

Kennedy School Review

Blinking Red: Policy Opportunities for Uncertain Times

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Kennedy School Review
Volume XXIII

An HKS Student Publication
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The *Kennedy School Review* (ISSN: 1535-0215) is a student publication at the John F. Kennedy School of Government at Harvard University. All views expressed in the journal are those of the authors only and do not represent the views of Harvard University, the Harvard Kennedy School, the staff of the Kennedy School Review, or any of its affiliates.

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The cover art was created using an AI image generator called Midjourney AI.

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Editors' Note

Scholars and policymakers wonder aloud today if we now sit at the precipice of the end of the "Long Peace." The concept of the Long Peace, spanning from 1945 to present, does not mean "peace," but rather an exclusive, particular type of peace; or more precisely, the absence of a great power war and the decline in smaller wars and total war deaths. In many ways, the world had never been safer than in recent years, though such a generalization means nothing to those in the Middle East, Afghanistan, Ukraine, or in many other war-torn societies. Yet today, at least in the near term, many wonder if the best is still yet to come, particularly as threats mount on the horizon: climate change and the direct human effects it brings; civil wars, which have been on the rise for several decades; reinvigorated great power competition among nuclear superpowers; and the development of technologies beyond the scope of human understanding and perhaps even control. These challenges may feel distant or beyond the purview of any individual, but the battle against each begins locally and, most often, personally.

It is this collection of challenges, this horizon line, that current and future policymakers try to dissect, understand, and improve upon in this twenty-third edition of the *Kennedy School Review*. In many ways, Harvard Kennedy School students have always stood on this precipice, seeking to find data, secrets, and lessons from the past to inform and guide new policies for the future. Indeed, our predecessor began his own Editor's Note for the first edition of the *Kennedy School Review* in 2000 asserting, "We stand on the edge of a world we barely recognize; one of new technology, wealth, and power." Even last year, our editor titled Volume XXII as "Brave New World," comparing future landscapes through Orwellian and Huxleyan perspectives. In none of these editions, however, has there been a stream

of defeatism. By nature, the Kennedy School is optimistic: policymakers are problem solvers who not only point out flaws but generate ideas to remedy and improve. Whether the challenges be issues of recidivism, privacy, or artificial intelligence, the essays and arguments herein strive to challenge readers and to test new ideas.

Inspired in part by President John F. Kennedy's maxim to "Ask not what your government can do for you — ask what you can do for your country," Richard Haass recently published a book offering a new Bill of Obligations for every citizen. The selection of works and authors you see herein reflect many of Haass' recommendations. These authors are informed and seeking to become more informed by getting involved in civil debates around issues they passionately believe in to promote the common good in the face of many challenges. We hope they inspire you to do the same.

We are profoundly grateful for the monumental efforts of our editorial team, none more so than our successors Sly Yushchyshyn and Gabriel Kelvin who took on the incredible task of coordinating and compiling the works you read next.

Finally, we wish to formally dedicate this issue to our late professor and mentor, a man who combined a passion for knowledge with an innate sense of service, Ash Carter.

Nicky Rault & Krizia Lopez
Editors-in-Chief

**In Memory of
Ashton Baldwin Carter**

Scientist • Professor • Statesman

A Note to Our Readers

The *Kennedy School Review* first published in 2000, and it has been an amazing 23 years as the flagship student journal of the flagship policy school.

In that time, we have published rigorous, evidence-based analysis of some of the most pressing social issues affecting our world, covered some of the most groundbreaking developments of our generation, and had countless brilliant minds contribute to our corpus of work.

It is therefore bittersweet to announce that this volume marks the end of the *Kennedy School Review*.

In 2022, the Harvard Kennedy School administration transitioned all student publications, including KSR, from the Office of Student Services to the Shorenstein Center for Media, Politics and Public Policy. On August 1, 2023, the Shorenstein Center then merged KSR with all other student publications into one new publication, the *HKS Student Policy Review*. Although the journals were not consulted about this decision and many did not agree with it and protested it, the decision was ultimately upheld.

We were appointed as the 2023-24 KSR Editor-in-Chief and Executive Director, respectively, and it is difficult to describe the feeling of knowing that we will be the last officers of this storied Review.

However, KSR will live on under a new banner. We both retained our commitment to engaging students with the great issues of our day, and we now serve as Managing Editors of the *HKS Student Policy Review*. It is our commitment to make this transition honor the legacy of KSR and its platform for new policy voices.

Many of KSR's hallmarks made their way into the new journal, including its departmental structure, workflow, and review process. Finally, the entire corpus of KSR's work remains accessible on the *Student Policy Review's* website, and will be preserved for future generations.

Even if the name will no longer be used this does not mean we have to say goodbye. Instead, this is a new era of student policy analysis — and we are hard at work ensuring this keeps the legacy journals and KSR's memory alive. It is our hope that our readers, authors, and alumni will continue to engage with the new Review.

So, we hope that this final print edition of the *Kennedy School Review* can be a celebration not only of our history but of our future as well. This edition will show that just as a species is constantly innovating, adapting, and evolving — technologically and socially — so shall we.

Thank you to all those who have spent the time and energy to lead, write, edit, publish, circulate, and read the work of the *Kennedy School Review* across almost the past quarter century. The impact you have made on Harvard University and the world will last forever.

With profound gratitude,

Svyatoslav "Sly" Yushchyshyn
Editor-in-Chief, *Kennedy School Review*
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AI and Technology

A House Built on Sand: The Future of Privacy in the United States

By Karl T. Muth

Privacy and Policing

When law professors or judges discuss a right to privacy, they mean something narrower: a *Griswoldian* right to privacy; it's from the famous 1965 decision in *Griswold v. Connecticut*, where the Supreme Court found a right to privacy not explicitly mentioned in the Constitution.¹ Along with the 1966 *Miranda v. Arizona* and a handful of other cases like *Terry v. Ohio* of the Warren and Burger Courts, these decisions form the modern American concept of where the state's ambitions to investigate conflict with an individual's right to resist its inquiries.

In essence, the mid-century case law affirmed that it is the state's duty to respect an individual's rights; it is not the individual's duty to satisfy every curiosity of the state.

Concerns about privacy from the state's investigative tools, whether in the criminal context or not, trace their origins back much further than the 1960s.² Several Framers of the Constitution witnessed these events, and abuses of police power were on their minds when crafting America's founding document.³ Today, we inhabit a world of aerial drones, GPS systems, infrared imagers, and body cameras — technology that would be unimaginable in the drawing rooms of 18th century Pennsylvania gentlemen.

In one of the cases discussed below, protections for the people encountering police are significantly lessened; in the other, these protections are meaningfully enhanced. In a forthcoming law review article co-authored with Illinois Assistant Attorney General Nancy Jack, from which this piece is adapted from, we explore the *Timmsen* opinion in detail and suggest a different outcome would have been correct.⁴

The Illinois Supreme Court's *People v. Timmsen*: A Problematic Precedent

In *Timmsen*, the defendant approached a roadblock and made a proper, legal, and unremarkable U-turn at normal speed. At trial, the prosecution conceded the defendant did nothing illegal. The Illinois Supreme Court found that even though the pile of things the defendant did were all individually unremarkable and permissible, the pile taken as a whole is sufficient to allow a search of the defendant's vehicle; in other words, enough "rights" become a "wrong" in this strange instance.

Suppose a person is approaching the crest of a hill and cannot see the roadblock in the distance. However, she is using Google Maps or

some similar driving aid, which notifies her of a delay ahead and suggests an alternate route to avoid the delay and reach the destination sooner. Such a driver may unknowingly, while following all applicable laws and attempting to operate the vehicle expeditiously and safely, make herself suspicious and subject to a vehicle search under *Timmsen* by "avoiding" a roadblock.

In the near future, one can imagine an autonomous vehicle in which the passenger has no steering wheel but instead is driven around in response to voice commands or a touchscreen map. Such an autonomous vehicle might choose to avoid roadblocks to get an occupant to a destination sooner. Current law permits the driver of a vehicle avoiding a roadblock to have her vehicle searched. Is it so hard to imagine a world where the judge finds that a software "driver" is no different?

While *Timmsen* may appear, even to legal scholars, a narrow holding quarantined within an unusual fact pattern, I believe the implications are more far-reaching, ominous, and worthy of futureproofing.

The Georgia Supreme Court's *Georgia v. Wilson*: Privacy Preserved

Turning to Georgia, we see that in *Wilson* the police sought a very broad warrant to look through the content on the defendant's smartphone, which had been lawfully and properly obtained from him along with other personal effects during a traffic stop resulting in a custodial arrest of the driver-defendant. The appropriateness and lawfulness of the arrest was not in dispute; what was, however, is the appropriateness of a second warrant, which allowed a "digital search" of all the files on the defendant's smartphone, even though the officers and prosecutors could not describe in *particular* what they were looking for.^{5, 6}

The Georgia trial court correctly suppressed the evidence found in the smartphone principally due to the overly broad warrant, and the Georgia Supreme Court upheld the lower court decision.

I believe *Wilson* to be not only correctly decided but, importantly, to be correct policymaking. To allow search warrants with no limiting language is bad policy and invites police to look for opportunities to rummage through citizens' digital lives rather than looking for crimes to prevent and prosecute. Today, the right of a person to be "secure in his papers" must extend to being secure in a Google Doc that might be hosted in "the cloud" or a tax return backed up in a faraway data center.⁷⁻⁹

One can envision a future in which it becomes essentially impossible, in the absence of deep technological literacy and a nearly unlimited defense budget, to protect one's life (especially the protection of personal data and metadata) from intrusive surveillance.

It Isn't Just About Autonomous Cars or Smart(er) Phones

While *Timmsen* and *Wilson* occur in different places and scenarios, and while one is bad policy and the other good in my view, they raise a shared concern that should not be viewed as obsolete or settled. When and how should the police be able to interrupt daily life and root around in things we hold dear?¹⁰

The best policies, like our Bill of Rights, envision not only a protection for the people against a current overreach of the state, but also anticipate erosion of existing protections over time and the need for additional protections when new vectors of attack become available.¹¹ Good policy requires more than *Timmsen*'s failure to think about even near-term distortions of its intentions and *Wilson*'s correct but rather narrow vision of privacy in a digital world.

We live in a world where technology changes how we interact with law enforcement in unanticipated ways. To use the example of facial recognition for unlocking mobile devices, police officers will sometimes attempt to unlock a phone with the face or finger of an unconscious suspect or uncooperative suspect; FaceID can now detect the difference between a picture of you and "actual you," but it cannot reliably distinguish between your typical face versus your face under duress. This may be your face with an officer's hand around your throat or your face after being hit over the head with a department-issued flashlight.

Simply because something is difficult to solve or cannot be decisively solved does not mean it should go unaddressed.

I recently published a commentary with the Hon. James A. Shapiro on the difficulty of describing "reasonable doubt" to jurors as both a concept and a standard. While "reasonable doubt" is not very complex to understand, it is famously difficult to apply. Similarly, ideas like "I should enjoy digital privacy" or "police shouldn't do that" are easy to understand but admittedly challenging to legislate. We must stop avoiding these challenges and confront them head-on with an understanding that our most cherished freedoms, those that are fundamental to our society, are at stake.

To borrow a famous legal quip, American privacy is protected merely by a thin layer of common decency, public policy, legislative safeguard, and judicial concern — *a four-walled house built on, and of, sand.*

Karl T. Muth teaches at the University of Chicago Booth School of Business and at Northwestern University Pritzker School of Law. His research on the state and fragility of the border between the state's curiosity and the individual's rights (including privacy rights) has appeared in a variety of publications, including Harvard Law School's *Blackletter Law Journal*, the *National Lawyers*

Guild Review, and the *Journal of Criminal Law and Criminology*. This is Muth's second feature for KSR; the first piece discussed American sugar subsidies. The author would like to thank Professor Danielle Citron, Assistant Attorney General Nancy Jack, and Andrew Leventhal, whose ideas and input strengthened this article.

Endnotes

[1] Or "excavated," to use the captivating metaphor of Samuel D. Warren, II.

[2] *Griswold*, *Miranda*, and *Terry* are criminal cases.

[3] Though English troops were a martial force, they also possessed police-like powers and enjoyed substantial latitude from stated orders.

[4] 56 Loy. U. Chi. L. J. — (2024) (accepted, not yet paginated).

[5] This is my best "laypersonese" translation; the words "forensic examination" were used in the warrant language.

[6] "Particular" is used here because a search warrant in Georgia must *particularly* describe the thing expected to be found, see *Dobbins v. State*, 262 Ga. 161, 164 (1992).

[7] To better understand this term of art, see e.g., *United States v. Miller*, 425 U.S. 435 (1976).

[8] "The cloud" can mean different things in different digital ecosystems, but it customarily means a mixture of software and infrastructure designed to store and transit files to a variety of devices on an on-demand basis.

[9] See cf. *United States v. Malquist*, 791 F.2d 1399 (9th Cir. 1986).

[10] Even ethereal things, in the case of files our phones constantly create, back up, and retrieve wirelessly often without user direction.

[11] Eighteenth century policemen didn't use infrared goggles to see through walls, for instance. See *Kyllo* at 29, 38: "Thermal imagers detect infrared radiation, which virtually all objects emit but which is not visible to the naked eye — [t]he Agema Thermovision 210 might disclose, for example, at what hour each night the lady of the house takes her daily sauna and bath — a detail that many would consider 'intimate;' and a much more sophisticated system might detect nothing more intimate than the fact that someone left a closet light on." *Kyllo v. United States*, 533 U.S. 27 (2001) (Scalia, J.).

Bridging the Information Gap: AI, Misinformation, and Global Education Reform

By Mir Mohammed Ali

"For every dollar and every minute we invest in improving AI, we would be wise to invest a dollar and a minute in exploring and developing human consciousness."

– Yuval Noah Harari¹

In June 2020, the veritable explosion of misinformation during the Covid-19 pandemic prompted more than 130 countries to issue a statement on the burgeoning "infodemic." The statement warned that "as Covid-19 spreads, a tsunami of misinformation, hate, scapegoating and scare-mongering has been unleashed."²

Though online misinformation predates the pandemic era, it came into stark relief during the pandemic owing to its unprecedented geographic spread, its cross-sectoral impact, its effect on various industries from health care and travel to education and employment, and the acutely government-centred nature of the policy response.

Crises give rise to uncertainties, which cause an increase in the demand for information. This underlying demand and an absence of a clear stream of information from authentic sources create a thriving environment for misinformation to prosper. A study of 225 instances of Covid-19 misinformation identified "misleading or false claims about the actions or policies of

public authorities" as the single largest category.³ This is exacerbated by an information ecosystem where engagement is driven by the promotion of "more emotional and provocative content," which fosters "rage and misinformation."⁴ These factors uniquely endow misinformation with the capacity to complicate our response to every other policy challenge, especially that of climate change.⁵

Misinformation will predictably complicate our response to the climate crisis, aided and abetted by rapid developments in AI.

Disinformation Meets Artificial Intelligence

Within a year since AI tools became available for mass public use, they have already generated believable images of events that never occurred — of President Trump being arrested in New York and of astronauts faking the 1969 moon landing — based on a single text prompt.⁶ Companies are already in the advanced stages of developing AI that convert text prompts to videos.⁷ A future where conspiracy theories about the moon landing are supported by compelling images and videos is just around the corner. News websites that are "almost entirely written" by AI are already a reality.⁸

The Limits of Regulation and Enforcement

The response to the misinformation challenge has largely centred around two poles: social media regulation and law enforcement. Both approaches, while certainly necessary, face inherent limitations. Companies can flag and take down certain posts, but their capacity to do so is limited by the quantity of content generated daily. Of the content that is fact-checked and flagged, oversight ends when it leaves the visible, public space of social media and enters the end-to-end encrypted space of private messenger apps, where misinformation finds a safe, untraceable space. France, Germany, and several other countries have passed laws to curb the spread of misinformation.⁹ But government agencies can only act against a limited number of cases at any given point of time. The cycle of identification, arrest, and prosecution detracts from core agency functions and is unsustainable in the long term.

Building Resilience to Misinformation

If the past two decades are any indicator, misinformation and information technology are clearly in a long-term relationship. Any effort to build resilience against them calls for a whole-of-society approach. The public education system offers the opportunity to pursue this goal at scale. Teachers, social scientists, IT specialists, and experts in pedagogy will have to come together and formulate a curriculum that is specific to local contexts, flexible, and avowedly non-partisan. This effort is most likely to succeed if it follows a process of political consensus.

Media and information literacy ought to be a separate subject through school and college. Children would begin with learning technical skills and progress towards skills that deal with adaptive challenges.¹⁰ Taking a cue from the framework developed by Professor Ronald Heif-

etz at the Harvard Kennedy School, the technical skills would cover the domain of fact-checking, while the adaptive skills would familiarize them with the ability and mindset needed to deal with ambiguity, have difficult conversations, manage disagreements and conflict, and build consensus in an increasingly complex world (Figure 1).¹¹

Educators working on these curricula don't need to start from scratch. They can build on resources like the "Checkology" platform from the News Literacy Project or the AN-NIE toolkit, which is a collaborative effort of educators across different universities.^{12, 13}

Technical Skills	Adaptive Skills
<ul style="list-style-type: none"> • Fact-checking • Source evaluation • Image and video verification • Understanding personalized algorithms • Means of info manipulation • Journalistic principles • Artificial intelligence 	<ul style="list-style-type: none"> • Managing disagreement / conflict • Having difficult conversations • Building consensus

Figure 1. The technical and adaptive skills

Frontrunners in Education Reform

Since 2016, Finland has introduced information literacy and critical thinking across subjects in their school curriculum.¹⁴ It consistently tops the list of European countries in the Media Literacy Index.¹⁵ In 2021, the government of Kerala, India's most literate state, launched a program titled Satyameva Jayate (Sanskrit for "Truth Alone Triumphs") which familiarized two million students with concepts like personalized algorithms, filters bubbles, the methods of manipulating information, and the means through which they could counter misinformation.¹⁶ Parts of the curriculum were drawn from the resources developed by the News Literacy Project.

Technological Transitions: Asset to Adversary

We often underestimate the power and speed with which disruptive technologies can subvert as much as they augment the public good. In his

book *A Promised Land*, President Barack Obama fondly recalls his victory in the 2008 Idaho Democratic primary, where he won five times as many delegates as Hillary Clinton thanks to volunteers "using social media tools like MySpace and Meetup to build a community."¹⁷ In 2016, he lamented in an interview with Bill Maher over the failure of school systems in building capacities for critical thought among children.¹⁸ Speaking at Stanford in 2022, President Obama called for urgent public regulation of social media, stating that the implications of AI and disinformation "for our entire social order are frightening and profound."¹⁹ It took a little over a decade for the same technology that propelled President Obama to office in 2008, in his words, to pose a threat to our social order as we know it.

Conclusion

Societies where critical thinking and skepticism towards misinformation are common traits will be able to weather the impact of information warfare. Regulation and enforcement certainly have a role to play, and they could only be more effective if supported by a larger community that understands the depth of the problem and the broad contours of the solution. Research on inoculation against misinformation, which seeks to build resilience through increasing awareness of methods of manipulation and deception has shown promising results.²⁰ We ought to seek to reach a point where skepticism towards online information is as common a piece of wisdom as refusing candy from a stranger.

Mir Mohammed Ali graduated from the Harvard Kennedy School on a Fulbright scholarship in 2023. He is an officer in the Indian Administrative Service, and his areas of interest include urban governance and technology policy.

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Planned Obsolescence: Exploring the Role of Free Markets and Regulation in the Right to Repair Movement

By Avantika Mathur

Recently, Tesla was hit with two class action lawsuits from Model S owners who claimed they were charged excessively high prices and faced long wait times for vehicle maintenance and repairs; John Deere faced a similar class action lawsuit over their alleged violation of antitrust laws through their tractor repair policies, including software locks and restricted access to repair tools; additionally, in 2017, a class action lawsuit was filed against Apple, accusing the tech giant of intentionally shortening the lifespan of its iPhones by slowing their performance.

In a similar vein, flower-shaped screws called pentalobe screws became synonymous with Apple products since its 2009 MacBook release. They are designed in a way that an ordinary screwdriver cannot be used to unscrew them. While Apple claims that pentalobe screws make its products tamper-resistant, critics argue that this is an exclusionary tactic to make repairing Apple products difficult.

So, what's the real story behind pentalobe screws, slowing down of iPhones, tractors, and the irreparable Tesla Model S, and what impact do they have on consumer rights and product repairability?

Planned obsolescence is a tactic of designing products with a pre-set date of expiry, also known as "death dating." Through planned obsolescence,

businesses artificially limit the usefulness of a product to encourage more frequent purchases by consumers.

Obsolescence can be planned in different ways — by making repairs difficult, by designing products so they deteriorate quickly, by making products appear out of style, or by introducing software lockouts that make a product unserviceable because of its inability to be updated.

To make sense of how planned obsolescence came about, consider its history.

Bernard London, an American real estate broker credited with coining the term "planned obsolescence," argued that building products with obsolescence would help end the Great Depression by increasing consumer spending on goods. At the time, his paper was well received but has since attracted ire from several factions of society.

