japan's proposals consistently fell short of GHQ's expectations. As the occupation continued, the GHQ's approach became increasingly interventionist, with the assistance of Milo Rowell, an American lawyer for the GHQ. As 1946 approached, Rowell and GHQ's stance began to make a significant shift. Rowell's report severely criticized the Matsumoto draft, pointing to its lack of explicit protections for individual rights, its weak judicial independence, and the absence of binding constitutionalism.¹⁵ Full of criticism, the GHQ escalated its involvement by issuing clear demands rather than recommendations. General Douglas MacArthur issued his "Three Basic Points" in early 1946, specifying that the new Japanese Constitution must prohibit war, dissolve Japan's feudal structures, and recognize the emperor as a symbolic head of state without political power.¹⁶ These core democratic principles and antiwar demands represented a sharp departure from GHQ's previous approach, showing their commitment away from passive observation to direct intervention. MacArthur and his team were particularly concerned with the limited time available to shape Japan's future, as they anticipated that the establishment of the Far Eastern Commission (an international body that would include the Soviet Union) in December of 1945, would limit America's unilateral authority over Japan.¹⁷ The GHQ sought to preempt Soviet influence by setting these parameters, thereby securing a democratic stronghold in the region that could quickly counterbalance Soviet expansion in Asia.

13 Alfred Hussey, *Three Basic Points Stated by Supreme Commander to be "Musts" in Constitutional Revision*, ca. February 4, 1946, Alfred Hussey Papers, Constitution File No. 1, Document No. 5, National Diet Library.

14 John M. Maki, *Japan's Commission on the Constitution: The Final Report*. (University of Washington Press, 1980).

15 Rowell, *Report of Preliminary Studies*.

16 Hussey, "Three Basic Points," Doc. No. 5.

17 National Diet Library, *Memorandum for the Supreme Commander: Subject: Constitutional Reform*. February 1, 1946. Alfred Hussey Papers, Constitution File No. 1, Document No. 3.

Under these circumstances, GHQ had officially run out of patience with Japanese revisions. General Courtney Whitney, frustrated by repeatedly inadequate draft constitutions, informed Matsumoto on behalf of the GHQ that Japanese assistance in drafting the constitution was no longer necessary.¹⁸ Urgency from at home and abroad demanded that the GHQ, acting on behalf of GHQ, deliver a complete draft of a constitution to the Japanese committee, effectively transferring authorship of Japan's foundational document to American hands.

The final document contained many different sections that upset conservatives in Japan. Without using the exact language as the American constitution, the preamble affirmed Japanese popular sovereignty over the government and the emperor.¹⁹ Many prominent people in the Japanese government firmly believed that the emperor was the sole source of sovereignty, as the Meiji Constitution had repeatedly maintained. Instead, the emperor was reduced to the symbolic head of state, completely subject to the power of the Diet, and whose only exclusive duty was to perform ceremonies.²⁰ The reinvigorated Diet, on the other hand, now held the authority to create a cabinet and pass laws without royal oversight preempting its decision making.

Many of the articles of the new constitution articulate individual rights, establish the separation of church and state, and provide for universal suffrage—all of which upset Japanese conservatives. The Meiji Constitution, through its founding principles, served as a powerful force in mobilizing the population to follow the emperor. For many Japanese people, Shinto was a part of their way of life and an icon of nationalism; its separation from the state was almost inconceivable.²¹ So too was universal suffrage; Japan was socially conservative and had not granted many rights to women up to that point, despite the eagerness of certain women groups.²² Nevertheless, many women had already wanted to engage in government and many citizens were supportive of democratization and expanding personal liberties.²³

But nothing insulted Japanese conservatives more than Article 9: the complete abolition of Japan's right to declare war.²⁴ This article still remains contentious in Japanese politics, with political parties dedicated to amending

18 National Diet Library, *Meeting of General Whitney, Colonel Kades, Commander Hussey, Lt. Col. Rowell with Dr. Matsumoto, Mr. Yoshida, and Mr. Shirasu*, February 22, 1946, Alfred Hussey Papers, Constitution File No. 1, Doc. No. 20.

19 Japan, *Constitution of Japan*, Article 1, Promulgated November 3, 1946; enacted May 3, 1947.

20 *Ibid.* Article 4.

21 John W. Dower, *Embracing Defeat: Japan in the Wake of World War II* (Norton & Company, 1999), 315.

22 *Ibid.* 366.

23 *Ibid.* 415.

24 *Ibid.* 416.

the constitution to remove Article 9. While the article might seem reasonable in the context of WWII, many elites in the government and even common people thought the provision was a surprise, as the country was supposed to remain a sovereign nation after the occupation ended.²⁵ The nation lost the right to control its own military, which many believed to be an overreach of the occupier. However, despite the conservative backlash to the draft, there was nothing to be done against GHQ.

This draft, developed by GHQ staff, was to be translated and adapted to Japanese culture by Matsumoto and his team, but the substance of the draft was to remain. As Herbert P. Bix details in *Hirohito and the Making of Modern Japan*, General Whitney's draft forcefully aligned Japan's legal and political framework with American political values against Japanese officials' efforts to preserve their constitutional agency.²⁶ The GHQ's proposed draft enforced significant limitations on imperial power and implemented a complete withdrawal from militarism, thus satisfying the GHQ that Japan would never again threaten America or its allies. More importantly, the draft enshrined democratic principles and ensured that Japan's governing framework aligned with America's foreign policy interest in checking the USSR diplomatically.