The Costs Associated with Planned Obsolescence

A direct cost of planned obsolescence especially in the appliance industry is the rising problem of waste and in particular, electronic waste comprising discarded electronic devices around the world. E-waste is the fastest-growing waste

stream in the world with more than 57.4 million tonnes of waste generated in 2021.

A 2009 study revealed that the average cathode-ray tube computer screen has five to eight pounds or more of lead. Heavy metals like lead are persistent bioaccumulative toxins (PBTs) that create environmental and health risks when the products are incinerated, put in landfills, or melted down. They release particulate matter into the air and contaminate water systems.

Another argument against planned obsolescence is spurred by the business community questioning the ethics of making consumers spend more. According to Elena Giaretta, "relentless product change is a one-sided strategy because it focuses on the needs of the firm at the risk of detriment to the environment and consumer welfare." She argues that differentiating a business through customer satisfaction, environmental friendliness, and the long-term usefulness of its products would improve a firm's market positioning.

The Repair and Refurbishment Economy

In several parts of the world, repair is an unregulated and untapped market that can be leveraged by businesses to make repairs cheap while providing employment opportunities. In labor surplus economics, on-demand repair and maintenance services are readily available through original manufacturers as well as third-party vendors. Investments are continually made in upskilling labor in these services.

Repairing products can also be viewed as a chance to broaden production diversity and enhance aftercare services. Researchers have shown that service management activities can offer competitive advantages such as extra revenue streams, improved customer loyalty, and the ability to charge higher prices for products. This approach allows traditional producer business

models to be adapted to take advantage of service-based economic opportunities.

Additionally, services are increasingly being used as central business strategies in the form of Product Service Systems (PSS). These options have the potential to increase employment in the repair service sector, but they do not necessarily democratize product repair on a user level. The extent to which companies incorporate the repair into their business models will be influenced by macro-level regulations and incentives.

Due to the Covid pandemic and the disruption of supply chains, an issue regarding the fragility of system dependence and the role of resale and repair in maintaining stability has surfaced. This issue is particularly important for essential goods like heating, cooling, and refrigeration, where the ability to repair and resell products can help ensure that people have access to these necessities even in times of supply chain disruptions.

In a unique move, Apple announced that the option of Self Service Repair of Apple parts, tools, and manuals has been made available to individual consumers. Patagonia, a worldwide leader in the corporate environmental movement, has been allowing the repair of its clothing products for the last several years through its Ironclad Guarantee which offers repair, reuse, and recycling of all products. Their Worn Wear Patch kit is a novel repair product that repairs tears in outdoor gear.

Challenges in Enabling Repair

Skill sourcing or hiring individuals with the necessary skills needed for repair is an active challenge, especially in economies with persistent labor shortages. For instance, Patagonia is currently taking 10 weeks to complete its repairs in the United States. Similar complaints have been voiced by Tesla owners around the country who are unable to receive service appointments for weeks due to the lack of availability of repair ser-

vices. A second constraint is changing individual repair behaviors. Repair transforms the user's position into that of a caretaker of objects. It is important to recognize that these actions are the result of the way our consumer mindsets have been primed to value convenience over commitment.

The Rational for Planned Obsolescence

In the case of Apple's slowing down of the iPhones lawsuit, the suspicions were confirmed by the company, but Apple explained that the slowdown was caused only by the natural deterioration of the old lithium-ion batteries performance. However, users had to pay more to replace the batteries to bring back their phones' original speed. Following a class action lawsuit in 2017 and a long legal battle, Apple finally agreed to pay \$500 million in compensation in 2020, which worked out to be approximately \$25 per affected user.

Planned obsolescence has also been justified by the industry as a way to provide access to technology for low-income groups and to spur innovation and economic growth. However, the cost to consumers over a period of time levels out as the replacement rate for each product increases. In the end, planned obsolescence capitalizes on present bias and people's willingness to pay a small amount upfront but continue paying in the long term at short intervals. In a time when waste has become a pressing global challenge, planned obsolescence cannot be sustained.

Incentivizing Planned Durability: Legislative Action Around the World

Right to Repair, the leading movement pushing for enabling the repair of consumer durables, has its foundations in the United States. Massachusetts passed the United States' first Motor Vehicle Owners' Right to Repair Act in 2012, which

"required automobile manufacturers to sell the same service materials and diagnostics directly to consumers or independent mechanics as they provide exclusively to their dealerships." The Massachusetts statute was followed by several states. In 2023, 20 states have filed for right-to-repair legislation, but only two states have enacted them so far.

Legislation around the world on right to repair is currently in the form of information disclosures, fees and fines, tax deductions, and rebates. The UK government introduced a Right to Repair Regulation in 2021 providing professional repairers with access to spare parts and technical information along with ecodesign and labeling requirements for specified electrical products sold in Great Britain. France has adopted a requirement that manufacturers contribute to a reparability scoring system to allow consumers to consider repair as a buying criterion. In 2015, the French National Assembly established a fine of up to €300,000 and jail terms of up to two years for manufacturers that deliberately planned the failure of their products.

The Government of India has recently expanded its right-to-repair program, which now includes four sectors: consumer durables, electronic devices, automobiles, and farm equipment. The program has also brought on board major brands to a single digital platform. According to this framework, manufacturers must provide customers with product information, enabling them to repair their items independently or via third parties, rather than solely relying on the original manufacturers. This framework also seeks to facilitate trade harmonization among Original Equipment Manufacturers (OEMs), third-party buyers, and sellers, thus generating new employment opportunities.

Swedes are permitted to receive a reimbursement of up to 50% of the labor expenses for repairing household appliances, such as washing ma-

chines, refrigerators, and stoves, through their income tax, and Austria reimburses up to 50% of repair labor costs, per year according to Rreuse's report. In addition, more inclusive theoretical scenarios for tax shifts have been proposed. These scenarios suggest shifting a significant portion of the current labor taxation — which accounts for approximately 51% of tax revenue in the European Union — towards consumption and natural resource taxes. Although these models indicate tremendous potential benefits, their implementation has been limited. The suggested shift prioritizes and encourages the development and utilization of human capital.

Policy Opportunities

Governments around the world have a unique opportunity to promote the growth of a repair economy by implementing various measures. This includes providing financial incentives such as tax rebates and deductions for both third-party repair vendors and in-house repair by manufacturers. Additionally, subsidies for repair could be funded by reducing the financial burden on waste management systems in state and municipal setups. Moreover, mandatory disclosures on repair guides and promoting do-it-yourself activities can help challenge existing norms around fast consumption. Incentivizing communities-led action through Repair Cafes is another way to encourage repair. Born out of grassroots movements around the world, Repair Cafes offer people space to come together and repair items from everyday life. Typically held at community locations, tools are made available and device owners can seek help from volunteers.

It is imperative that we act now and urge our leaders to prioritize the growth of a repair economy. By taking these steps, governance can play a critical role in reducing waste, conserving resources, and creating new job opportunities while simultaneously contributing to a more sustainable future for our planet.

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AI in the Newsroom: How AI Could Improve the Work of Journalists

By Robert Socha

I spent the last few days in Perugia, Italy, where I attended the 2023 International Journalism Festival. Such events are not places where journalism happens. They are aberrations, but they let journalists unwind, exchange views openly, and think big.

One of the big issues discussed at the festival was AI. Advancements in AI technology are a threat as well as an opportunity for journalists across the globe. Journalism at its core remains the same: it is about holding those in power to account. But in the AI age, it is going to be about investigating governments that will try to use AI to spread even more disinformation as well as holding the code and the people behind it to account too.

Access to information will not be a problem. We are already living in the age of information overload. The key premium skill (and not only in journalism) will be the ability to establish the truth based on verified facts and scientific evidence. It matters when taking into account the tectonic shift between ad supported business models towards reader revenue models (subscriptions, donations, memberships etc). Readers will pay only for quality and exclusive information. *The New York Times* understood it years ago when they pioneered the paywall.

In this context, another trend in corporate storytelling is visible. It is not anymore just about a newsletter. It is becoming more about quality storytelling with journalistic DNA. Organizations are looking for quality, be it a podcast or a newsletter. Raju Narisetti was a career journalist who is now the global publishing director at McKinsey, and I was surprised by his statement that McKinsey's newsletters have subscribers in the millions. It is a scale not imagined by many media organizations. These are spaces where journalists should look at and be inspired by as well.

Narisetti brought to light an interesting example. Everyone is talking about AI now. McKinsey cannot compete with all the news, but if you google "What is generative AI?" the top result will be a McKinsey article! The conclusion is that good content is not the only thing you need to succeed. What you also need is the experience layer (build your expertise, build habits, persistence advised, aim long term). For some reason, Google's algorithms recognize the article as a reliable piece of information and rank it high on its results page. Supposedly, there is a lot of authority behind McKinsey's quality content offer.

Will AI replace journalists? Not that easy. It will replace "content creators" and will free journalists from mundane and repetitive tasks. Specif-

ically, investigative journalism and quality opinion writing will not be automated, but it can be supported by AI in the research process.

"Spotlight" is one of the best movies about journalism. In the film, Marty Baron says: "we spend most of our time stumbling around the dark. Suddenly, a light gets turned on, and there's a fair share of blame to go around." Investigations at their core are not flashy. It is mundane work. It is like putting a puzzle together with many dead ends to misguide you. AI can speed up the process, but the workflow remains the same.

Over a year ago, I was training an independent Hungarian media outlet specializing in investigations; I introduced them to Google's AI tool for journalists called Pinpoint, which analyzes large groups of documents. They had just started working on a story where they had to process over 1,700 files. Once they uploaded them to Pinpoint, they were immediately able to speed up the research process; the tool started searching for regularities, such as people, companies, and addresses. Most importantly, they were able to search the scanned documents using keywords and work in a team. Eventually they published a series of articles.

AI itself will not solve journalistic problems. It can help, but it should be embedded with values and true journalistic thinking. Even when employing AI, you will get nowhere without knowing where you are heading. To get a story, you sometimes will still need traditional shoe leather reporting skills with a pinch of design thinking.

A few years ago, I was attending an event at the Institute of Politics at the Harvard Kennedy School. One of the panelists was Jane Mayer, a renowned *New Yorker* journalist, and she said such a brilliant thing: "I was doing a piece on Mike Pence. He never agreed to talk to me, so I went to his hometown and had coffee with his mum. That way I heard some great stories."

There are already some outstanding initiatives such as London School of Economics's JournalismAI project, researching the use of AI for quality reporting (supported by Google News Initiative). Platforms are also advancing their AI tools for journalists. It might be a part of their lobbying efforts to placate regulators, but the bottom line is that some of the tools are truly impressive and useful for journalists. Google News Initiative was also the main sponsor of the Perugia conference (disclaimer: I worked as Google News Lab's main training person for the media in Central & Eastern Europe, but I went privately to Perugia paying for myself).

Speaking about AI means also discussing platforms because they are the wielders of the algorithms. For the media, cooperation with platforms has always been a double-edged sword. The issue was thoroughly discussed during the "The elephant in the room: could AI give technology giants more control over the news?" session. If the media get too close, then they risk dependency on an external infrastructure they do not quite know and control. The dilemma might be how much of their data are they willing to trade off to train an external algorithm. Will it be good for them in the long run?

In addition, platforms such as Google and Meta are not organizations devoted to journalism but rather for-profit advertising vehicles. Do they truly care about journalism, or do they just need us to advance their lobbying efforts? There are more questions than answers here, but it is always worth it to keep the conversation going. It is an adaptive challenge. At this stage, we really do not know where it will take us.

Professor Charlie Beckett, a former journalist now leading the JournalismAI initiative at LSE, stressed that when traveling the Global South he realized an opposite issue there. For many newsrooms, their problem is plummeting revenue and trying to get their audience to deal with political

interference. These newsrooms are seeking help in understanding and accessing some of the AI technology, so they do not fall behind. They are aware that if they don't strengthen their organizations, then other people will start to provide information and control the information sphere.

Journalism will survive the impact of AI, but the future belongs to small and agile media organizations that are data and AI savvy with traditional journalism skills mastered as well, such as Ukraine's digital native *The Kyiv Independent*. The ad supported business model for news is broken. The future is about reader revenue, but it involves mastering engagement and community building skills, employing AI models on the business side (e.g. dynamic paywalls). These are things that big corporate media, which are used to ad money and one way relationships with their audiences, have been struggling with. In addition, the scale of reader revenue will never match the good old times. Just a few big players, with the mission at heart, understood it early and started transforming themselves accordingly, such as *The New York Times*, *Financial Times*, and *The Guardian*.

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Why Compliance Costs of AI Commercialization May Be Holding Startups Back

By Weiyue Wu and Shaoshan Liu

While artificial intelligence technologies are progressing fast, compliance costs have become a huge financial burden for AI startups, already constrained by tight research & development (R&D) budgets. Complex regulatory processes that vary across the globe give well-established technology firms an upper-hand over resource-constrained startups.¹ If this continues, giant tech firms may monopolize AI technologies, phasing out startups in this field. How do compliance costs typically hinder a startup's ability to compete with larger tech firms in AI commercial operations? We explore these challenges using insights from our firsthand experience with PerceptIn, an AI startup in the autonomous driving space.

Financial Vulnerability

Based on the OECD Regulatory Compliance Cost Assessment Guidance, we quantitatively compare the financial vulnerability of tech giants versus AI startups.² Conducting a financial statement simulation provides a glimpse at the impact of changes in compliance costs.

We found that startups' operating margins are significantly impacted by compliance costs, in contrast to tech giants. Moreover, compliance costs may be concealed in financial reports, leading to potential under-

estimations of true costs. Current estimates of AI compliance costs may be insufficient.

The simulation in Figure 1 assumes that gross profit and expense are a fixed percentage of revenue. The compliance cost is split into a fixed cost regardless of revenue and a variable cost that takes 5% of revenue. When the fixed compliance cost increases by 200%, the operating margin of the startup changes from 13% to -7%, causing the firm to lose money. In contrast, such a change only causes a slight dip in the operating margin for tech giants.

According to Accounting Standards, companies are not required to disclose compliance cost explicitly in financial reports when the cost is not material.³ Thus, compliance costs may become hidden by nature and classified into other categories, such as R&D expenses and other administrative expenses. Lacking firsthand information, analysts on the macro-economic level tend to underestimate the costs of AI regulations.

The Compliance Trap

AI is a highly regulated industry, but unfortunately, there is no standardized AI regulation framework.⁴ Most AI entrepreneurs may not even be aware of the existence of compliance costs, let

	Start-ups		Tech Giants	
	Base case	200% increase in fixed compliance cost	Base case	200% increase in fixed compliance cost
Revenue	\$2,000,000	\$2,000,000	\$20,000,000	\$20,000,000
Gross Margin	40%	40%	40%	40%
Gross Profit	800,000	800,000	8,000,000	8,000,000
Total Compliance Cost	300,000	700,000	1,200,000	1,600,000
Fixed compliance cost	200,000	600,000	200,000	600,000
Variable compliance cost	100,000	100,000	1,000,000	1,000,000
Expenses	240,000	240,000	2,400,000	2,400,000
Operating Income	260,000	(140,000)	4,400,000	4,000,000
Operating Margin	13%	-7%	22%	20%

Figure 1. Sensitivity analysis: Impact of change in compliance cost on operating income

alone the severe impact compliance costs may have on the company's overall financial health.

First, unlike R&D budgeting, due to varying AI regulatory frameworks across the globe or even across multiple regions within a country, there is no standard method to budget for AI compliance costs. Even estimating the range of AI compliance costs is infeasible.

Second, even with an AI compliance budget, the actual costs may significantly deviate from the budget. AI startups often encounter new compliance issues as they progress through commercialization. In addition, opportunity costs arise as regulators inspect AI products on safety and privacy issues, causing delays in commercial deployments.

Third, varying AI regulations often introduce indirect costs. For instance, a strict compliance environment demands engineers deal with regulatory issues such as responding to various compliance technical inquiries instead of spending time developing products. Such a shift of focus does not reflect in financial reports, as engineers' costs are categorized as R&D costs.

A Field Deployment Perspective

With more than six years of firsthand experience in deploying commercial autonomous driving

services, we delve into the details of compliance costs from a field deployment perspective. We aim to raise awareness about the adverse impact of the lack of standardized AI regulations.

PerceptIn is an autonomous driving startup founded in California in 2016. It offers autonomous micro-mobility solutions to customers from the United States, European Union, and Asia. The company only budgeted for ordinary compliance expenses, such as the direct labor cost of a safety driver on board and the equipment cost of a waterproof surveillance camera. While facing a broad spectrum of regulatory obstacles across different countries, PerceptIn fell into the compliance trap.

No Standard Method to Budget

The AI regulation framework in China was blurry, and when the company first launched the autonomous micro-mobility project in China, it was impossible to budget for compliance costs. For instance, in the absence of relevant regulation, the company had to develop its own testing plan to obtain deployment approval. Without detailed testing standards, the company spent \$25,000 per month to simulate real-world scenarios in initial stages for testing and demonstration purposes. The \$300,000 annual cost was not included in the company's original budget and imposed a heavy burden on the company's balance sheet.

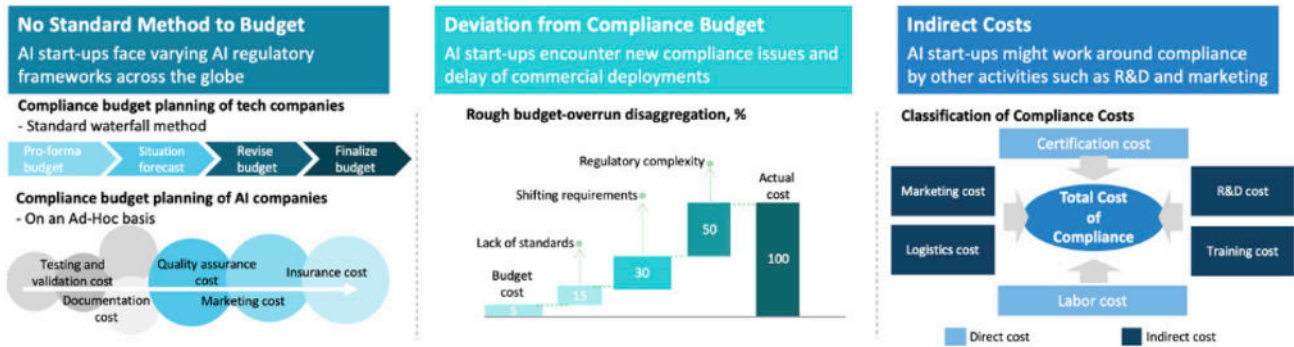


Figure 2. The compliance trap for AI startups

Deviation from the Compliance Budget

PerceptIn was invited to launch an autonomous driving pilot program in a European city. Before rolling out the project, the company was asked to prepare a risk mitigation plan for 40 different scenarios. To cope with the regulatory process, the R&D team shifted its focus to responding to scenarios-based functional specifications and supplemented the mitigation plan with real-time data. During the project budgeting phase, the company had prepared 20 person-days (or one person's working time for a day) to cope with the AI regulatory process. Despite an original budget of \$10,000, the process ultimately consumed 400 person-days and \$200,000 to complete.

Indirect Costs

Japan is famous for its rigid structure in organizations. To gain the confidence of the Japanese government, the company first debuted a marketing campaign to promote safe autonomous micro-mobility services in a smart city project.⁵ With a successful local case and a globally established brand, the company then discussed operation permits with the Ministry of Land, Infrastructure, Transport, and Tourism.⁶ The preparation and initiation of the project took over 24 months, costing \$500,000 in promotion, material preparation, and marketing campaigns. Traditionally marketing activities were not meant

to cope with compliance requirements. However, in this case, marketing was a tool to convince the regulatory body to accelerate autonomous driving operation permits.

In the case of PerceptIn, the compliance cost of one deployment project is \$344,000 on average, whereas the average R&D cost is around \$150,000, making the compliance costs 2.3 times the amount of R&D costs, far exceeding the 17.6% estimation of the European Union's Artificial Intelligence Act.

Silver Linings

The root cause of the compliance trap is the lack of a standardized AI regulatory framework. A new business model of Compliance-as-a-Service (CaaS) can specialize in dealing with varying AI regulatory frameworks and thus amortize compliance costs across different AI startups. In addition, CaaS reduces the friction between regulatory bodies and AI startups by providing an interface to compile legal terms into technical and operational plans. With the new business model, AI entrepreneurs can adequately budget for compliance when evaluating the potential of an innovative idea.

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How Congress Should Regulate AI in the Short-Term

By Kevin Frazier and Mari Dugas

AI presents a perfect regulatory storm. Like nuclear weapons, it can end humanity. Like bio-weapons, non-state actors can develop and deploy the technology. Like social media, regulators and policymakers appear unwilling or unable to understand the seriousness of the short- and long-term risks posed by AI. This storm will not subside; AI development will continue regardless of the regulatory actions taken by Congress. The proper regulatory response, then should not include futile attempts to stop inevitable research and development or discourage beneficial and innovative uses of AI. Instead, Congress should focus on making critical infrastructure more resilient to the worst-case scenarios presented by AI.

In the short run, this is a relatively straightforward task that legislators should accomplish sooner than later, but the regulatory clock is already ticking. Congress should prioritize establishing regulations that accomplish two goals: first, informing stakeholders — private, public, and NGOs — as to the likelihood and severity of such scenarios; second, penalizing companies that inadequately monitor and respond to actions that may make those scenarios more likely. In other words, the sooner Congress starts measuring and monitoring the risks posed by AI, the sooner it can develop durable regulatory frameworks to mitigate those risks.

We will save a discussion on how Congress should act upon better understanding and mitigating the AI risks for another article.

Thankfully, Congress can look to a pre-existing risk-based regulatory framework to kickstart this effort: data breach laws. Cyberattacks, like disruptions caused by AI, are inevitable — regulators have accepted that bad actors have greater technological capacity and resources than their targets. Rather than attempt to play defense against every such attack, Congress and state legislatures have imposed data breach laws with the intent of reducing the odds of such attacks and the severity of those attacks, shifting some of the onus to companies to proactively institute reasonable security and respond effectively to protect consumers in the case of inevitable attacks. This risk-based approach to regulation has several downsides, but it nevertheless offers important lessons for AI regulation.

Prior to diving further into the merits of applying a data breach framework to AI, it's important to outline why Congress should approach AI regulation from a risk-reduction standpoint. AI poses existential risks — defined by Oxford philosophy professor Nick Bostrom as a risk that "threatens the premature extinction of Earth-originating intelligent life or the permanent and drastic de-

struction of its potential for desirable future development." Inadequate regulation of AI may manifest in the following worst-case scenarios — all of which present existential risk according to the AI research and non-profit Center for AI Safety:

- Weaponization of AI by malicious actors
- Undue and excessive delegation of human-tasks to AI that causes humans to lose control over their own institutions, economies, and cultures
- Widespread disinformation that undermines the ability of humans to take collective action and imperils the authority of governing institutions
- Power-seeking AI that seizes control over major private and public institutions
- Autocratic regimes gaining greater influence and power through oppressive uses of AI
- AI unexpectedly and rapidly developing more power than anticipated resulting in stakeholders having too few means and too little time to mitigate its risks
- AI developing the capacity to evade and trick efforts to monitor and understand its activities

These risks differ in scale than the risks commonly associated with AI, such as job loss from increased automation. The latter type of risks merit attention, but it's the existential risks that mandate that Congress institute a risk-reduction approach to AI in the coming months.

The existential risks outlined above may seem fantastical. Isn't "power-seeking AI" the plot of myriad Hollywood movies? Haven't Luddites been warning about a technological takeover since the telegram? Why is this time any different?

It may not be.

Over time, fear of the existential risks outlined above may prove to have been overblown. For now, Congress cannot take such a gamble. Legislators have a responsibility to develop a better understanding of such risks before worst-case scenarios become unavoidable futures. Tellingly, the creators of this technology agree that now is not the time to underestimate its risks. Industry leaders, such as Sam Altman of OpenAI, openly share a fear that they are creating a technology that will cause significant harm to the world. Altman went so far as to testify before Congress to ensure elected officials realized the scale and magnitude of AI risks, and the myriad harms that AI could bring about.

Adapting a Data Breach Regulatory Framework

As cyberattacks proliferated and increasingly impacted private companies and consumers, California became the first state to enact a data breach law in 2003, mandating notice to individuals and state regulators following discovery of a breach. In the twenty years since, every state has enacted their own data breach law. The state data breach laws come in every shape and size, creating a true regulatory patchwork. The data breach laws all define covered personal information differently, require notifications at different thresholds, and provide for different exceptions and penalties. The data breach laws generally have the same impetus however: they create a risk-reduction approach to the ever-present threat of cyberattacks, offering both incentives for proactive preparation and formalization of information security best practices, and penalties to account for consumer harm caused by data breaches.

Data breach laws have a few key characteristics that should inform AI regulation.

First, the majority (34) of state data breach laws incentivize having written information security policies in place. Data breach statutes vary in their notification requirements with most re-

quiring written, telephonic, or electronic notification, and others specifying exactly what must be included in the notification to individuals. An information security exemption allows the entity some reprieve from prescriptive notification requirements. For example, Virginia's data breach statute includes the following provision:

"An entity that maintains its own notification procedures as part of an information privacy or security policy for the treatment of personal information that are consistent with the timing requirements of this section shall be deemed to be in compliance with the notification requirements of this section if it notifies residents of the Commonwealth in accordance with its procedures in the event of a breach of the security of the system."

Information security policy exemptions function as an incentive to entities subject to data breach laws. They encourage the adoption of such policies, which can help an entity understand and organize its business around certain cybersecurity risks. Information security policies help entities prepare for the worst, and regulators in many states reward that preparation by allowing entities to rely on their internal procedures rather than conform to the state's notification requirements.

Second, state data breach laws commonly include exemptions for notification for certain regulated sectors, including healthcare and finance. Both are governed by strict data privacy and security regulations, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Gramm-Leach-Bliley Act (GLBA), respectively. Certain states lean on those existing regulatory frameworks allowing entities who are in compliance with HIPAA, GLBA, or other approved primary regulators to escape the state's notification requirements. These types of provisions recognize the limits of legislating a rapidly evolving landscape. Data breaches and security incidents don't look the same as they did in 2003; neither does the security of our personal data that we expect from companies. By leaning on existing

regulatory structures, states allow themselves more flexibility. Those regulatory regimes, often that have more onerous security requirements, are closer to the entities they regulate and likely more able to adapt to changing technologies. If state data legislatures tried to amend data breach laws to keep up with technology, there would be no winners. Laws would consistently be behind the technology and lawmakers would be spending valuable time and capital inefficiently.

Particularly as AI continues to develop, the technology will have vastly different impacts in different sectors. Privacy and security concerns stemming from AI in the healthcare industry will look different than in the critical infrastructure sector. Executive rulemaking can help bridge the gap and be more responsive to specific industry concerns, while an overarching law like data breach laws or a congressional AI bill can address the incentives and risks across sectors.

Additional Policy Considerations

Though data breach laws provide useful frameworks for the development of AI regulations, there's still room for improvement. If Congress opts to emulate its approach to data breaches in the AI context, then it should increase the efficacy of such an approach by considering the following improvements.

First, expanding the technical competence of regulators. If the gap in technical expertise between industry leaders and regulators becomes too large, then all the risk detection in the world will have a limited effect on Congress actually mitigating those risks. Congress should take companies like OpenAI up on their supposed willingness to collaborate with regulators in the creation of responsive policies by educating a cohort of government AI experts. These experts could spend months, if not years, embedded within companies learning from the world's foremost experts in what could be world-ending technological development. State data breach laws have been criticized for their unresponsive-

ness to the changing technical landscape. Incorporating the expertise of companies developing AI should be a regulatory priority.

Second, increasing incentives to err on the side of caution. In short, the creation of a fine and penalty regime that spurs compliance among regulated entities. Despite industry leaders such as Sam Altman, the CEO of OpenAI, admitting that they do not know just how risky their technology may be, these AI developers have not slowed their AI R&D. One lesson from consumer protection laws generally is that some companies consider fines resulting from a breach as a cost of business that they can stomach and, therefore, minimally comply with regulations. The existential risks of AI mean the size and likelihood of enforcement of penalties must prevent a similar willingness to try to squeak by — too many minimally compliant companies will increase existential risks to an unacceptable degree.

Third, setting the federal legislative standard instead of leaving the door open for a patchwork approach. Though the state-by-state approach to data breach governance has some benefits, the costs may be higher. On the positive side of the ledger, states can more quickly implement, and amend their regulations to reduce risks from emerging technology. Perhaps unintentionally, the patchwork approach itself makes those risks less likely because regulated entities have to pay more attention to the nuances of each state's approach. This increased attention to regulation necessarily forces companies to move slower and break fewer things.

On the negative side, this patchwork approach may delay or undermine a more comprehensive and sustainable approach to risk reduction. The ongoing struggles to pass a nationwide privacy law demonstrate this negative side effect. States with more onerous requirements have objected to federal legislation that may preempt and weaken those requirements. Both AI developers and the public would benefit from avoiding a similar struggle. A federal law could provide de-

velopers with the sort of legal clarity and stability required to innovate, and it could ensure all Americans have the necessary protection from the existential risks of AI rather than allowing some AI-risk tolerant states to serve as the breeding ground for the proper policy response.

Conclusion

Now is not the time for novel regulatory approaches. Congress must take the existential risks of AI seriously and deploy pre-existing risk assessment tools and regulations to better understand, monitor, and mitigate those risks. Radical ideas have a time and place — right now, though, such ideas will only increase the odds of prolonged congressional debate.

Congress has already taken action in line with a risk-reduction approach to AI; in 2021, it directed the National Institute of Standards and Technology to develop a risk framework for AI systems. In an era marked by partisanship and gridlock and on an issue that presents as many and as significant risks as AI, the path of least regulatory resistance ought to be followed — at least in the short term.

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Climate

The Importance of Aggregate Climate Data for Global Climate Progress from Emerging Economies

By Najat Ferchachi

Harmonized data lies at the heart of the climate agenda, but do we pay enough attention to the development of the figures that we see? Do we ever question how the figures are calculated? May there be elementary discrepancies compounding into a distorted representation of supposed facts? And could this all possibly contribute to sub-optimal and ineffective policy-making clouded by perceived assurances of data certainty?

The production of reliable climate data is critical to how our daily lives and future are shaped. Decisions taken by national leaders are based on global, regional, and national trends and forecasts. The Paris Agreement and the subsequent net zero agenda is an example of how data and its interpretation for societal and economic progress are at the core of policy choices. On the one hand, official statistics are used to inform the development of policy and decisions by public officials and businesses. On the other hand, statistics are used to monitor impact and effectiveness.

This places the input of national statistics into global datasets, such as those provided by the United Nations and World Bank, at the heart of this debate. It is critical for countries to have timely and frequent data releases, high-quality data outputs, user confidence, and Human Resources development per the UN Handbook for National

Statistical Systems. Harmonized global data is key for meaningful global data output and informed decision-making. National statistical ecosystems play an important role in that and ought to deliver statistical outputs that adhere to global standards.

Countries and Multilaterals Developing Data and Statistical System Capabilities

Multilateral organizations, such as the United Nations and the International Monetary Fund, host sophisticated divisions for statistics. The United Nations adopted in March 2022 their "Global Set of Climate Change Statistics and Indicators," whereas its first handbook on national statistical systems dates back to the 1980's. The International Monetary Fund introduced in 1996 its Data Standards Initiatives, which comprises of three tiers of national statistical capability: entry (e-GDDS), intermediate (SDDS), and advanced (SDDS plus). Advanced economies, such as the European Union and the United States, have garnered capabilities and created well-developed statistical systems.¹

Figure 1 displays information provided by the International Monetary Fund with regards to participant countries in its Data Standards Initia-

tive. It shows how divergent are the capabilities between developed and developing countries. Based on data in Figure 1, 112 countries participated in the entry tier of the data dissemination framework by the end of 2022. Africa, Asia and Pacific, and Middle East and North Africa represent 73% of these 112 countries. In contrast, 97% of the participant countries in the advanced dissemination standards are from Europe or the Western Hemisphere. As such, the quality of national data production and output has significant variance. This exposes possible shortcomings in statistical products, including those measuring progress towards a net zero agenda.

Potential Role of Big Data for Countries and Climate Change

Would fast-paced technological developments provide answers for more harmonized and accurate statistics across all countries? Big Data has certainly entered the realm of official statistics, questions as to how Big Data can be exactly relevant for official statistics are ongoing.⁴ According to UN Big Data, which is part of the UN Statistics Division, "Big Data is considered as possible means to support the monitoring of the 2030 Agenda, as it could improve timeliness and relevance of indicators without compromising their

impartiality and methodological soundness."⁵ As such, finding ways to use Big Data as part of official statistics may supplement lower capabilities in countries. With that, it could support high quality international data aggregation for meaningful global action plans, such as with the urgency provided by measurement towards progress on global climate change.⁶

Overall, common goals, including the net zero agenda, require high-quality and dependable baseline data inputs for measurement. Climate change is front and center for many decisions

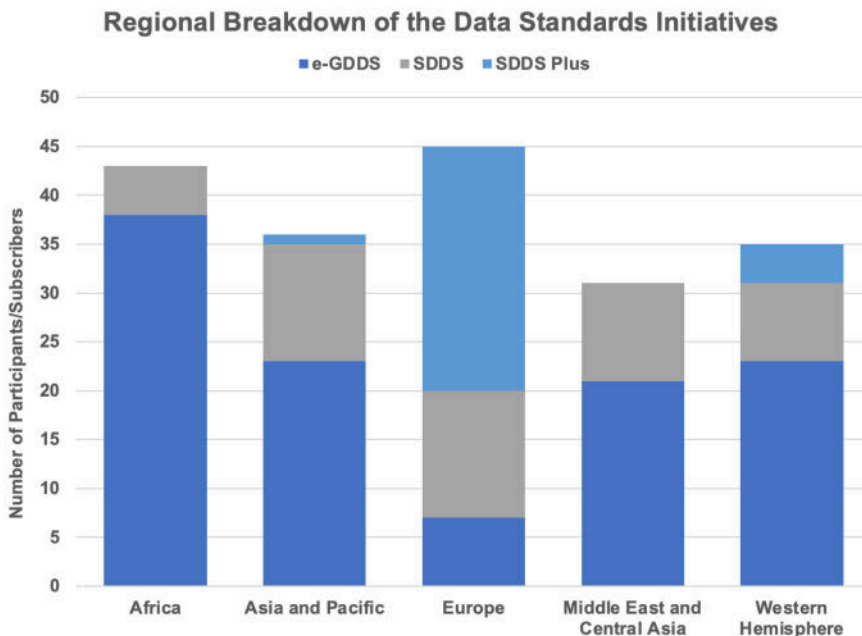


Figure 1. Source: Dissemination Standards Bulletin Board

Statistics can serve as a true base for effective policy-making insights, but there are limitations due to nations' capabilities. Capacity development in national statistics has been evolving in emerging countries over the past years through a variety of support tools offered by multilateral organizations.² The United Nations Statistics Division following up on their newly adopted "Global Set of Climate Change Statistics and Indicators" shows a variety of workshops to strengthen environment statistics for instance.³

to be taken. We cannot deny that we live in an era with a collective problem: the warming of the globe and the impact this has on our natural habitat and progress. Let us make sure that whatever policy choices we take in that regard, we ensure that the statistical capabilities in all countries are on par with one another, so that inputs into global datasets that we deem reliable, such as those from the United Nations and the International Monetary Fund, are truly of the quality that we need them to be for real progress and outcomes.

Najat Ferchachi has 15 years experience in government affairs at the intersection of business, government, and academia. She is passionate about climate change and forging meaningful alliances and strategies in support of the net zero agenda. Her proven track record is in strategy development. She is Dutch and lived in the Netherlands, United Arab Emirates, and United States. Najat holds an MPA degree from the Harvard Kennedy School and MA and BA degrees from Maastricht University in European Studies with speciality in European Union policy domains and International Relations. She speaks Dutch, English, and Arabic with limited German and French.

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Global Governance, Climate Change, and International Security: Aligning Issues to Compel Action

By Aashish Khullar

"Humanity is waging war on nature. This is senseless and suicidal." These are the first words of the United Nations seminal report, *Making Peace with Nature*.¹

The consequence of this war is the "triple environmental crises." Greenhouse emissions continue to exceed safe limits, biodiversity loss rivals periods of mass extinction, and pollution kills more people today than ever.

Between 2021 and 2023, several flashpoints within the climate-security interplay have been identified in Afghanistan, Somalia, Central African Republic, Columbia, Ethiopia, Sudan, Iraq, South Sudan, Sahel, and Mali.² Similar analyses have also been carried out for countries such as Syria, Egypt, and Yemen.³

For instance, Iraq is on the verge of another human-induced disaster because it is facing the triple environmental threats of extreme weather, biodiversity loss, and pollution. Droughts and water scarcity undermine agriculture and food security. As a result, close to 70,000 people have already been displaced, creating pressure on social and political systems in more densely populated areas.⁴

Climate, Peace, and Security at the UN: Silos and Friction

Within the UN and beyond, there is a growing conversation on the intersection between climate change and violent conflict. Given the UN's central role as the global convener and arbitrator on these topics, the conversation is simultaneously influencing and being influenced by realities on the ground. Climate change is already shaping the future of the global peace and security landscape.

The United Nations Security Council (UNSC) first considered climate-related security risks in 2007.⁵ It has since recognized climate change as one of several factors affecting global and national stability, and has called for more in-depth analysis, reporting, and risk assessments on the links between environmental shifts and insecurity. During the course of its deliberations until June 2022, the UNSC has held 10 open debates on climate change and security, and issued seven presidential statements on climate change and security.⁶ In addition, until now, it has also held 22 open debates on climate change related impacts.⁷

The discussion between climate change and peace and security is a crucial development within the global governance landscapes of climate and

security. Climate change has traditionally been placed within the development pillar of the UN, whereas peace and security is a pillar itself. However, the structure and decision-making processes at the UN have not traditionally enabled such linkages. This highly politicized discourse is further complicated by competing views about the Security Council's mandate, its reform process, and the general division of work within the UN.⁸

Additionally, several countries have expressed reservations about these developments. They fear it could undermine the UN Framework Convention on Climate Change, which is the current global regime for addressing climate change. Further, they worry it would falsely securitize a sustainable development issue by placing it under the purview of the Security Council. They believe this would create a democratic deficit on global climate action, as the Security Council does not include all UN members and gives disproportionate powers to the five permanent members on an issue that has traditionally been placed in a universal decision-making setting.⁹

Engaging Non-State Actors

Officially, the Security Council has no mechanism to engage non-state actors. However, since the initiation of the Arria Formula meetings in 1992, the UN has tried to work around the issue. These meetings are not part of the UN Charter or the rules of the Security Council. Instead, they are confidential, informal discussions on peace and security between interested members of the Security Council and non-state actors, including other international organizations.

Between February 2013 and June 2023, the Security Council held seven Arria Formula meetings on topics related to climate change and peace and security; all included non-state actors as key participants.¹⁰ This indicates the increased use of informal governance processes and engagement of non-state actors related to the topic.

Simultaneously, other organs of the UN such as the Secretariat, the General Assembly, and the Economic and Social Council have all maintained the momentum by initiating deliberations at the intersection of climate and peace and security, which have also included non-state actors.¹¹⁻¹³

The Political Discussion

The discussion on the issue is evolving and remains open to several scenarios with varying degrees of securitization. The current scenario frames climate change as a threat multiplier for global security.¹⁴ All actions are conceived as conscious but measured responses to the security risks made worse by climate change.¹⁵

But, the potential practical implications at the extreme ends of this conceptual spectrum include highly securitized and non-securitized scenarios.

- On the highly securitized end: What happens if a country fails to address climate change or proactively accelerates it? The Security Council would suspend a country's national sovereignty and enable the collective use of force from the international community.¹⁶ This treats climate change similarly to other international crimes: genocide, crimes against humanity, and crimes of war.
- On the non-securitized end: The Security Council would take no action on climate change and dismiss it as a non-issue for international security. Nothing would happen.

While the political discussion on various scenarios is ongoing, the need to better understand the implications of climate change for peace and security has caught on significantly, and so has the conversation on the possible roles of the Security Council.^{17, 18}

These developments also provide several opportunities for accelerating action on climate

change. Unlike other organs of the UN, the resolutions of the Security Council are legally binding, and the framing of climate in the context of security could lead to heightened interest and incentive for countries to act, including through increased resource allocation.

Moving the Conversation Forward

While there has been significant work on studying the interplay between climate change and violent conflict, scholars are divided on the causal link between the two events.¹⁹⁻²² This paradoxical situation has led to policymakers and diplomats being misaligned with scholars in their discussions concerning climate change and the Security Council.²³

Yet, despite the uncertainty, concerns about climate change impacting peace and security have generated traction with academics, practitioners, activists, and policy experts.²⁴

Further, there is a growing convergence on the view that climate change can be a risk multiplier in relation to threats associated with insecurity, overburdening state capacity, and exacerbating vulnerability in already vulnerable communities.²⁵ Additionally, the mechanisms by which these risks manifest tend to be highly context dependent. They are a function of the localized interaction of climate stressors with exposure factors and society's sensitivity and coping capacity.

Certain aspects of the impact of climate change on human security are more evident. For example, several small island developing states are particularly susceptible to displacement and existential threats associated with sea-level rise.²⁶

Other consequences are more complex and play out in various ways, including food insecurity, spiraling poverty, and inequality. These all also have negative effects on displacement, global food prices, and geopolitical stability.²⁷

However, the security implications of these interactions are not confined to traditional conceptions of violent conflict; they can manifest as other forms of insecurity, such as organized crime, armed group activity, and sexual and gender-based violence.²⁸ A context-specific thorough risk analysis could help determine whether or not a particular circumstance meets the conditions under which the effects of climate change can exacerbate insecurity issues.