To officially ratify the constitution, GHQ required the Japanese emperor to issue an imperial rescript ordering the formation of a new Diet, elected through universal suffrage, which would be tasked with formally adopting the constitution as an amendment to the Meiji Constitution. This procedural requirement was intended to maintain a sense of continuity and legitimacy in Japan's government, even as it underwent radical changes. As Eiji Takemae notes in *Inside GHQ*, this process not only served American objectives but also set a precedent for foreign influence in constitutional reform, ensuring that even during occupation, political procedures must be maintained to secure the perception of legitimacy.²⁷ By setting these parameters, the United States ensured that Japan's new government would be structurally dependent on political democracy and the American military, aligning with American objectives of maintaining stability and peace in East Asia.

Throughout the reform process, one analyzed by John Maki in Japan's Commission on the Constitution, American officials shaped the country's legal and political future in a manner that not only democratized Japan but also curtailed any resurgence of militaristic ambitions.²⁸ The constitution, ratified by the Japanese Diet in November 1946, took effect in May 1947 and became the legal foundation for Japan's postwar state, manufacturing the principles of pacifism, republican governance, and individual liberties that

25 *Ibid.* 422.

26 Herbert P. Bix, *Hirohito and the Making of Modern Japan* (HarperCollins, 2000).

27 Takemae, *Inside GHQ*.

28 Maki, *Japan's Commission*.

reflected American ideals more closely than they did Japanese traditions.²⁹

The Constitution of Japan, as ultimately adopted, reflects the American influence on Japanese cultural and political identity. Former Japanese Prime Minister Shigeru Yoshida recounts his work on the constitution in his memoirs. Although many Japanese agreed reform was necessary, the haste and lack of input left a bitter taste in many citizens' mouths "We, on our part, could do nothing."³⁰ The United States occupied Japan with one essential goal: to make it "economically and industrially impossible" to remilitarize and become a threat to American interests.³¹ With the extensive changes made under GHQ's guidance, it is evident that while the United States sought to achieve Japan's democratic transformation, the United States also limited Japan's agency to facilitate American geopolitical goals. Japan's adoption of American democratic principles was mainly the outcome of geopolitical pragmatism, as it allowed the United States to consolidate its influence in the region and counter potential threats from the Soviet Union. However, the American occupation also demonstrated the understanding of the need to frame Japan's constitutional changes in a manner that could be acceptable to Japanese society for it to last. GHQ's decision to retain the emperor as a symbolic head of state acknowledged the cultural importance of the imperial institution, allowing for continuity but refusing to compromise on substantive democratic reforms.³² By crafting a constitution that upheld individual rights and institutionalized pacifism, the United States left a lasting mark on Japan's national identity, laying the foundation for its modern role as a peaceful democratic power in Asia.

America's attempt at nation-building in Japan was a complex issue that embodied ambition and anxiety, as both the foreign and domestic identities struggled for dominance in the postwar era. The United States' actions were particularly intricate, because not only were they restructuring a nation that they went to war with, but they were also preparing a devastated country to re-emerge onto the global stage as a democratic country. This necessarily resulted in Japan losing a part of its identity, as militarism and imperialism had remained a part of their system for nearly a century. But the new government was not entirely alien to the Japanese people. Japan retained its traditional legislature, the Diet, and kept the emperor as the head of state. Although some Japanese military leaders like Hideki Tojo were executed for their wartime actions, Emperor Hirohito was not given any punishment for his involvement in WWII and remained on the throne until

29 United States Department of State, *Japan: General Principles Applicable to the postwar Settlement with Japan* (T-357), Post World War II Foreign Policy Planning, State Department Records of Harley A. Notter, 1939–1945, Document No. 600-T-357, United States National Archives and Record Administration.

30 Yoshida, *The Yoshida Memoirs*, 126–142.

31 Rosenman I. Samuel, "Memorandum from Samuel I. Rosenman to President Harry S. Truman," 1960. In *President's Secretary Files. Independence*, MO: Truman Library and Museum, DOI 290015686.

32 Thiel, *Militant Democracy*, 230–232.

1989. Eventually, Japanese society, high and low alike, embraced Japan's new identity under the 1947 constitution. The ideals of the new constitution were ultimately amenable to the Japanese way of life.

The Japanese citizenry was expected to accept their new governmental structure, as well as elect a new Diet and Prime Minister. The first session of the National Diet under the new constitution was called in May 1947. There was considerable pushback from the public and officials, however, the Far Eastern Commission released a statement that encouraged the Japanese government to take up the issue of constitutional revision upon themselves in one or two years after the end of the occupation.³³ Once this time came, many periodicals and political groups released their own tentative version of the constitution to be considered for ratification. However, as the Prime Minister at the time Shigeru Yoshida writes, "There exists little reason for being sensitive to the circumstances in which Japan's present constitution was drawn up. It is far more important to consider whether that document actually operates to the advantage of the Japanese people."³⁴ In the future Japan would discuss amending certain articles; however, over time, the question of the Japanese constitution faded into the background of the political climate in Japan.

Despite America's vigorous involvement, the Constitution of Japan is undeniably Japanese. Despite the large amount of both historical and modern support of reform by the Japanese people, the adoption of the Japanese constitution was ultimately an American product. The American occupation of Japan gave the citizens little to no say in the constitution outside of small cultural distinctions and vetoed all attempts by Japanese officials and scholars to suggest a new constitution. After their initial plans failed, the American government eventually suggested their own version of the constitution and forced the document to be adopted.

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33 Yoshida, *Yoshida Memoirs*, 144.

34 *Ibid.* 145.

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