As evidenced by the growing literature and real-life manifestations, some interlinkages between climate change and peace and security are compelling. A large portion of the population and/or extensive land areas in fragile states face high climate risks with "70% of the bottom quartile of countries most vulnerable to climate change are also in the bottom quartile of the most fragile countries in the world."^{29, 30}

What Could Be Done

Given the current literature and practice, the question is not what is the causal relation between climate change and peace and security. Instead, it is now more important to understand how climate change interacts with existing and emerging conflict dynamics and how to address these challenges. Hence, it is imperative to better understand how these factors manifest in various geographical, sectoral, and temporal contexts and how global governance can effectively respond.

To make progress, several actions could be undertaken across relevant global governance processes: 1) issue framing and agenda setting, 2) norm creation and dissemination, and 3) capacity building. In addition, any meaningful action would need to account for and engage with recent global governance trends, including the emergence of non-state actors and the rise of informal governance processes.

Being able to effectively link these processes and trends will enable meaningful progress on the is-

sue of climate change and peace and security. Such an effort will only happen by addressing divergent views among diverse stakeholders and including more perspectives. Keeping this in mind, the following steps could offer a coherent way forward.

Independent Commission on Climate Change and Peace and Security

Depending on the support within the UN, the Secretary-General, the General Assembly, or the Security Council should consider establishing an independent multistakeholder commission to further deliberate this issue. It should engage a diverse range of stakeholders, including academics, policymakers, legal professionals, practitioners, indigenous leaders, knowledge holders, civil society, and impacted communities.

The commission will allow diverse perspectives to dive deeper into different aspects of the issue and generate more clarity. More specifically, its work could include the following streams:

- **Subject Matter Review.** It would study the divergence and convergence in the academic and policy analysis literature. Establishing this understanding is essential to ensure an evidence-informed and data-driven comprehension of the topic. Specifically, the mandate could focus on developing a better substantive and practical understanding of the interplay between climate change and peace and security issues across various contexts.
- **Mapping Institutional Scenarios.** It would undertake research on outlining various institutional arrangements within the UN and the broader global governance architecture for addressing the interplay between climate change and peace and security.

This exchange of ideas could enable creative and innovative ways to address the issue or offer sug-

gestions for interim measures until an ideal set-up can be implemented.

It could become the basis for renewed issue framing and agenda setting to initiate both formal and informal governance processes involving a broad range of state and non-state stakeholders. Following progress on the matter, additional actors could be brought on board to further norm creation and dissemination.

Conclusion

While progress has been made in better understanding the interplay between climate change and peace and security, we have also realized the limits of our knowledge. Additionally, given the contextual nature of climate change, its influence is determined, in part, by the localized interplay of a wide range of elements and presents itself in diverse ways in real-world settings. This, in addition to other factors, makes it all the more complicated to calibrate the most appropriate global institutional arrangement to address the issue.

Failure to recognize and manage the nexus of the relationship between climate and security could have significant ramifications in the future between and within countries and communities. Without considering these implications, efforts to promote sustainable development and peace may fall short.

This is a new era for war. Countries aren't just fighting with each other; they are also fighting the planet, and with it, the very fabric of what sustains life. Our survival and that of future generations demands new thinking, and the Independent Commission might just be the answer.

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tiations, interagency coordination, and stakeholder engagement, specifically on sustainable development, peace and security, and emerging issues. To this end, he worked on, among other things, the Sustainable Development Goals, the Paris Agreement, and the Secretary-General's Our Common Agenda. He is currently a fellow at the Royal Society of the Arts in the UK.

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Security

The Army National Guard's Recruiting Woes: An Experiment to Challenge the Status Quo and Offer Valuable Lessons

By Thomas D. Hobbs

"We don't go anywhere or do anything without the National Guard. We can't do what we do as an Army without the National Guard. Every time we have asked, the National Guard has been 'Always Ready, Always There.'"

– General James C. McConville¹

"There's no sugarcoating it: all three components of the Army missed their required end strength for fiscal 2022, leaving boots unfilled after missing recruiting goals."

– *Army Times*, October 10, 2022²

Six months before Covid-19 shuttered the nation, the United States Army published its first "Army People Strategy."³ Gen. James McConville, the service's senior military leader, intended the document to serve as a roadmap to "drive success in our Readiness, Modernization, and Reform priorities."⁴ No one imagined that just three years later, McConville's now familiar tagline "People First. Winning Matters." would reveal a completely different concern.

Fewer new recruits than expected joined the service in each of the past three fiscal years from 2020-2022 (Figure 1).⁵ Despite withdrawals from Iraq and Afghanistan, demands on the U.S. Army remain high. Russia's invasion of Ukraine, competition with China in the Pacific,

and maintaining relationships with allies and partners require forward presence; in other words, soldiers deployed overseas. The Army will be challenged to maintain forward presence if its recruiting failures remain unaddressed.

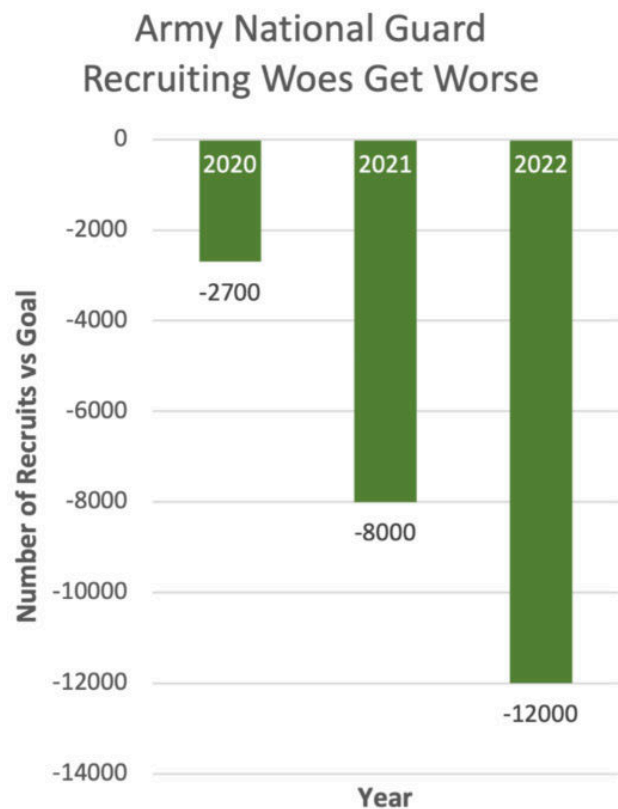


Figure 1. Recruitment numbers in the Army National Guard

Recruiting woes disproportionately affected the Army National Guard (ARNG), the service's largest reserve component, which missed its targets by increasing margins.⁶⁻⁸ The Army National Guard fulfills significant national security objectives, including maintaining military-to-military relationships with 100 allied and partner countries and providing critical capabilities for Army multi-domain operations.⁹ Since 2001, its role in defending vital national interests has dramatically evolved. Its recruiting methods have not.

To improve recruiting effectiveness, the Army National Guard needs to reconsider its recruiter employment and development practices. Before assuming recruiter roles, most ARNG soldiers spend a decade learning how to apply combat power under austere conditions. Leadership aside, few skills transfer between the application of force to dominate an adversary and guidance counseling for uncertain young adults—the largest proportion of new members who join the organization. The ARNG must ask itself: are mid-career soldiers the best candidates to recruit a new generation of recruits?

Recruiter training also deserves scrutiny. The Covid-19 pandemic necessitated less effective virtual training than the customary six-week

in-person recruiter instruction.¹⁰ Continuity between personnel leaving and assuming recruiting duties also suffered because of remote work requirements. These unfortunate realities exacerbated the strain on already brief tours of duty. The average recruiter only serves in the position for 1.6 years.¹¹

To their credit, many ARNG recruiters learned valuable lessons during the pandemic. Embracing instant messaging, creating social media content, and leveraging recruit-to-recruit networks yielded desperately needed dividends.¹² Yet, few of these skills are taught in formal recruiter instruction. The ARNG must also ask: is the current recruiter development model sufficient to enable recruiter success today?

To answer these questions, the ARNG should conduct a pilot program comparing soldier recruiters to professional civilian recruiters. Civilian recruiters should receive the same administrative training as new ARNG recruiters to ensure equal knowledge of eligibility criteria, information technology systems, and enlistment procedures. Then, each group should be placed in comparable urban markets with sizable populations for a minimum of three years. At periodic intervals, they should be compared to their counterparts working in demographically

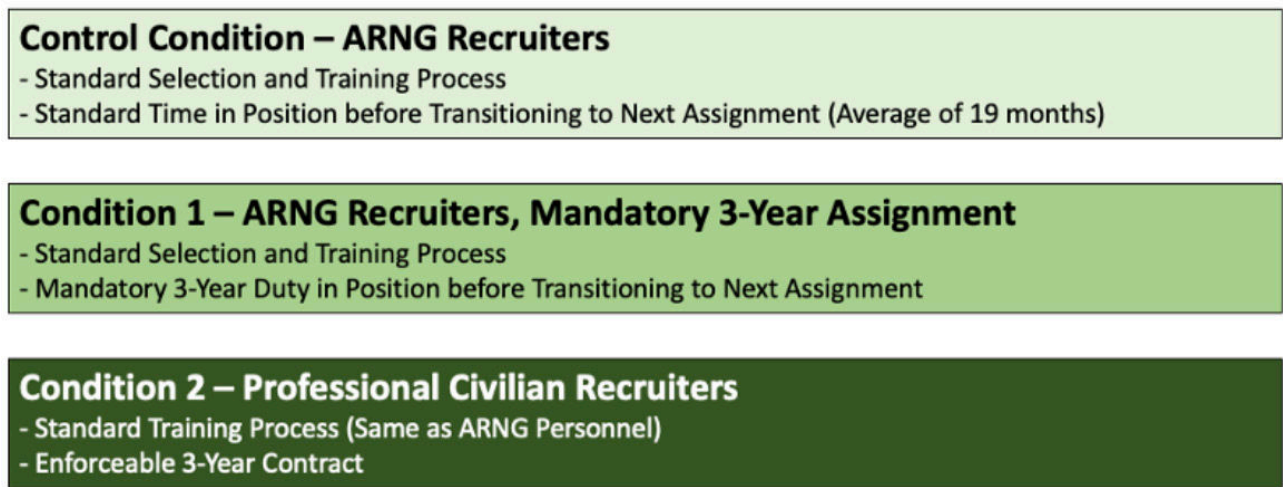


Figure 2. Breakdown of the conditions

Example Key Performance Indicators (Weekly)

- Number of Active Referral Sources
- Number of Active Referral Source Contacts
- Number of Prospective Recruits in Pipeline
- Number of Prospective Recruit Contacts
- Number of New Enlistments (Recruit Transitions to Enlisted Soldier)
- New Enlistment Success Metrics
(Completes Stages of Training, Achieves Higher Ranks)

Figure 3. Possible indicators

similar cities. Comparisons should include uniformed ARNG recruiters operating under the current system (not participating in the pilot), uniformed ARNG recruiters operating under the three-year pilot program, and civilian recruiters operating under the pilot program (Figure 2).

This experiment will help the ARNG better understand the following:

- How important is firsthand experience as a service member to recruiter success?
- How do training and prior experience impact recruiter effectiveness during the first year of assignment?
- How does tenure in the role impact recruiter effectiveness after the first year?
- How does tenure in the market impact recruiter effectiveness?
- What behaviors and practices between the groups (uniformed military and non-uniformed civilian recruiters) affect results?

Quantitative measures of effectiveness should include the number of recruits who join the organization, the effectiveness of each recruiter, and expense per recruit acquired. Qualitative comparisons should track new recruits through basic combat training, advanced individual training, and first duty assignments to determine differences in performance and job satisfaction (Figure 3).

Recruiting efforts appear to be rebounding thanks, in part, to relaxed Covid-19 mitigation efforts.¹³ This is good news. Still, the percentage of Americans able and willing to serve continues to decline.^{14, 15} The organization must find new and better ways to meet growing requirements.

Heightened geopolitical tensions in Eastern Europe and the Pacific, illegal immigration, the destructive effects of climate change, and passionate public discourse concerning equity and justice will require engagement from America's citizen-soldiers for the foreseeable future. The Army National Guard must experiment and adapt its recruiting practices to meet these challenges. To win when it matters, we need people first.

Thomas D. Hobbs is a Major in the Army National Guard and received his Master's in Public Administration from the Harvard Kennedy School.

The opinions expressed above are those of the author and do not reflect the position of the Army National Guard, the U.S. Army, or the Department of Defense.

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The Case for Paradiplomacy: How Delegating Control Might Be America's Best Diplomatic Hope

By Richard Garcia

"The future will be won by those countries that unleash the full potential of their populations."

– President Joe Biden, before the United Nations General Assembly, 2022¹

Polling over the past half-century shows that a clear majority of Americans want the United States to play an active role in world affairs.² However, very few citizens are actually called upon to play that role. Even though the U.S. foreign policy enterprise may be one of the largest in the world, the number of people legally empowered to represent U.S. interests abroad remains shockingly small. Between overseas diplomats, military attachés, intelligence officers, U.S. Agency for International Development (USAID) officials, and political appointees, roughly 25,000 – 30,000 people are charged with the day-to-day task of achieving the United States' vast foreign policy agenda.³ To put it in another context, almost all official interactions between the United States and the rest of the globe are conducted by less than 0.01% of the American population.

While efforts have been made to diversify this relatively small group, not much has been done to expand it.⁴ A centrally controlled foreign policy apparatus will always run into a tyranny of scale. For each new additional person at the

front lines of diplomacy, there are many more persons required to manage and supply them. An embassy can only get so big, and a centrally controlled national security apparatus can only manage so much at one time. With the world's largest foreign policy establishment already in place, the United States is unlikely to rapidly expand and escape the cruel physics and expense of this equation anytime soon.

Likewise, the odds of reduced demand or increased specificity seem equally unlikely. Five consecutive presidents have tried and failed to simplify and focus efforts within Washington.⁵ Year after year, the number of requirements listed within the national security strategy grows, demands from maintaining alliances increase, and the number of domains the government must account for multiply.⁶ Rather than reduce demands or increase its capacity, the United States instead continues to overpromise and underperform.

The answer, instead, must be division and delegation. National leaders should seek to offload a reasonable portion of the foreign policy agenda to entities outside of the central foreign policy establishment. Paradiplomacy, or subnational diplomacy, refers to foreign affairs activities conducted at levels below the nation-state. Un-

der a strategy of paradiplomacy, entities, such as states, provinces, or cities, are empowered to lead and act in parallel to sections of U.S. foreign policy with relatively high levels of autonomy.

Why Paradiplomacy Now

Centralization is a cornerstone of U.S. foreign policy, but its best days may be behind it. Since the unipolar moment, five presidents have struggled to wield the United States foreign policy apparatus nimbly enough to keep up with challenges from Chinese and Russian adversaries.⁷ To keep up with an ever-growing list of national security priorities and fires on all fronts, the United States Government has responded by adding more and more institutions to its foreign policy establishment. As of 2023, the United States vastly outspends many of its autocratic adversaries, enabling it to compensate for lack of nimbleness. However, this workaround is quickly running out of steam.⁸

The foreign policy landscape of the 21st century is likely to be far more multipolar than the centrally controlled Washington establishment is capable of responding to. In addition, confronting global issues like climate change and Covid-19 requires the cooperation of subnational leaders who are closest to affected communities.

Attempts to keep up with such demands via an ever-growing bureaucracy are unlikely to succeed, and the influence mega-corporations, states, cities, and other subnational actors have in foreign policy will only increase. Ignoring and avoiding engagement with subnational entities will only drive them towards riskier and more destructive behavior. Luckily, the United States is uniquely positioned to take advantage of such an environment. Its mayors, governors, business leaders, and academic institutions already lead the charge in a vast array of international relations and national security spaces. It is time to empower and enable these entities to do more.

1. Delegate to Subnational Actors as Part of the National Security Strategy

The 2022 National Security Strategy makes little mention of the growing role of subnational diplomacy. In fact, it does not use the word "city" or "state" (as in a U.S. state) a single time in the context of foreign engagement. However, nearly 30% of the overall document is spent addressing issues that fall directly within the interests of subnational actors, such as climate and energy security, pandemics and biodefense, food insecurity, terrorism, technology development, and crime. Covid-19 is mentioned 16 times in 48 pages.⁹ These issues, especially food and energy security, are already being addressed through a wide array of subnational relationships. Given the size of some of these issues and the limited capacity the federal government has to address them, subnational governments will likely wind up doing the lion's share of the work.

Rather than looking at states and cities as supporting elements in need of coordination, the federal government should look to subnational entities as potential leaders in this effort. The United States should take advantage of this increased interest and capacity by subnational actors to free itself of issues not of vital interest to U.S. global engagement. In return, Washington should give subnational entities the latitude to engage and lead in these areas.

2. Make Subnational Diplomacy a Cornerstone of the State Department Mission

The need for increased capacity in subnational engagement has long been identified as a weakness within the State Department. Historically, subnational diplomacy has fallen on a small office within the State Department's Office of

Intergovernmental Affairs.¹⁰ In 2019, Rep. Ted Lieu and Rep. Joe Wilson introduced the City and State Diplomacy Act to create an Office of Subnational Diplomacy. A year later, Senator Chris Murphy and then-Senator David Perdue introduced a similar bill.¹¹ Spurred on by this increased attention, in 2022, the State Department created a new Special Representative for Subnational Diplomacy, appointing Ambassador Nina Hachigian as its first officeholder.¹² Movement in this direction is admirable. However, investments in this capability remain small and certainly do not indicate a foreign policy strategy with paradiplomacy at its core.

In contrast, China has shown far greater interest in expanding its paradiplomatic efforts. Since 2013, the study of subnational diplomacy has become a key area of research at Tsinghua University's Department of International Relations. In 2015, Tsinghua published a study led by Yan Xuetong, one of China's top international relations scholars and key foreign policy adviser, titled, "Expanding Subnational Exchanges, Promoting China-U.S. Great Power Relations."¹³ This study spurred high-level engagements by President Xi Jinping — leading to the establishment of several subnational programs.¹⁴ This list of successful programs is vast and growing rapidly, creating a gap between Chinese and American diplomatic capabilities that will require urgent reform to rectify.

American policymakers and certain subnational leaders have taken notice. Former Secretary of State Mike Pompeo commented, "Xi knows that the federal government is pushing back against the Chinese Communist Party here in the United States... [the CCP] sees that here in the United States, and increasingly around the world, it can use subnational entities to circumvent America's sovereignty."¹⁵

In some instances, subnational elements within the United States have taken it upon themselves

to defend against Chinese subnational institutions. In 2020, a number of educators in Wisconsin led a diplomatic and legal battle against the growing influence of Chinese funding within the Wisconsin University system, working to pass state laws to counter them.¹⁶

Despite clear interest by senior lawmakers and cabinet members, U.S. investment in paradiplomatic capabilities remains meager at best. Under current administration guidance, the State Department is responsible for providing "U.S. representation abroad, foreign assistance, foreign military training programs, countering international crime, and services to U.S. citizens and foreign nationals seeking entrance to the United States."¹⁷ It is time that the State Department add paradiplomatic relations to this list of core tasks and make a meaningful investment into the capability.

3. Provide a Liaison Between the National and Subnational

The Biden Administration National Security Council has emphasized the need to "ensure that the needs of working Americans are front and center in our national security policymaking."¹⁸ Across the United States, there are hundreds of millions of business owners, intellectuals, and average citizens, who could provide immense value in achieving foreign policy goals, and yet there are few, if any, liaisons connecting these entities to the larger national security apparatus.

During the War on Terror, the State Department saw the need for increased coordination and communication with the Department of Defense. They proceeded to embed one career foreign service officer with each major Combatant Command and general officer level command.¹⁹ Today, over 90 of these liaisons advise and coordinate between military units and the State Department.²⁰

As of 2023, however, no foreign service officers are embedded in the other major federal depart-

ments. The Departments of Commerce, Education, Treasury, and even the Interior all have a role in shaping foreign policy, and yet the principal department in charge of this domain has no one in the building. They also have no embedded persons within any city or state level governments. If our leaders want "working Americans at the front and center in our national security policymaking," State Department officials will be needed to help guide the way.

Why Have We Not Used This Approach Already?

The Treaty of Westphalia, signed in 1648, brought an end to the 30 Years' War and helped enshrine the nation-state as the principal sovereign entity on the international stage. The treaty intended to bring into check the power of supranational organizations such as the Catholic Church and the Habsburg Empire. In doing so, it established who could and who could not take part in the world of foreign relations and set a precedent that has been largely enforced for the past four centuries.

The framers of the U.S. Constitution shared this conviction. Enshrining that states shall not "enter into any Treaty, Alliance, or Confederation" and that the power to make treaties and conduct external affairs belong to the President and the Congress alone.²¹ The United Nations Charter echoes this underlying principle.²²

Prior to World War II, the United States had a history of independent diplomatic engagement by leaders within business, local government, and civil sectors. However, the passage of the National Security Act of 1947 placed the responsibility of executing American strategy in the hands of a relatively narrow subset of Executive Branch foreign policy professionals.²³ In an era when a single misstep could have led to the nuclear annihilation of the planet, tight centralized

control over diplomacy seemed a prudent decision. While the nuclear threat remains, central control is losing its luster, and the prevalence of subnational actors is increasing.

The Trend Towards Paradiplomacy Has Already Begun

The historical precedent that began with the Treaty of Westphalia is already being challenged. Global focus on greenhouse emissions reduction and the Covid-19 pandemic fueled an explosion of test cases in paradiplomatic relations. In 2013, California entered into an unprecedented agreement with China's National Development and Reform Commission in an attempt to combat climate change.²⁴ In 2020, Mayor Eric Garcetti of Los Angeles convened the mayors of the world's largest cities to share their experiences in combating the pandemic. These mayors were part of C40 Cities, a network of 96 of the world's largest cities focused on combating the effects of climate change.²⁵

Today, over one-fifth of the global population lives in just 100 cities, and over 55% of the world lives in urban centers.²⁶ That number is expected to climb significantly over the next century, and with it, the foreign policy aspirations of city leaders. A combination of political pressures from millions of inhabitants, distant and often unresponsive national governments, and GDPs larger than the majority of U.N. member states will push subnational leaders to enter into the sphere of foreign relations. (For context, Los Angeles County has a GDP of \$710.9 billion, comparable to that of Saudi Arabia in recent years.)

Subnational entities have also shown an increasing willingness to deviate from central foreign policy leadership. After the United States withdrawal from the Paris Climate Agreement by the Trump Administration, 468 mayors endorsed the agreement on their own. These mayors represented ten of the most populated cities in the

United States, encompassing some 74 million Americans.²⁷ With loose and relatively untested constitutional limits, cities and states are developing their own foreign policy platforms.

Subnational leaders are often closer to the real issues affecting people's lives — trade, transport, clean air, energy consumption — and therein are more vested in driving practical solutions. City and state leaders, who know these problems intimately, are increasingly losing trust that a distant and often detached foreign policy establishment properly represents their interests abroad. Instead of waiting on Washington, they are choosing to do it themselves.

Risk of Inaction

A paradiplomatic approach to foreign policy is not without its risks. The post-Westphalian system and the international rules-based order is predicated on the idea that those entering into the foreign policy realm do so under the official endorsement and supervision of their nation. Paradiplomacy blurs the lines between officials and non-officials, making central control inherently difficult.

These lines are already being tested and crossed, and the risk of ignoring subnational actors must be taken into account. In 2017 Erik Prince, owner of the now-rebranded Blackwater private security firm, offered the Trump Administration an out-of-the-box solution to the Afghan War. His private company would take over the war, with himself acting as a *de facto* viceroy, he proposed.²⁸

Far from being an aberration, this trend has radically increased since the war in Ukraine began. The Russian Wagner group, a private military corporation owned by Russian oligarch Yevgeny Prigozhin, has taken over a large portion of the Russian war effort in Ukraine, and continues to wage wars across Africa on behalf of wealthy benefactors.²⁹ Erik Prince, once again, offered to

take over the defense of Ukraine through paramilitary groups and contractors.³⁰ Elon Musk has continued to dabble in the Ukraine war largely without consent and much to the chagrin of State Department officials.³¹

While corporations have long been used as instruments of a national government, these private entities represent something new. In many cases, they are providing services and entering into negotiations without the clear oversight or consent of national-level leaders.

Avoidance, exclusion, and sanction have long been used to mitigate the risk of subnational actors becoming involved in international affairs. However, trends seem to show this practice is losing its effect. Rather than practicing avoidance, policymakers must craft a strategy capable of harnessing subnational actors while mitigating risks of paradiplomacy run amok.

Limitations and Conclusion

Expanding paradiplomacy will require charting a careful pathway between limits enshrined in the Constitution, historical norms, and international laws. In many cases, it will require testing limits of international codes which have been in place since Westphalia. As such, it will require large-scale investment by the whole of government and national-level leadership willing to shepherd it. Paradiplomacy is also not a panacea, capable of addressing all foreign policy issues. Rather, it must be looked at as a significant force multiplier in need of strategic guidance. Half measures and lackluster investment in such a strategy will likely result in little noticeable improvement above the status quo, and paradiplomacy without a coherent strategic vision will only result in chaos.

While the federal government empowering cities, states, and businesses with a prominent role in sectors of international relations will undoubtedly lead to a number of international snafus and

handwriting within the Washington establishment, the unknown opportunities and unforeseen benefits that such freedoms will unlock may provide exponentially more value overall. Rather than see the growing assortment of subnational actors as meddlers, American foreign policy leaders should actively shape a national security strategy designed to take advantage of these subnational policy entrepreneurs. Leaders must delegate what they are ill-equipped to effect, focus on what they can, and gain the wisdom to know the difference.

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The views expressed here are the author's alone and do not reflect the policy or position of any U.S. government organization or entity with which he may be affiliated.

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If You Want Peace, Prepare for War: Five Steps Toward Building New European Capacities in the Age of Economic and Political Instability

By Patrik Gayer

Si vis pacem para bellum — if you want peace, prepare for war. For too long, Europe has ignored this fundamental Latin adage.

As Russia's war in Ukraine has made abundantly clear, Europe is still dependent on the United States as a guarantor of the continent's security and as a deterrent to Russian aggression. Without American weapons and financial aid, the situation on the ground in Ukraine would look very different.

Can Europe afford to take this support for granted? Every statement about Europe or NATO that then-President Trump made was combed through with unprecedented diligence in Brussels, Paris, and Berlin, not to mention Warsaw and Tallinn. After the election of President Biden, however, discussions about the future of transatlantic relations have mainly focused on the response to Russia's invasion of Ukraine and the impending accession of two new members.

What no longer seems to be top-of-mind in Europe is the further polarization of American politics. One of the two major American parties is becoming increasingly isolationist and authoritarian. Europe simply can no longer take American support for granted, but there is no coherent EU strategy or debate about a scenario where transatlantic cooperation no longer forms the foundation of European security.

Europe's reliance on the United States has led to a lack of proper prioritization of one foundational element of security and sovereignty: deterrence. If the EU is to truly become strategically autonomous, and guarantee the security of the continent in a situation where the U.S. significantly decreases its presence in Europe, this needs to change. Deterrence needs to become a central part of the European Union's push for strategic autonomy by prioritizing security of supply, integrating security into wider EU policymaking, reforming outdated decision-making processes, moving towards a more European NATO, and creating a capable European intelligence agency.

During the Cold War, the world was taught a lesson in deterrence theory through the concept of mutually assured destruction, an enduring dynamic that created a deterrent to either side launching a nuclear attack.

Today, deterrence has a much more nuanced meaning. Great power competition, and indeed war, have become more complicated affairs, and unfortunately grow more nebulous each decade. U.S. Secretary of Defense Lloyd Austin summed it up nicely: "Deterrence still rests on the same logic — but it now spans multiple realms, all of which must be mastered to ensure our security in the 21st century."¹

As is evident from the decision by long-standing EU member states Finland and Sweden to seek NATO membership, deterrence has not been and is still not an objective of the Common Security and Defence Policy (CSDP) of the EU.² The leading policy document for the CSDP approved in March 2022, the Strategic Compass, is aimed at guiding and enhancing the Union's action "to make the EU a stronger and more capable security provider."³ The word deterrent is not mentioned once in the 64-page document and "deter" only twice. As a comparison, in the U.S. National Security Strategy from October 2022, some variation of the word "deter" is used 40 times in 48 pages.

That is partly by design and partly by omission. In Europe, deterrence has been the domain of NATO, whose first core task is deterrence and defense, and national militaries.⁴ NATO's Article V enshrines the principle of collective defense, and the nuclear umbrella has served as the ultimate deterrent. These existing deterrents have worked in preventing adversaries from using direct military force against an EU or NATO member state. They have not, however, deterred Russia from escalating its broader hybrid war with the Western world over the past decade.

To cover this gap in Europe's security architecture, particularly in a scenario where American involvement is decreased, the EU needs to integrate deterrence into its policymaking.

The goal of strategic autonomy is for the EU to no longer need to rely on other countries to make decisions and protect its interests. In the aftermath of the financial crisis, strategic autonomy was primarily coined to address security and defense issues. Later, following Russia's invasion of Ukraine in 2014, the concept came to encompass the need to defend European interests more broadly. Since the onset of the Covid-19 pandemic, eco-

nomics dependence on foreign supply chains has taken center stage in the debate, and today, almost all policy areas are covered by the concept.

In the realms of manufacturing, innovation, and technological advancement, Europe now lags behind both the United States and China. The European economy not only relies heavily on the importation of entire product categories from countries like China, but several European businesses also depend on non-EU suppliers and intellectual resources.

Strategic autonomy in non-security domains is paramount for the EU to be able to effectively address security challenges and maintain influence in global affairs. Allowing geostrategic rivals to have leverage over the EU through their control of central parts of critical supply chains is the essence of short-term suboptimization. It also damages the deterrent effect created by billions of euros invested in traditional deterrence-creating measures, predominantly on a national level. Europe's reliance on Russian energy and the resulting leverage it has granted Putin serves as a crucial warning, highlighting the undeniable link between the supply of societally critical resources and security. The vast amount of military equipment expended in Russia's war in Ukraine, coupled with the West's inability to produce it at scale, further emphasizes the need for investing in domestic manufacturing capabilities.

It is useful to think about strategic autonomy as a sliding scale between full autonomy and full dependency in different policy areas.⁵ The EU needs to tread cautiously when drafting policies that move the slider. It needs to be careful not to raise unnecessary trade barriers, incentivize protectionism, or further erode European competitiveness in emerging technologies. However, not reacting to a changed geopolitical environment would be even more harmful.

Policy Recommendation 1: Establish a New Approach to Security of Supply

In the EU context, security of supply refers to the availability of adequate energy resources and does not cover other areas.⁶ EU policymakers must broaden the scope to include other essential resources, such as food and water. One does not need to look further than to the most northeastern member state with a long history of coping and even thriving next door to Russia. In Finland, the National Emergency Supply Agency (NESA) is responsible for coordinating the efforts of various organizations and sectors to integrate the objectives and interests of society and the business community. This collaboration is critical to ensure the continuity of critical operations in the event of disruptions or emergencies.

The EU should establish a European Emergency Supply Agency based on the Finnish model of NESA. The agency would not only coordinate the efforts of EU-level and national agencies but also work closely with outside stakeholders. International interdependencies and global value chains and thus private companies are increasingly important for security of supply. As a result, ensuring security of supply requires increased collaboration and cooperation between countries, businesses, and NGOs. This would involve sharing information and resources, coordinating response efforts, and working together to address potential threats and vulnerabilities. The agency should work to ensure the continued functioning of the critical systems and services that are essential for maintaining the basic operations of society.

Similarly to NESA, an EU-level agency could maintain strategic stockpiles of critical goods and raw materials, facilitate joint procurement initiatives for essential supplies, conduct stress tests and simulations, and establish a central-

ized information-sharing platform for relevant stakeholders. Such an EU-level agency would increase deterrence by reducing vulnerabilities that malicious actors could exploit, improving overall resilience to potential threats, identifying and assessing potential risks to critical systems, and coordinating collective preparedness efforts.

Policy Recommendation 2: Integrate Security into the EU Policymaking Process

Currently, regular EU legislative initiatives are not analyzed through a security lens. This naivete is untenable, and the EU should therefore introduce security impact assessments, which the European Commission would be tasked with performing together with relevant agencies.

A security impact assessment would be a process that evaluates the potential effects of a proposed policy on the security of the EU. It would identify potential risks and vulnerabilities associated with proposals and analyze the potential consequences of the risks and include risk mitigation recommendations. The assessments could either be integrated into established European Commission impact assessment processes and documents or take inspiration from other security or risk analysis frameworks.^{7,8}

Security impact assessments would improve risk management and the quality of decision-making, enhance transparency and accountability, reduce the risk of unintended negative consequences, and ultimately improve security and resilience, and thus also deterrence.

Policy Recommendation 3: Reform Arcane Voting Rules

Most challenges related to developing strategic autonomy and deterrence are suboptimal outcomes that arise from the institutional frame-

work of the EU. One glaring example is the consensus-based decision-making mechanism within foreign and defense policy, which gives a de facto veto to intransigent member states.

The EU should move towards Qualified Majority Voting in matters of security and defense. It would result in more prompt and efficient decision-making, and it would remove the member state veto.

Since a change of the voting rules would require either treaty change or the use of the so-called passerelle clauses, which both require unanimity, there is a relatively high hurdle standing in the way of achieving this change.⁹ However, European leaders must have the courage to open the door for institutional reform. The current security environment and the prospect of future threats certainly make a compelling case for reform.

Policy Recommendation 4: Strengthen a More European NATO

The EU and NATO have become increasingly synergistic organizations. After Finland's and Sweden's accession to NATO, only four EU member states remain outside of the alliance: Austria, Cyprus, Ireland, and Malta. The deepening cooperation between NATO and the EU is enshrined in multiple strategy documents, including the two most recent: the EU's Strategic Compass and NATO's Strategic Concept.^{10, 11} Still, as commentators have noted, there is a need to further deepen the cooperation.^{12, 13}

If the U.S. were to significantly decrease its military and security presence in Europe, it would be even more important for NATO-EU cooperation to be much closer than it is today. Relying on NATO and further developing the CSDP does not have to be mutually exclusive. Strengthening defense capabilities of member states and the EU would help Europe become a more valu-

able member of the alliance while also increasing its sovereignty. Furthermore, the EU can defend its interests more effectively by being a stronger contributor to global security. By proving to be a valuable member of NATO, the Union will find itself in a better position to defend its interests within the organization.

The development of military technology that can address new threats, such as hybrid and cyber attacks, would be a valuable contribution to global security. By mobilizing the resources and expertise that the Union already has and investing in new capabilities to address the increasingly unstable global climate, the EU and its member states could more efficiently fulfill their commitments to NATO and thus strengthen transatlantic trust.

Policy Recommendation 5: Establish a European CIA

Having early detection intelligence capabilities is important because it provides awareness of potential threats and the ability to incapacitate them before they materialize. Intelligence coordination is something of a blind spot in the European security architecture. NATO member states share intelligence to different degrees, but most intelligence relationships are bilateral and opaque.

The EU has a very limited role in intelligence. The Strategic Compass envisages some further actions related to intelligence. The problem with both existing and proposed initiatives is threefold: they are dependent on voluntary participation, they only give the EU a coordinating role, and they are either intended to provide static reviews or react to events as they happen. Additionally, they are likely to be perennially underfunded.

European policymakers should thus either empower the Single Intelligence Analysis Capacity and make it an independent agency or establish a new central European intelligence agen-

cy. This agency should be well-funded and have the authority to detect, analyze, and respond to threats as they occur. Importantly, to provide a real deterrent effect, the agency also needs to be empowered to act offensively. That would entail a significant shift of competencies from member states to the EU. Taking an incremental approach, the agency should initially be given the ability to develop offensive capabilities in the cyber realm, to complement the Cyber Defence Policy of the EU.

While some might argue that this is a politically unrealistic proposal, the EU needs to evolve in lockstep with the changing security landscape. Without an empowered European intelligence capability, the EU will have a glaring capability gap vis-à-vis its geopolitical rivals and remain de facto dependent on American and British intelligence.

Conclusion

The European project is at a crossroads. Authoritarianism is rearing its ugly head, technological development is dispersing power, and war has returned to Europe. Navigating this complex environment requires nimbleness and adaptiveness, but also strategic foresight. The EU has helped guarantee stability on the continent for decades not through remaining static, but by open-mindedly reinventing itself. European leaders must once again find this spirit.

The United States and China are not passively reacting to world events, but actively shaping them. In contrast, the EU tends to react to what the two superpowers and even regional actors like Russia, do. This must change, not just if the U.S. reduces its presence in Europe. The EU must move from a reactive to a proactive posture.

The EU needs to pair the tactical capacities developed particularly after Putin's illegal invasion with a new grand strategy. The goal should be to achieve sufficient strategic autonomy for Eu-

rope and create deterrence against bad actors, to generate space for multilateralism, free trade, the rules-based international order, human rights, and other important values to flourish. Strategies, however, are not built overnight, but the five steps outlined in this article would contribute to this imperative strategic transformation.

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Special Interests' Hold on State Courts: The Need for a Fourth Wave of Judicial Election Reform

By Kevin Frazier

History presents a clear lesson: when judicial independence and competence wanes, it's time for meaningful reform. Contemporary U.S. voters have ignored that lesson in recent decades and must now rally to preserve the legitimacy of state courts and the judicial branch writ large.

A historical perspective shows us that past waves of judicial election reform have sought to enhance judicial independence and increase the odds of selecting competent jurists by altering who has the legal authority to hold judges accountable. Appetite for reform surged when judges became incentivized to decide cases contrary to the public's interest in a fair and competent judiciary. Though many share those same attitudes today, appetite for meaningful reform appears to be low.

There have been three major waves of judicial election reform in the U.S.: the initial transition to judicial elections from 1846 to 1853, the move from partisan elections to nonpartisan elections in the Progressive Era, and the decades-long spread of the Missouri Plan — a merit-based system of selecting judges that first took root in Missouri in 1940.¹⁻³

Reformers — legislators, community leaders, and others devoted to altering the judiciary — have

pushed for safeguards of judicial independence and competence over the past two centuries.

These measures have included changes to election laws to mitigate the effects of judges becoming beholden to partisan or corporate actors.⁴ However, such safeguards failed to diminish the influence of external forces on judges, prompting reformers to advocate for new systems of judicial elections.

The first wave of reform sought to alter the Founding Era system of judicial elections, under which state court judges were appointed by one or both political branches but were generally denied the life tenure afforded to their federal counterparts.⁵ Reformers recognized that judges in this system had limited checks on other branches if those branches ultimately appointed them. As a result, judges refrained from exercising judicial review and failed to strike down unconstitutional laws.⁶

In states like New York, the failures of the judiciary inspired reformers to hold constitutional conventions, which allowed them to enshrine significant changes to the judiciary. For example, at the 1846 New York Constitutional Convention, delegates embraced the concept of judicial elections and showed other states how voters could place competent, nonpartisan individuals on the bench.⁷

By 1853, 20 states had also adopted judicial elections, and for a brief period, the system worked: voters elected competent judges who exercised their independence by serving as a robust check on legislative and executive overreach.^{8,9}

However, political parties recognized that they could manipulate this system by using partisan primaries to select "party hacks" rather than competent judges.

During the Progressive Era, reformers interested in advancing the rule of law drove a second wave of judicial reform by seeking to revive the public's role in judicial accountability. Political parties had seized the people's responsibility for holding judges accountable, so reformers advocated for nonpartisan elections — the ballots in these elections do not contain any information on a candidate's party affiliation.

These second-wave reformers had success in 12 states, each of which adopted nonpartisan elections in the hope of restoring the legitimacy and effectiveness of the courts.¹⁰ However, reformers did not realize that voters did not pay close attention to judicial elections. In fact, many voters refrained from casting ballots in judicial races — a phenomenon known as "ballot roll-off."¹¹ People who attempted to vote often made their decision with little to no information on the judicial candidate and often relied on "irrelevant cues" such as the familiarity of a candidate's name given that they did not even know the candidate's party.¹²

Special interests, such as chambers of commerce and labor unions, realized that these low-information elections gave them room to persuade voters — encouraging them to cast their ballots based on the ideological "correctness" of a judge's decision rather than the legal caliber of their ruling.¹³

The formation of the Missouri Plan marked the third wave of judicial reform in the 1960s and 1970s.¹⁴ Under the plan, judges were selected by a

state judicial commission and/or by the legislative or executive branch of government followed by a retention election — elections that present voters with the decision of whether or not an incumbent judge should serve another term. Therefore, voters only exercised power when deciding whether to retain judges who were originally selected by one or two other branches of government.

This shift enhanced judicial independence and bolstered judicial competence for at least a few years.¹⁵ But election laws and norms eventually changed in the 1990s and early 2000s, giving special interests the leverage necessary to seize from voters the power to hold judges accountable. In particular, two U.S. Supreme Court cases — *Republican Party of Minnesota v. White* and *Citizens United v. FEC* — permitted special interests to extract specific policy stances from judicial candidates and mobilized partisan factions of voters willing to hold judges accountable to those ideological stances.

The influence of special interests on elections resulted in the appointment of judges who were more familiar with megadonors than major legal treatises and complex areas of the law.¹⁶ It also likely generated a chilling effect on honest, qualified candidates who would otherwise have entered judicial races.¹⁷ As elections grow more competitive and contentious, some candidates will steer clear of mud-slinging and stay in their lucrative private practice gigs or stable public roles.¹⁸

Moreover, because judicial elections occur frequently and are intensely competitive, judges who want to secure another term often issue "friendly" decisions that seek to capture voter support.¹⁹ Empirical evidence shows that judges nearing a retention election alter their decisions to appease those who will play a role in their reelection.²⁰

A fourth wave of judicial reform is long overdue. History suggests such a usurpation of the people's power would lead to reform but that wave has yet to materialize.

In order to preserve the independence and competence of the courts, we need to imagine a new system of judicial elections. A new wave of reforms should seek to preserve ties between the people and the judiciary — with the goal of lending judicial decisions greater legitimacy, restoring public confidence in the judicial branch, and ensuring that competent and independent jurists are placed on the bench.

One reform in particular merits attention: rather than issue majority opinions, concurrences, and dissents authored by individual judges, state courts of last resort should publish a single opinion that identifies "the court" as its author.

In other words, courts should refrain from sharing the vote split in any opinion and end the practice of judges writing concurrences and dissents. This easy fix would limit the ability of special interests to see if their judges are issuing friendly opinions.

Instead, both the public and special interests would be forced to comprehensively evaluate the judicial performance of the courts. In turn, judges could lean on this anonymity to deliberate more earnestly with their colleagues and to issue opinions that reflect their judicial competence, or lack thereof.

Reformers also should consider other means of bolstering judicial independence and judicial competence. For instance, a public financing system for judicial elections would reduce the need of judges to pander to special interests for campaign donations. Likewise, an increase in term length for elected judges would grant judges more time to focus exclusively on issuing the opinion demanded by the law, rather than the one demanded by voters and donors.

What matters most is that reformers begin rallying against the status quo sooner rather than later — the legitimacy of state courts depends on it.

Any of the aforementioned reforms would steady the courts in the face of undue pressure from special interests. Without efforts to reduce that pressure, state judiciaries will become super-legislatures responsive to a few powerful interests. Prior generations of reformers collaborated to defend the courts and collectively spread those reforms across the country; now's the time for another wave.

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Protecting American Businesses Starts with Increasing Transparency at the USITC

By Max Baucus and Dave Camp

We stand at a pivotal moment in our country's history. Domestically, inflation is forcing Americans to stretch every last dollar to afford to put groceries on the table and fill up their cars. Globally, the United States must contend with Russia's invasion of Ukraine and the rise of autocratic governments.

In the face of these geopolitical and domestic challenges, we need to ensure that every level of our government is doing its part to support American employers while lowering prices for consumers. This whole-of-government approach is only possible when agencies and departments across the government work together to protect our interests.

Some of our institutions are failing to meet the moment. Government agencies, like the United States International Trade Commission (USITC), are being taken advantage of by bad actors looking to prevent American businesses from competing fairly. During these uncertain times, we must have government agencies aligned with our best interests. It is critical that we increase transparency at agencies like the USITC to prevent this from happening.

When Congress established what would become known as the USITC in the midst of

World War I, the agency was given a clear mandate to protect American interests through the safekeeping of the U.S. tariff schedule. Over a century later, the mission and mandate of the USITC has been expanded — through acts of Congress such as the Tariff Act of 1930 — to include the adjudication of intellectual property disputes in an effort to prevent the importation of goods that infringe on American patents.

Armed with this broadened mandate, the USITC now has the authority to prohibit the importation and sale of products that infringe upon a valid United States patent by imposing exclusion orders. This means that the USITC has the power to bar the products of any manufacturer, American or foreign, from entering the United States.

While this clause was created and implemented with the best interests of American businesses and their workers in mind, bad actors known as patent trolls have now turned it on its head. These shell companies do not produce anything or contribute to the economy in any way. Instead, they buy up large amounts of broad patents to harass businesses into paying them large sums of money. Not only do they use these broad patents to sue businesses in traditional courts, these entities are now using the USITC as yet another venue where they can extract ransoms from their victims.

Patent trolling at the USITC is a serious problem that calls for increasing oversight of how the agency operates. This has been an ongoing bipartisan concern and one we both encountered as Chairs of the Senate Finance and House Ways and Means Committees. Due to the gravity and breadth of exclusion orders, these entities are able to use them to coerce large settlements from companies that are not even guilty of infringing upon any patents. This problem has only gotten worse.

For example, in 2020, one Irish-based company sued a dozen high-tech companies at the USITC in order to ban the importation of nearly every smartphone, tablet, and e-reader sold in the United States. Even though the entity did not make any products of its own, it was able to gain standing at the USITC based on the business of the prior patent holder. Given the existential threat of an exclusion order and the outsized leverage it provides to plaintiffs, it's perhaps unsurprising that the cases settled before going to trial. In the meantime, the targeted companies spent millions of dollars in lawyers' fees instead of investing in developing new products, growing their operations, or creating new jobs.

In the last year alone, patent trolls accounted for one-fifth of all exclusion order investigations — and there are no signs of this trend slowing. From telecommunications to some of the largest American automobile manufacturers, these misguided exclusion orders are targeting and weighing down critical sectors of our economy. And without requirements to disclose the financial interests funding these cases, trolls continue to operate in the shadows, relentlessly targeting American manufacturers.

The USITC needs to take swift action to prevent this type of gamesmanship from occurring. Forcing these entities and their backers into the sunlight is one good place to start, and the USITC should mandate disclosure of any litigation funding. If nothing else, this would ensure

the USITC staff and Commissioners can fulfill their ethical obligations to the public and recuse themselves from cases where there may be a real or perceived conflict of interest. Just as importantly, it provides policymakers insight into who is really backing these suits (ex., sanctioned individuals or hostile governments).

The USITC should also conduct a robust public interest analysis as soon as a petition is filed to determine at the outset whether excluding the goods in question would be in the best interest of the public. This alone would provide a significant disincentive to these entities since they would rarely meet this bar.

A strong patent system is the cornerstone of American innovation, and it must be safeguarded at all costs. During our time in Congress, we worked to modernize our patent system through legislation such as the America Invents Act. We know how important it is to counteract the desperate tactics used by patent trolls seeking a quick profit.

At this critical moment in our history, the need for this reform across every level of government is imperative. Businesses and innovators of all shapes and sizes are counting on Washington to work for them — not the other way around.

Max Baucus served as U.S. Ambassador to the People's Republic of China from 2014 until 2017, and as a U.S. Senator from Montana from 1978 until 2014. He served as Chairman of the U.S. Senate Committee on Finance from 2001 until 2003, and again from 2007 until 2014.

Dave Camp served as a U.S. Representative from Michigan from 1991 to 2015. He served as Chairman of the House Committee on Ways and Means from 2011 to 2015.

Sanctions: A Hammer for Every Nail

By Rose O'Brien

Introduction

The United Nations Office for Coordination of Humanitarian Affairs estimates that a record-breaking 339 million people will need humanitarian assistance in 2023. Eighty-six million of those people live in countries currently sanctioned by the United Nations — a number that grows to 208 million living under U.S. sanctions. These include internally displaced Venezuelans, civilians living in government-controlled areas of Syria, and innocent bystanders to armed conflict in Sudan.

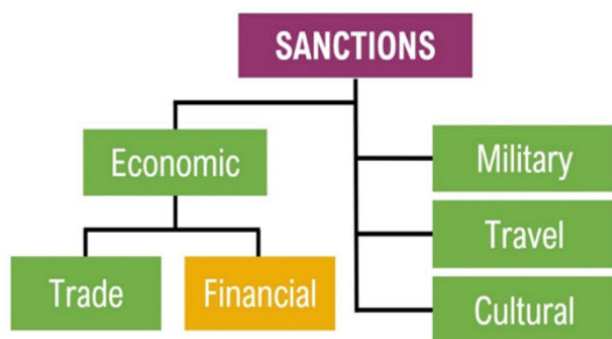


Figure 1. Different types of sanctions

Measuring the impact of sanctions on these vulnerable groups is highly controversial, intensely politicized, and practically difficult to do.

For example, when the United Nations Security Council sanctioned Iraq in response to the 1990 invasion of Kuwait, there were fierce de-

bates about whether sanctions upheld or undermined human rights. Advocates for sanctions relief were accused of appeasing Saddam Hussein while advocates for tougher sanctions were seen as targeting innocent civilians. Some global health experts estimated that between 100,000 and 227,000 Iraqi children died as a direct result of sanctions, while others have since argued that survey data was inflated by Hussein's regime and that child mortality was not affected at all. In a now-infamous interview with 60 Minutes, then-Secretary of State Madeleine Albright said that even if half a million Iraqi children died as a result of sanctions, "the price is worth it." Thirty years later, there is still no consensus.

Overcompliance

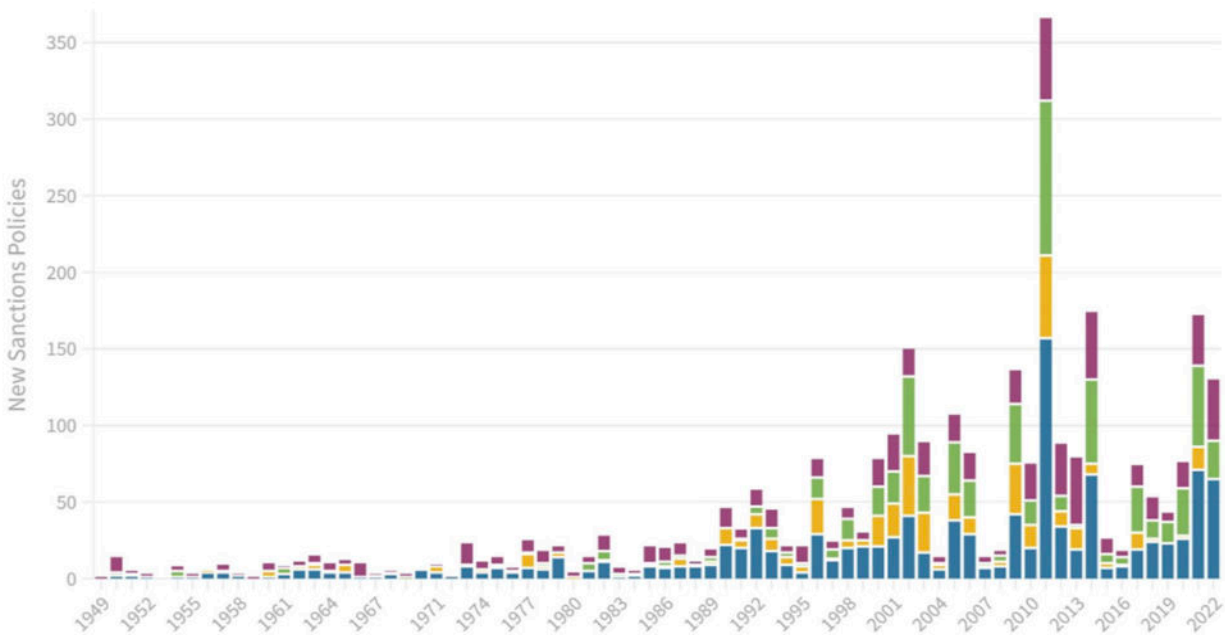
What we do know is that sanctions are not going away any time soon. Sanctions (especially financial sanctions) now form the cornerstone of U.S. policy on major issues such as the war in Ukraine, the rise of the Taliban, and the United States' trade relationship with China. As the United States relies on financial measures more than ever, it must also analyze the collateral impacts of these sanctions and build robust protections for those in humanitarian distress.

Whereas trade sanctions limit specific products, sectors, or countries from import/export mar-

New Sanctions Regimes, both Multi- and Unilateral*

Sanctions have dramatically increased since the 1990s

■ Financial ■ Military ■ Travel ■ Trade



Source: [2022 Global Sanctions Database](#) • Created by author, data courtesy of Yotov et. al.

*data shows the start date of each new sanction, not the duration

Figure 2. Breakdown of new sanctions

kets, financial sanctions limit bank accounts, money transfers, and assets. These assets and money transfers are the lifeblood of international criminal activity, but they are also necessary for legitimate financial transfers made by non-profit actors working in humanitarian crises.

Sanctions do already include exemptions for humanitarian goods and services — although there is a wrinkle between policy and practice. Although the U.S. Office of Foreign Assets Control (OFAC) writes exemptions into its policy so that nonprofits can get transfers to sanctioned areas, there is one more stakeholder in the middle: banks. These banks serve nonprofit clients around the world, many with multimillion dollar portfolios in areas of the world traditionally seen as risky: conflict zones, dictatorships, and areas with scarce infrastructure.

Processing payments to these areas is an extra risk for banks, and often one they are not willing

to take. Against the stringent regulatory background of international sanctions law, financial institutions are not incentivized to accept the legal, reputational, and financial risks. Instead, it is easier for them to drop accounts, delay transfers, or deny services altogether. This phenomenon is known as bank de-risking, or overcompliance, and it is perfectly legal. While the U.S. government can forbid transactions with bad actors, they cannot force banks to transact with good ones. The result is that humanitarian organizations struggle to conduct operations in the areas of the world where their resources are needed most.

Impact of Overcompliance on Humanitarian Assistance

Over the course of the past year, I interviewed more than 30 experts to get a better understanding of the risks faced by financial institutions, the policy approaches taken by the U.S. government

to address overcompliance, and the impacts on those in need of humanitarian aid. I spoke with sanctions scholars, lawyers advising multibillion dollar banks, U.S. federal officials, and humanitarians speaking from their experiences in Myanmar, Syria, North Korea, Afghanistan, Sudan, and Iran. What resulted was a 50-page policy analysis and recommendations, from which this article is adapted.

Risks Faced by Financial Institutions in Sanctioned Contexts

Understanding sanctions overcompliance must start at the origin of the issue, which lies in the risk analysis of banks. One anonymous humanitarian who experienced significant delays in getting aid to North Korea put it plainly: "There's no legal reason why banks shouldn't work with us under the exemptions — it's fully legal. But rightly so, they don't want anything to do with business in North Korea; the risks are too great." Given that banks cannot be legally compelled to process humanitarian transactions, solutions that address overcompliance must prioritize private sector risks and incentives.

Government Fines

The first and most obvious disincentive for banks is the fear of hefty fines leveled at sanctions violators. The most cited case is that of the French bank BNP Paribas, which was fined nearly \$9 billion for willfully violating sanctions on Sudan and Iran in 2015. This was just a drop in the bucket of the total fines across the industry. Between 2010 and 2014, the top 16 financial service institutions paid a collective \$300 billion in penalties, fines, private settlements, and forensic costs for misdeeds including sanctions busting.

Legal Compliance and Uncertainty

Compliance itself also poses a financial burden. To track and monitor the millions of financial

transactions that occur daily, most transnational banks have a computerized risk analysis system that flags potentially risky transfers. Once a transaction is flagged, a compliance officer within the bank manually checks the transaction, attempting to interpret based on the information provided whether it is compliant with sanctions law. Ninety-five percent of American mid- to large-size firms cite sanctions screening as their top compliance challenge, with 36% of their compliance costs going to the salaries of officers who meticulously check transfers by hand.

Put together with the financial market and exchange rate uncertainty that financial institutions already manage daily, introducing ever-changing sanctions increases the incentives for banks to drop accounts in fragile contexts. Banks will assume financial and legal risks when the reward is high enough, but nonprofit accounts in remote locations are rarely the type of billion-dollar return on investment that make uncertain investments worth it.

Reputational Risk

Lastly, large banks face severe reputational risks if they let money get into the wrong hands. The backlash against companies still operating in Russia after the invasion of Ukraine in February 2022 is one such case in point. In one sense this is a positive development — an informed public can make decisions about whether they wish to bank with a company that also counts warlords or despots among its customers. On the other hand, it increases incentives for overcompliance, even in cases of humanitarian need for prisoners of war behind enemy lines.

Reputation is not only important for private customers, but also for public ones. Firms that are too often at odds with OFAC, the FBI, or the Bureau of Industry and Security (BIS) are less likely to win lucrative government contracts in the future.

Impact of Overcompliance on Humanitarian Actors

Compliance Burden

Financial regulations imposed by both OFAC and private banks impact nonprofit operations at every level from the field to the headquarters. According to one anonymous humanitarian with experience working in Yemen, applications for permits to complete the most basic of tasks were a full-time job on top of humanitarian work. "You're constantly sending in new applications and asking for approval for extension of your permit," they said.

Typically, humanitarians must confirm the identity of recipients before they deliver goods and services. However, recipients often do not have the personal identification and documentation required by financial organizations' compliance departments. According to one interviewee, fragile governments that have data stored digitally may also lose access to that data, making it difficult for recipients of aid to prove their identities. Refugees, internally displaced peoples, and rural populations may not have national ID cards at all, presenting a real issue for banks' Know-Your-Customer (KYC) requirements.

Costly Workarounds

When bank accounts are not available to purchase goods or process payroll for local workers, humanitarians are pushed to find workarounds that increase security risks or are unnecessarily costly. For example, if humanitarians are not able to provide digital vouchers to local recipients, they may instead carry large sums of cash across borders, a theme reflected in multiple interviews. This is dangerous in sanctioned contexts such as South Sudan or Afghanistan where bribes are exacted at checkpoints — and ironically benefits hostile militaries and terrorist organizations.

Another workaround is engagement with the informal money broker system often used by diaspora groups to send remittances and complete currency exchanges (sometimes called hawala). The Financial Action Task Force, a global money laundering and terrorist financing watchdog, released a report on informal channels in 2013 underlining that informal brokers are not inherently criminal and can provide secure, well-documented transfer services. Nonprofits with trusted partnerships with local money brokers have advocated on their behalf, but stigma remains and money brokers are often not able to transfer the volumes of cash needed for an international humanitarian operation.

Delayed, Denied, and Dulled Impact

A drawn out due diligence process by banks or government agencies means that humanitarian efforts may be critically delayed or accounts may be dropped altogether.

Delays in accessing financial resources have an outsized impact in emergency or disaster response situations. The earthquake in Turkey and Syria in February 2023 is a primary example: lives were saved (or lost) based on the ability of nonprofit organizations to respond within hours. Complicating the issue is the lack of basic infrastructure needed for due diligence, such as corresponding banks that were reduced to rubble. Although OFAC did eventually issue a general license to reiterate the legality of humanitarian transfers to Syria, it came after 72 hours of legal uncertainty.

Even in more protracted contexts, delays caused by financial regulations impact the quality of services. What is relevant and needed at the time of application may no longer be necessary months later, when licenses are approved and funds are released. I spoke with one anonymous humanitarian working in a sanctioned country with widespread childhood malnutrition. They said their organization took 18 months to receive a

shipment of soybeans, at which point the local community had given up on the initiative and lost trust with humanitarians in the area who promised results.

Disparate Impacts on Smaller and Muslim NGOs

Regional or local nonprofits have historically played an important role in taking on riskier, more nuanced causes, but they do not have the same resources as multibillion dollar organizations with international clout. A country team for a small nonprofit may have only a handful of lawyers (or one) responsible for compliance with byzantine sanctions regimes.

For smaller nonprofits that do not have existing relationships with large banks, navigating compliance can be daunting. Banks may not publicly share the extent of compliance requirements, so they can reserve the right to delay or cancel payments for undisclosed reasons.

Furthermore, there is evidence that Muslim charities feel the brunt of sanctions overcompliance. Fadi Itani, CEO of the Muslim Charities Forum, pointed to the difficulties that Muslim organizations had sending donations after the 2022 flooding in Pakistan, such as account closure and transfer denial. The Institute for Social Policy and Understanding found that 62% of American Muslims reported challenges with their nonprofit accounts, compared to 17% of general nonprofit account holders.

Policy Responses and Challenges Faced by the U.S. Treasury

The past few years have seen a significant increase in government willingness to engage on the topic of overcompliance. According to An-

drea Hall, Senior Manager of the Together Project and legal advocate for nonprofits,

"In the past two and a half years, we have seen a 180-degree shift in OFAC and even the State Department. We used to explain to the Treasury that if they didn't help facilitate these funds transfers for humanitarian work, [workarounds were] ironically increasing the risk of terrorist financing. There's a friendly administration right now that has created an enabling environment."

Hall attributes the tipping point to the backlash following then-Secretary of State Mike Pompeo's 2021 decision to designate the Houthis as a Foreign Terrorist Organization. This tied the hands of humanitarians, as the Houthis controlled access to 80% of Yemen. Within a month, Secretary Blinken revoked the designation, citing the "dire humanitarian situation" in Yemen and "devastating impact on Yemenis' access to basic commodities."

The new administration has also taken a lead on overcompliance internationally. In December 2022, the United Nations announced U.N. Resolution 2664, a universal general license for humanitarian work, which was the result of years of advocacy by humanitarian actors and led by the American and Irish delegations. This blanket license, which is intended to dramatically reduce the time required for nonprofits to apply for permits, was soon followed by the U.S. Treasury Department's announcement of new and amended American general licenses for humanitarian activity.

Although the new and amended licenses are not as comprehensive as some nonprofit advocates had hoped, "the fact that the U.S. was able to lead a U.N. Security Council process to create this humanitarian exemption signals a massive change in position for the U.S. government, which sets

the tone for these things," said Jacob Kurtzer, a humanitarian researcher and aid expert. "The problem is," he added, "that achieving the end goal of domestic implementation is going to take a very long time."

Immediate Next Steps

Given the complexity and scope of the issue, sanctions overcompliance can seem like an intractable problem. Each stakeholder is balancing high-stakes priorities: billions of dollars in assets, national security, political power, and life-saving humanitarian response. However, there are two immediate actions the U.S. government could take in the short-term to address overcompliance.

The first step should be a USAID-funded grant to train bank compliance officers on nonprofit financing and share best practices with U.S. grant partners. Why USAID? Because they stand to lose the most through overcompliance: they spent \$32 billion dollars on non-reimbursable grants to its partners throughout the world last year, many of which are small nonprofits in conflict zones. USAID relies on these nonprofit contractors to enact their programmatic goals, but a 2019 report found that 43% of the agency's awards achieved just half of their intended results.

USAID is aware of this issue — and was a contributing supporter of the Center for Strategic International Studies' 2022 multistakeholder dialogue on overcompliance. Still, they could take a more active role in public-private partnerships needed to address the issue.

A second short-term solution with immediate impact is an automatically triggered 24-hour general license in response to acute natural disasters. The benefits of this solution are that it is difficult to exploit (the window is limited and disasters are unpredictable) and it would prevent the deadly consequences of delays in the hours following a tragedy. In a world facing greater threat of climate disasters, it is also proactive instead of reactive.

Specifications such as the length of the window, definition of "acute," and which disasters qualify are worth careful consideration. Still, a few hours' assurance would have made all the difference to the survivors of Syria's earthquake and the banks processing the donations needed to dig their relatives out of the rubble.

These two steps are the first in a longer-term strategy needed to streamline bank compliance, support humanitarian assistance abroad, and modernize financial sanctions as we move into a new era of foreign policy.

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Navigating the "Existential Vacuum:" Practical Strategies to Achieve Meaningful Leadership

By Eloise Skinner

In Viktor Frankl's bestselling book, *Man's Search for Meaning*, he writes, in the context of the post-war era: "the existential vacuum is a widespread phenomenon of the twentieth century." The vacuum itself is described as a state of meaninglessness, in which a person does not know exactly what they want, or what they want to do. As Frankl writes, "no instinct tells him what he has to do, and no tradition tells him what he ought to do; sometimes he does not even know what he wishes to do."

According to Frankl, this existential vacuum is the result of two factors, to which Frankl refers as a "two-fold loss." The first factor is, perhaps, more straightforward: a loss of basic "animal instincts" that were left behind as humanity developed. The second factor is a more recent development: the loss of traditions and social structures that previously helped to define human choice and attitudes.

One example of this could be the influence of religion. Research indicates that the majority of countries are becoming less religious, and today's generations are likely to experience a decline in religious influence when compared to previous years.

Another example could be found in social expectations. Traditional career paths and family

structures are less predictable and often less desirable, and job tenure is shorter, more flexible, and less committed.

A final example is seen in automation; the rise of progressive technological developments that threaten previous ways of working and living. And the result? From Frankl's perspective, at least: an advantage (more leisure, freedom, and autonomy), but also a loss (a potential sense of meaninglessness, or an inability to make clear choices about what lies ahead).

When it comes to the topic of leadership, even amid the existential vacuum, there may be an opportunity. Where social structures and expectations might fall away — or decline in power — a space may emerge in which new voices and suggestions can be heard. Leaders of organizations, communities, and interest groups who are led by purpose are well-positioned to fill this gap. And if they are able to do so with intention, delivering innovations and creative solutions that reflect the values and preferences of those they serve, such leaders may be able to navigate the existential vacuum in a way that offers structure, support, and a potential source of meaning.

On a practical level, then, how could this be achieved?

First, meaningful leadership will call for a strong dialogue between leaders and communities. Research from Harvard Business School discussed a model of "organizational conversation," drawing on four main elements: intimacy, interactivity, inclusion, and intentionality. The elements were manifested in a variety of practical ways, including close listening relationships, involvement, and clarity of agenda. On a practical level, these elements could be introduced into a workplace or leadership environment using initiatives such as mentoring schemes or roundtable feedback discussions, enabling a mutual dialogue between leaders and their community.

Second, meaningful leadership will be required to confront and respond to the existential challenges raised by digitalization (in particular, AI). A White House study published in 2022 noted the likelihood of employee disruption as AI reaches the workplace, and emphasized the importance of making investments in long-term training and development. As a result, meaningful leadership will require leaders to look to the future, anticipating disruption, and establishing structures to support individuals through a period of existential reorientation. This might involve, for example, providing opportunities for employees to retrain, upskill, or master new tools.

Third, meaningful leadership will need to balance structure and support with freedom and space. In the field of Existential Analysis (an area of psychotherapy founded by Dr. Alfred Längle, prioritizing an integrated method to find meaning and fulfillment), three conditions — protection, space, and support — are regarded as supporting the fundamental question of existence: I am, but can I be? In other words, finding a sense of protection, space, and support can allow individuals to develop trust in the world, preventing or counteracting feelings of restlessness, anxiety, and fear. For leaders, protection, space, and support can be incorporated as priorities when dealing with periods of organizational change; for

example, giving employees a sense of job security (protection), enough autonomy to perform their tasks (space), and a structured way to raise any concerns or issues (support).

For today's leaders who are able and willing to rise to the challenge, to answer the call for meaningful leadership, and to navigate the evolving nature of the environment, there are countless opportunities to cultivate. These opportunities are, of course, not solely leadership challenges, but extend into personal, human and existential questions. For the leaders who recognize and respond to this, the rewards — both in terms of practical impact and personal fulfillment — will be significant.

Eloise Skinner is an author and psychotherapist, specializing in logotherapy and Existential Analysis. She is a graduate of Cambridge University and Oxford Business School, and currently studies leadership at the Harvard Kennedy School within the Public Leadership Credential program. Her newest book, from Hachette, is called *But Are You Alive?* and explores a sense of meaning and depth in everyday life.



Recovering from Crises

Superhumans Center: How One Prosthetics Clinic is Rebuilding Ukraine

By Olga Rudnieva and Melinda Haring

More than 400 days ago, 39-year-old Petro Buriak was driving a truck abroad and dreaming about playing dolls with his 5-year-old daughter when his route brought him home to Ukraine.

That all changed for Buriak and 41 million Ukrainians when Russian President Vladimir Putin did the unthinkable and launched a full-scale war in Ukraine on February 24, 2022. Buriak rushed to volunteer and defend his homeland and lost both legs near Kherson.

Since then, thousands of civilians and soldiers have been killed or maimed, hundreds of schools and hospitals destroyed or rendered unusable, and the country's GDP dropped 30% in 2022. Kyiv School of Economics estimates that Moscow's war of choice has resulted in \$63 billion in damages to Ukraine's infrastructure.

Even though the war continues with no end in sight, many conferences have already been held to prepare and plan for Ukraine's eventual reconstruction. But the truth is, reconstruction has already begun. We at the Superhumans Center in Lviv, Ukraine, are part of that organic reconstruction process. Ukrainians aren't waiting around for an elaborate Marshall Plan. We are taking matters into our own hands and rebuilding brick by brick, as much as we can now.

In the city of Bucha, which is synonymous with horrific war crimes, the street where civilians were tortured and killed, has been restored. A memorial at the church marks the field where several dozen bodies were found. Apart from the memorial and fence, one could be forgiven for overlooking the site as nothing more than a small city north of Kyiv. Of course, we should and will remember, and we will demand justice. But we've already cleaned up the site of one of the worst atrocities that we've seen so far.

Economists can measure loss and project managers can assess how much time and money the reconstruction process will take, but the human losses the country has experienced concern us the most. They are incalculable and enormous.

As a result of Russia's wanton destruction of civilian infrastructure, more than 12,000 Ukrainians need complex operations or prosthetics now. Most patients are young and have many years ahead of them. Ukraine had previous experience dealing with older patients who required a prosthesis below the knee, but as a result of the war, most patients are under 40 and many need upper arm prostheses, elbows, knees — or all the above. Patients are scattered across Ukraine, and the state has a cap on how much it can spend per patient. Obviously, the state cannot address

all of these needs adequately in the middle of an ongoing war.

Into the gap stepped Ukrainian entrepreneurs and civil society leaders. In less than a year, we built a state-of-the-art medical center for war heroes and civilians in Lviv to address these needs. With a generous gift of \$16.3 million from the Howard G. Buffett Foundation and many other donors, we built a world-class medical center that is only one hour from the Polish border.

We joyfully opened the Superhumans Center on April 14 in the presence of more than a dozen patients and a host of international dignitaries. We are setting the standard for a new kind of care in Ukraine. We have traveled the world looking for the best approaches to complex cases of amputation and built relationships with the best prosthetic makers.

Ukrainians no longer need to go abroad to receive excellent care. Now they can receive outstanding care near their homes, families, and in the Ukrainian language. We know that patient outcomes improve when a patient has the support of a family member nearby, and that's part of the reason why we insisted on building in Ukraine. Patients also need easy access to their prosthetist. This is an ongoing relationship. An amputee's weight may change, their hair color may change, but their prosthetist should not. Children in particular must have their prostheses changed frequently to account for their physical growth.

We also know that patients do better when the care is comprehensive, and that giving a patient a state-of-the-art prosthetic device without any preparation is a recipe for disaster. A patient must mentally and physically prepare before they receive a prosthesis.

Therefore, Superhumans provides psychological support, prosthetics, and rehabilitation services free of charge to all Ukrainians wounded

by war. First Lady of Ukraine Olena Zelenska is a board member of Superhumans, and the medical center has already opened its prosthetics lab, rehabilitation department, and started providing psychological support. So far, we have served men, women and children. We also plan to start a PTSD program for children soon. Our next step is to open a second building on our Lviv campus that will house two operating theaters for complex reconstructive surgery and dorms for international doctors.

In less than a year, we have achieved something very ambitious, but we are far from finished. Ukraine doesn't have enough medical personnel such as prosthetists and rehabilitation specialists, and its psychologists and surgeons need additional training to meet the country's immediate needs. To do so, Superhumans will establish a National Education Center at its Lviv headquarters, and in collaboration with the Ministry of Health, it will open university branches to issue government approved certificates. It will train prosthetists, psychologists, rehabilitation specialists, and surgeons to work for Superhumans and in other medical facilities across the country.

In one year, we hope to train 100 specialists in person and up to 500 online. The National Educational Center will also train its former patients to be prosthetists, rehabilitation specialists, and psychologists. We expect up to 50 patients to get certified for a new profession in a year's time.

That's not all we have planned. Howard Buffett pledged to open a regional Superhumans office next, and we plan to open our first satellite office in Kharkiv. The purpose of satellite offices is to connect care with patients so as to lessen the need to travel. Satellite offices will provide prosthetic fittings, psychological services, and rehabilitation; surgery and the actual making of prosthetics will remain in Lviv.

Much remains to be done. But more than 400 days after Putin's disastrous decision, we are

united and determined to fight. Ukrainians overwhelmingly want President Zelenskyy to continue to resist for as long as it takes even if it means prolonging the war.

More than 400 days after the war began, Petro Buriak is walking with Ottobock prostheses in Lviv and smiling broadly. When asked how he can go on with the obvious pain and discomfort he faces, he says, "We must. There's no other choice."

Every day Superhumans meets the physical needs of heroes like Petro, and every day Superhumans stands as a physical reminder that we are not afraid. Vladimir Putin massively underestimated Ukrainians. Ukraine will triumph — and our heroes will walk and even run again.

Olga Rudnieva is the CEO of the Superhumans Center in Lviv, Ukraine.

Melinda Haring is the director of Stakeholder Relations and Social Impact at the Superhumans Center, and she tweets @melindaharing.

Policing a Pandemic in Rural India: From Enforcement to Engagement

By Harssh A Poddar

Throughout this spring of 2023, the world is witnessing a global surge in Covid-19 cases, driven by variants of the virus such as the XBB.1.16 strain in India and the XBB.1.15 in the United States.¹ The Covid crisis has glaringly underscored the need for nation-states to prepare for the advent of global pandemics. Lockdowns are a crucial component of the response arsenal that states have when dealing with pandemics for which vaccines are yet to be invented. The lessons from India's experience of executing one of the world's largest lockdowns during the first wave of Covid in early 2020 can help prepare the world for the next pandemic, or even the next wave of the same disease. Particularly, India's experience can elucidate best practices in pandemic law enforcement that can serve as a template for future international crises drawn from the world's largest democracy.

On March 24, 2020, India had approximately 500 active, identified cases of Covid.² As a precautionary measure to quell the steady rise of cases, the central government announced what would become the most stringent lockdown in the world.³ The government lockdown officially ended on May 31, 2020 and six phases of re-opening were administered through November 2020. It is estimated that the timely imposition of phased lockdowns in the first wave of transmission averted 1.5 to 3 million cases, thereby saving 37,000 to

78,000 lives.⁴ Daily reported cases dropped to an all-time low of 9,000 by February 2021.⁵

The second wave, however, ballooned the daily number of reported cases and deaths to 400,000 and 3,500, respectively (as of April 30, 2021).⁶ In response to the staggering health crisis, as states announce new lockdowns to contain the pandemic, public health officials should heed lessons learned from the micro-level implementation of the lockdown in the first wave of transmission that can be replicated in this ongoing second wave.

The pandemic's impact on cities and urban areas has dominated the narrative — with a focus on the service sector, the industrial labor crisis, social distancing, and the normalization of "work from home" policies. However, in the Indian context, it is also worth highlighting the pandemic's impact on the vast rural hinterland, and accordingly the mobilization of local law enforcement agencies in these regions.

In the state of Maharashtra, the Beed district police served a crucial role in the community despite rural-specific challenges. Beed is located in the heart of the state and spans an area of nearly 4,000 square miles. Three million people live within its borders and constitute a primarily agrarian society. The district is closely linked

economically and socially with the cities of Pune and Aurangabad (both of which have emerged as major Covid-19 hotspots in the preceding months), with constant population movement between each of these cities and Beed.

In April and May of 2020, 70,000 sugarcane laborers returned home to Beed from the afflicted districts of western Maharashtra. Unlike cities, homesteads in rural areas are not self-contained spaces in which families can isolate themselves for extended periods. It is tremendously difficult to persuade the population to indefinitely quarantine in these spaces. In rural areas with limited digital literacy, disinformation on the internet and social media continues to prevent the dissemination of accurate information.

Despite these aggravating factors, Beed remained reported nil infections since the advent of the pandemic, until relaxations to the lockdown were announced. The overarching principles that have informed the police's strategy are empathy, awareness, and firmness.

Empathy: Supporting Communities in Coming to Terms with the Crisis

1. A comprehensive and responsive pass system: The key limitations imposed by consecutive lockdowns were restrictions on movement and the consequent disruption to emergency services. The state swiftly adopted a system of quick response coded passes, with police teams working nonstop to approve 70,000 emergency service providers within 24 hours of application. This system sanctioned passes for citizens with personal emergencies who needed to access advanced medical facilities in major cities. The unit ensured these passes were verified and sanctioned within half an hour of application due to their time-sensitive nature. These police teams enabled more than 3,000

citizens to access medical facilities across the state despite the rigor of the lockdown.

2. Coordination of returning labor: Beed is a source of agricultural migrant labor for the sugar industries of western Maharashtra and northern Karnataka. The lockdown created a crisis where thousands of families who migrated to these regions for sugarcane fieldwork were stranded for months in sugar factories, unable to return home. Unchecked and uncoordinated movement of these families could result in the spread of the virus and also create a law enforcement crisis at district borders.

A control room at police headquarters coordinated the staggered movement of laborers through 19 designated border entry points. This ensured inward routes were not overwhelmed by any bottlenecks. At entry points, every returning laborer was screened for symptoms to halt the spread of disease. Over 160,000 laborers crossed the borders of Beed and were reunited with their families without any resulting deaths.

3. Distribution of food grains and groceries: Beed is a drought-stricken district where water shortages have limited agriculture. Hundreds of villagers across the district generously contributed grains and vegetables to the police, who distributed them to those most in need. Almost overnight, police stations transformed into granaries, supplying food to families economically crippled by the lockdown. Police officers were delivering these life-saving rations (Photo 1).

4. Domestic violence helplines: The Indian mainstream discourses on the pandemic have often omitted mental health information and effects. This severely affected families, where women, children, and senior citizens bear the brunt of physical and mental aggression by male heads of household. In a rural setting, the usual port of call for such



Photo 1. Distribution of essential supplies by the Beed Police

survivors is the nearest police station. However, women rarely have access to independent transportation and cannot reach the police station in the absence of public transportation. To remedy this, helplines were created for domestic abuse survivors to seek immediate police intervention. During the lockdown period, police teams in Beed resolved 132 cases of domestic violence through mediation, legal action, and educational home visits where police acquainted perpetrators of legal consequences if violence or ill-treatment continued.

Awareness: Leveraging Knowledge, Our Best Weapon Against the Virus

Given the prevalence of data services in rural areas, the internet remains the predominant source of information for village communities. It is vital for law enforcement agencies to intervene in the information dissemination process to counter fake news and provide facts with credibility and authority. In Beed, the police used a wide range of methods to achieve this:

1. Coordination with religious leaders: Religious leaders in nearly all communities enjoy a level of influence unrivaled by any other organization. Police officials recruited reli-

gious leaders such as pandits, maulanas, and monks to convey the lockdown protocols in short videos.

The real impact of this initiative was felt during festivals and spiritual celebrations. The lockdown period coincided with some of the biggest festivals of the calendar: Ram Navami, Hanuman Jayanti, Shab-e-Baraat, Ambedkar Jayanti, Ramzaan, and Eid. While these festivals typically garner crowds in the hundreds of thousands, not a single congregation was seen during lockdown, in part due to the efficacy of the awareness campaign.

2. Awareness videos by senior police officers: Faced by constantly changing regulations, it is essential to communicate the rules and their rationale to the public in simple terms. In Beed, senior police officers delivered authorized, up-to-date information in regularly posted videos. These videos covered topics such as the latest policy changes, the process of pass disbursal, and how to use a pulse oximeter. These videos served as an authoritative source of genuine information, cutting through the specter of fake news.
3. Social media monitoring cell: While awareness is the main focus in internet safety discussions, it must be accompanied by consequences for those who disingenuously operate in cyberspace. The social media unit of the district police monitors hashtag and keyword searches on social media platforms for fake news, rumors, and hate speech. They also monitored content in active WhatsApp groups. Beed had the highest number of actions taken against fake news and hate speech during the pandemic.

Firmness: The Role of Enforcement in Containing the Contagion

1. Border sealing: Sealing the district borders and maintaining strict control on migration

was the first and most significant measure taken in Beed (Photo 2). In rural Indian districts, it is not sufficient to impose checkpoints at each of the border entry points. Beed is a landlocked district and shares contiguous borders with six other districts, which people can travel between on several internal village routes. The police identified and excavated more than 300 such routes in order to prohibit the movement of unscreened people from infected regions of the state.

2. Gram Suraksha Dals: Despite endeavors to seal the district borders, it is impossible to entirely prevent people from reaching villages within the district. A village level intelligence mechanism was formed consisting



Photo 2. Border sealing task forces of the district police, responsible for ingress and egress from the district

of the Sarpanch, the Police Patil, and the Tantamukta Adhyaksh (elected village officials). This committee informed the police each time an unscreened person returned to a village. These people were then tested for symptoms and placed under quarantine.

3. Contact Tracing Cell: It is crucial to identify people who were in contact with an infected person. This requires organizational coordination for interviewing, surveillance, and detection. The Contact Tracing Cell unit traces the previous contact history of infected individuals through personal and techni-

cal intelligence. As a result of this unit, over 350 individuals were successfully taken into medical custody for institutional quarantine.

4. Geo-fencing of home-quarantined individuals: Home quarantine enforcement posed a unique challenge to police in rural areas. Houses are typically disparate and often located at great distances from the nearest police station, which limits surveillance. A village house is typically used only for sleeping, and it lacks the entertainment facilities that can enable people to stay indoors for extended periods. In order to achieve effective home quarantine, three forms of surveillance were leveraged in Beed:

- A GPS-based app called Life 360 permitted a closed user group to track all the members of the group.
- The houses of people who are placed under home quarantine are geo-fenced so that any movement outward or inward can be traced.
- A beat constable, police patil, and a village employment officer checked physically on households.⁷

5. Area Domination: In addition to border management, it was important to place restrictions on the interactions between the three million people within Beed. To enforce the lockdown for over two months, police mapped places of regular public congregation and controlled fixed points and regular route marches. The police patrolled the internal roads of each city with drones. In a vast district, aerial surveillance and mapping enabled coordinated patrols in zones where lockdown enforcement was most necessary (Photo 3).

Since all Beed residents were not subject to the same lockdown guidelines, mobility restrictions were implemented with discretion. Social distancing protocols were generally aligned with



Photo 3. Aerial surveillance of the deserted public spaces of the district

the nature of agricultural work. Given that field laborers do not crowd each other, farmers were completely exempted from the lockdown regulations, to prevent a future food crisis.

This pandemic added a new chapter to the history of the Maharashtra Police, one which has forged a new relationship between the police and citizens — with empathy, trust, and commitment. Beed's example teaches us it is crucial that governments see lockdowns through the prism of facilitation rather than enforcement alone. Realistic predictions of socio-economic dynamics during the period of the lockdown go a long way in achieving this goal. Most importantly, rural communities need to play to their



Photo 4. Route marches to enforce the lockdown welcomed with flowers by citizens

strengths in handling the contagion rather than emulating urban methods. Relative availability of space, self-reliant consumption patterns, close knit communities — aspects that define rural societies — can become some of the most impactful weapons in this battle.

Harssh A Poddar is pursuing the Mason Fellowship at the Harvard Kennedy School as a Fulbright Scholar. He is an officer of the Indian Police Service (IPS) and served as police chief of Beed district from 2019-20. His initiatives on de-radicalization, service reform at police stations, countering disinformation, and electoral management have received national honors. Prior to joining the IPS, he graduated with a master's degree in law from the University of Oxford as a Chevening Scholar and worked as a corporate lawyer with Clifford Chance LLP, London.

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Social Justice and Mobility

Medical Personnel Uninformed of Reproductive Law: How Bolivia's Neglect for Abortion Rights is Endangering Pregnant Individuals

By Rina Rossi

How difficult is it to get a legal abortion in Bolivia? Well, as shown by a recent ordeal an 11-year-old child had to go through, it took weeks of mass national protests, government intervention, and international media attention.

In October 2021, an 11-year-old Bolivian girl, unnamed due to privacy concerns, became pregnant after repeatedly being raped by her step-grandfather.¹ Abortion is legal in the country when the pregnancy is a result of incest or rape, or if the pregnancy is life-threatening.²

As such, why did it take such a state effort for a child to terminate a pregnancy?

In Bolivia, 90% of healthcare personnel are reportedly unaware of the circumstances in which abortion is legal.³ Pregnant individuals also face significant stigma for seeking abortions. As a consequence, many women turn to clandestine forms of abortion to terminate their pregnancies, making unsafe abortion the third most common cause of maternal death in Bolivia. The current maternal mortality rate stands at 155 maternal deaths per 100,000 births — one of the highest in Latin America and the Caribbean.⁴ Bolivia's restrictions on abortions have dire consequenc-

es, as 60% of OBGYN health funds spent in the country are for treating complications from unsafe, clandestine abortions.⁵

All of these tell part of the story as to how this 11-year-old Bolivian girl was stripped of her fundamental human rights concerning her reproductive autonomy.

The 11-year-old girl, who we shall refer to as Maria, had been living under the care of her 61-year-old step-grandfather in Yapacaní while her parents worked in La Paz. Maria told her cousin that she experienced unusual movements in her belly that scared her. Following their conversation, the cousin informed her mother about the situation, who contacted authorities.⁶ Maria was brought to the children's Ombudsperson's Office, whose role is to protect and promote human rights in Bolivia.⁷ There, she underwent an interview with a psychologist. In Maria's meeting with the psychologist, she cried and noted that she wanted to have what was in her body removed and resume her studies.

Consequently, the step-grandfather was brought into custody and Maria's mother took her to the Percy Boland Women's Hos-

pital in Santa Cruz to terminate her pregnancy, where she was given mifepristone to induce medical abortion on October 22.⁸

The next day, Maria was visited at the hospital by officials claiming to be attorneys for an organization affiliated with the Catholic Church. Despite her evident fear and desire to move past the pregnancy, she stated on the next day that she wanted to pursue her pregnancy.⁹ In a separate meeting without the presence of Maria and her mother, the Church representatives consulted with the hospital personnel, who decided to discontinue the abortion.

According to a second psychological review that Maria had undergone on October 25, the psychologist learned that the Church representatives had influenced Maria to suspend her abortion. Reportedly, the representatives characterized an abortion in a manner that scared her and pressured Maria to sign a statement indicating her desire to move forward with the pregnancy. Consequently, she was brought into the care of a Catholic shelter on October 26.¹⁰

In response to the mistreatment of Maria and the deprivation of her reproductive rights, demonstrations broke out in Bolivia. Activists, such as the humanitarian organization Plan Internacional, who chanted "Save the two lives", "child pregnancy is torture," and "Niñas, No Madres" ("Girls, not Mothers" in Spanish) gathered and wore green scarves — an emblem of mobilization for abortion criminalization across Latin America.¹¹ Demonstrators such as activist Carmen Sanabria also asserted that the mistreatment of the young girl's case ultimately condones acts of rape.¹²

Additionally, due to a petition made by the Ombudsman, a La Paz court required that Maria be removed from the Catholic shelter and re-examined by medical personnel on November 2. Finally, Maria received a safe abortion with both her consent and support from her mother, and the

Bolivian government called for the punishment of those who infringed on her reproductive rights.¹³

Subsequently, Bolivian Human Rights Ombudswoman Nadia Cruz asserted in a news conference that the Ombudsperson's Office was filing criminal complaints against the Maria's mother, the Children's Ombudsman in Santa Cruz and Yapacaní, the hospital personnel, the Santa Cruz Bishop's Conference and the church who intervened. According to Cruz, these individuals should be criminalized "for breach of duties, and human trafficking with the purpose of forced pregnancy."¹⁴ The United Nations in Bolivia asserted in a statement that forced pregnancy of a minor is categorized as a form of torture.¹⁵

Yet, Maria's case could have been much different if the Ombudsperson had not intervened and if her case was not at the center of fiery nationwide protests. It took public outcry, intervention from the Ombudsperson, and support from activists nationwide for a single abortion to get through, while thousands of other Bolivians' unwanted pregnancies are left unnoticed. Unfortunately, Maria's situation is all too prevalent in Bolivia.¹⁶ Specifically, around 185 women receive clandestine abortions in Bolivia every day.¹⁷

In addition, another barrier in abortion access arises due to medical personnel's refusal to provide abortions.¹⁸ Often, these refusals of providing abortion services can be adduced on the grounds of conscientious objection, or CO, which medical personnel have the legal right to invoke when providing a particular service clashes with their religious, moral or ethical beliefs. In fact, CO is widespread in Bolivian health facilities and its usage is most commonly based on issues such as misinformation and misunderstanding of abortion laws, stigma and fear of legal repercussions.¹⁹

It is crucial that legislators first focus on improving the health system's preparedness to

provide reproductive care. Specifically, legislators must expand accessible information regarding the legality and safety of abortions and abortion pills, as well as the rights of pregnant individuals and medical personnel who may need to provide abortion services. Placing a renewed focus on educating medical personnel on abortion laws will dispel misinformation and misconceptions concerning the legality of abortion services. Lawmakers must also prioritize the expansion of this information in poor and indigenous communities, who disproportionately endure poor reproductive and maternal health consequences due to inaccessible health services and lack of information.²⁰

It is also critical that legislators assess the available data and stories of Bolivian women and girls who experienced the consequences of unsafe abortions, denial of abortion services or died due abortion criminalization in the country. Lawmakers must advocate for the full decriminalization of abortion so that pregnant individuals can receive safe and legal abortions without discrimination, outside influence and stigma.

Furthermore, legislators must also scrutinize the role that religious influence has in controlling the personal decisions of Bolivians. The Latin American and Caribbean Committee for the Defense of Women's Rights issued a statement condemning the intrusion of the Catholic Church in Maria's case.²¹ Similarly, Bolivian legislators must also voice opposition to the Catholic Church's interference in Maria's case. Legislators must come together to form a committee specifically to protect the rights of pregnant individuals and their individual right to make decisions regarding keeping or terminating their pregnancies. Additionally, legislators must strengthen patients' privacy rights policies so that hospital officials will not be able to discuss with third parties — such as Catholic Church representatives — whether or not patients should terminate their pregnancies, without the patient present in the

room. The decision to terminate or continue a pregnancy should be a judgment of the pregnant individual, not religious third parties.

Access to safe reproductive health services is a fundamental human right — not one that should be at the crux of undue influence from Church officials and national demonstrations urging medical personnel and the Bolivian government to act. Maria endured sexual abuse, medical mistreatment and violation of her reproductive autonomy. If Bolivia wants to protect its children, women and other individuals who find themselves experiencing an unwanted pregnancy, its legislators must immediately make it a national priority to expand comprehensive reproductive services. Otherwise, they will continue to uphold their limited, inequitable and unsafe abortion laws that endanger many Bolivians every day.

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The Case for Expungement of Cannabis Drug Charges Amid Its Widespread Legalization

By Olivia Cyrus

Marijuana is both a widely used medicinal depressant and recreational drug in the twenty-first century. Older and younger people alike are drawn to the natural psychoactive drug, making it near-impossible to live in a major city without catching a whiff of its pungent, sulfurous perfume. However, with its spread into modern culture and widespread legalization comes the issue of expungement for those who were previously convicted for selling, possessing, or using marijuana.

The illegalization of marijuana and its effects took their first uptick in the mid-1960s and is traced back to the stances of the Nixon Administration, as well as, the Rockefeller Drug Laws. With over 40,000 people currently incarcerated for cannabis related offenses, and each state spending between \$25-\$120 million dollars in marijuana prohibition and enforcement expenditures, the illegalization of marijuana is becoming incredibly costly.¹⁻³

On the other hand, the legalization and dispensation of cannabis is a multi-billion dollar industry with investors and celebrities including Jay-Z and Martha Stewart dipping their toes into this profitable market.⁴

In light of this, expungement for those imprisoned with felonies or misdemeanors on their re-

cord is a viable solution that can be implemented to fairly reintroduce past offenders to society, and, furthermore, mitigate the systemic consequences of marijuana sales and consumption within marginalized communities.⁵

History of the War

The War on Marijuana is being fought between two opposing forces: the Black and Brown communities, and the American justice system. According to the Marijuana Policy Project, African Americans are far more likely than their Caucasian counterparts to be arrested for cannabis, despite similar use rates across both races.⁶ This has been an ongoing conflict that has incarcerated an egregiously disproportionate amount of people and collapsed the stability of communities of color.

Aside from the obvious stigma surrounding drug sales and consumption in minority populations, another factor contributing to this drug war is the disparity in arrests in these areas, specifically for possession of small amounts of cannabis. With police more inclined to patrol underprivileged neighborhoods and minority communities, unequal enforcement ignores the universality of cannabis use, especially now as marijuana becomes legalized recreationally or medicinally in more and more states.

For decades, committing a drug-related offense could result in attaching a misdemeanor or felony to one's record, and, in the case that the offender is not a legal citizen, detention and deportation to one's country of origin.⁷ Furthermore, the offenses are a contributing factor to the stereotype of broken homes and torn families many associate with Black and Brown peoples. Expungement is a fair solution to this issue that vacates any marijuana-related offense, waives any fines related to their punishments, quashes any existing warrants, seals court files and law enforcement records, and restores the offender's civil rights.⁸

Legal Decriminalization and Expungement Efforts

The proposition of the Cannabis Administration and Opportunity Act in the U.S. Senate was the first step toward marijuana-related drug reform and expungement. The Act, if passed, would remove cannabis from the federal list of controlled substances and call for the expungement of all federal non-violent cannabis convictions within one year of its enactment. The Act's purpose is to decriminalize cannabis nationwide and "empower states to create their own cannabis laws."⁹

The legalization of cannabis alone, though, does little to nothing to address the expungement of those who are still paying for crimes committed years ago. In order to promote equity, record erasure must be implemented for previously charged individuals so that they can reenter society and not contribute to the issues of unemployment, impoverishment, and stigma that follow many with tainted records.

The MORE (Marijuana Opportunity Reinvestment and Expungement) Act is one of the few successfully enacted cannabis legalization bills that was passed in the state of New York to remove marijuana from the Controlled Substance Act, reinvest in communities, and provide for the expungement of marijuana convictions.¹⁰

Some states have also used pardons to expunge past offenders. In 2018, Nevada Governor Steve Sisolak pardoned 15,000 people who had been previously convicted of offenses involving the possession of up to one ounce of cannabis. In 2019, Washington Governor Jay Inslee pardoned around 3,500 people with past criminal misdemeanor marijuana-related convictions, and Illinois Governor J.B. Pritzker issued 11,017 pardons to those with low-level marijuana convictions. In early 2022, Colorado legislators granted 1,300 pardons, and the mayor of Birmingham, Alabama, pardoned over 15,000 city residents.¹¹ In late 2022, President Joe Biden discussed issuing an executive order that could pardon over 6,500 eligible American citizens and erase their federal convictions from their record.¹²

States have also adopted pre-plea diversion programs that can allow people who commit cannabis-related drug crimes in states where it is not legalized to participate in treatment programming without having to enter a guilty plea. Often, under-resourced people put on trial take the guilty plea, fearing worse consequences, especially if they are unable to find adequate legal representation.

The Counterargument

Many critics of expungement feel that the idea itself is just a way to reintroduce criminals to society without any rehabilitation or punishment and create an uptick in drug sales, which can trickle down to its consumption amongst those that are not fit to purchase such drugs. In turn, there are fears that expungement can result in the continued criminalization of black markets.

However, these concerns can be mitigated by a suite of policy developments, including decriminalizing drug possession and changing the punishment for cannabis in states that have not legalized it to mandatory drug treatment, rehabilitation, therapy, and community service. That

way, policies that result in disproportionate arrest and imprisonment rates among people of color can be eliminated, providing a fair chance at a future to those who have been charged.

These policy developments, in tandem with the numerous social benefits — boosting the national economy by creating new tax revenue, reducing unemployment — further justify the necessity for expungement.¹³

Conclusion

The next wave of cannabis policy reforms needs to entail automatic record expungement to rebuild communities ravaged by the War on Marijuana.¹⁴ At the moment, about 85% of Americans support the legalization of medicinal marijuana use, and 59% of Americans support recreational use by adults.^{15, 16} Furthermore, as public opinion and laws change in favor of recreational and medicinal cannabis use, decriminalization and expungement are the best solutions to adapt to these modern views. And while expungement does not make up for years of oppression and discrimination, it is a form of reparational justice that can give those who have been charged in the past a chance to re-enter society and have a fair shot at higher education, loans, housing, and employment.

Olivia Cyrus is a writer from Tennessee. She is passionate about journalism and hopes to create a dialogue about the systemic issues and reformation of laws that disproportionately affect minorities. She can be found editing or writing for *The Blue Marble Review*, *Coexist Political Magazine*, *Polyphony Lit*, and her personal blog, *The Cyrus Piece*.

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Businesses Benefit by Hiring People with Criminal Records

By Katie McMurray

In 2019, Zach Moore was a new software engineer at a San Francisco-based tech company. He showed up to work early, walked around the neighborhood, and cleared his head. Incarcerated at age 15, Zach learned how to quiet his mind while spending 22 years in prison.

For decades, he worked on himself and helped others through countless self-improvement programs. He attended college, served others as an addiction counselor, and learned how to code — all while incarcerated in California. Since coming home in 2018 and becoming a software engineer, Zach continues to help others, visits prisons to show incarcerated people what is possible, is a leader within his team, and has been promoted twice within the company.

Zach is one of 600,000 Americans returning home from prison each year and one of 70 million people in the U.S. who have some kind of blemish on their criminal record ("record" for short). That means 1 in 3 U.S. adults worries every time the background check rolls around when they apply for jobs. In reality though, research confirms that hiring people with records is good for business.

Unemployment for people with records hovers around five times that of the U.S. population — even worse for Black and Latinx people who have

left prison. Despite this, the future of employment for people with records in the U.S. is looking up. Companies like JPMorgan Chase, Slack, and Zach's employer, Checkr, a background check company, are practicing "fair chance hiring" also known as "second chance hiring." Checkr defines the premise of fair chance hiring as, "everyone, regardless of their background, has the right to be fairly assessed for a role they are qualified for."

Business leaders such as Jamie Dimon of JPMorgan Chase, are prioritizing fair chance hiring and influencing others to do the same. Companies across the nation are joining the fair chance movement, including those in the Second Chance Business Coalition, made up of 40 cross-sector companies committed to expanding the practice within their companies.

These business leaders don't just embrace fair chance hiring out of the goodness of their hearts. Employees with records are more loyal and companies that hire them see higher retention and lower turnover, saving money in expensive recruiting costs.

Additionally, surveys of executives who practice fair chance hiring in the U.S. found that employees with records often have higher productivity and promotion rates than their colleagues without conviction histories. In fact, a study of the

U.S. military found that enlistees with a felony record were promoted more quickly and to higher ranks than their peers, and were no more likely than people without records to be discharged for negative reasons.

An added benefit — companies that hire people with certain records can qualify for tax breaks through the Work Opportunity Tax Credit (WOTC), the U.S. government's incentive for "employers who invest in American job seekers who have consistently faced barriers to employment."

We need more business leaders to practice fair chance hiring — to change lives, businesses, and communities for the better. Giving opportunities to people with records enables them to financially stabilize their families and communities. Fair chance employment is one way that employers can make sure the markets in which they work prosper, which leads to a better environment for business.

To be sure, companies must consider risk when hiring people, with or without records, for jobs. Fair chance hiring does not mean that companies should hire any candidate with any record for any position. Employers should use the U.S. government's guidance from the Equal Employment Opportunity Commission (EEOC) when evaluating candidates with records. Among other things, employers should use the "nature-time-nature" test to consider the nature of what comes up on the background check, the time that has passed, and the nature of the job the candidate is applying for.

Given our culture's stigma against people with records, it is understandable that people wonder whether those with violent convictions are a safety risk. According to the advocacy organization Prison Policy Initiative, people convicted of violent offenses are actually among the least likely to be rearrested. Their rearrest rates are 20% lower than all other offense categories com-

bined. Using data to correct misconceptions is critical to advancing inclusive hiring practices.

We often stigmatize people who are involved in the justice system, but most of us probably don't want to be judged for the worst thing we've ever done. Ninety-five percent of people sitting in prison right now will return home. They have families, dreams, and a future. When asked what he is looking forward to, Zach says, "I'm excited about the simple things...feeling safe and supported, getting a dog, earning my next promotion...continuing to build and grow, and settling down somewhere."

We need not run away from our pasts, but instead, embrace them as an asset of great depth as we navigate the present and future. Our lived experiences make us who we are. Those who have experienced incarceration have a unique perspective to offer the world and workplace. If you've ever hit "rock bottom" you know that it takes a tremendous amount of tenacity and resilience to build yourself back up — qualities that make for a hard-working employee who's been given an opportunity.

People with records deserve a meaningful opportunity to provide for themselves and loved ones, and never fall into the justice system again. Likewise, our country's businesses deserve to flourish in thriving communities with loyal, qualified employees like Zach, contributing to their company's mission and bottom line.

This author is employed by Checkr, and this op-ed is written in her personal capacity.

Katie McMurray is a fair chance hiring advocate and former prison educator. She met Zach Moore while visiting San Quentin State Prison and has since become good friends. Katie is currently pursuing master's degrees in Public Administration at the Harvard Kennedy School and Business Administration at Dartmouth Tuck. Katie works for Checkr, Inc.

Approving \$1 Trillion is Easy, Spending It Is the Hard Part: Local Governments Need Diplomatic Hustle to Make Effective Use of Infrastructure Funding

By Michael Nelson

The \$1.2 trillion Infrastructure Investment and Jobs Act (IIJA) was signed into law over a year ago — a bipartisan accomplishment that felt akin to winning the lottery. With the big checks inbound, are state and local governments actually prepared to spend them? Can government administrators avoid fraud, waste, and abuse?

The trillions of dollars mobilized through Covid-19 stimulus successfully (albeit temporarily) brought poverty rates to a record, pre-pandemic low. Taxpayers, however, will not easily forget their infuriation over the misuse of the stimulus funds along the way — such as well-funded universities accepting scarce aid, businesses defrauding billions in Paycheck Protection Program (PPP) loans, and late or missing checks for millions of Americans.

These missteps were made simply by distributing the stimulus money. Now, with the IIJA investing seven times the annual federal infrastructure budget of 2021, not only does the administration need to distribute this funding wisely, but it needs to build stuff, too.

Running effective development projects poses logistical challenges. On the one hand, trust in local government is at an all-time low and administrators who move too hastily meet resis-

tance. Take the \$1.4 billion initiative to reconstruct New York City's East River Park. Rushed feasibility assessments and poor communication with residents led to local resistance and significant financial waste while administrators struggled to balance speed and effectiveness.

On the other hand, moving too cautiously risks missing critical deadlines and facing federal claw backs. A notable example occurred in 2019 when the State of California's high speed rail project lost \$929 million in rescinded funding when the federal government claimed the project was dragging. While the Biden-Harris Administration eventually reversed this decision, the current Congress has renewed interest in expanding claw back protocols for local infrastructure projects.

As IIJA projects begin, government leaders can better navigate challenges of time, trust, and expertise if they adopt management practices from, of all places, business startups. Administrations need diplomatic hustle, which means getting community-level endorsements for project plans, limiting expensive overhead, and nurturing local labor talent for future projects.

Before receiving funds, administrators should start community outreach. Startups call this "idea validation" — the time used to meet po-

tential customers to understand what products are useful. Effective government seeks feedback from constituents to avoid future project delays like protests, lawsuits, and votes for new leadership. Traditional opinion gathering through town meetings does not suffice because it tends to attract wealthier, more privileged voters who are able to attend weeknight forums and craft technical NIMBY ("not in my back yard") arguments. Finding data that's more representative of diverse constituents requires more creativity, like conducting meetings in different neighborhoods, inviting underrepresented voters and associations, and soliciting feedback over social media. The Udall Foundation has identified exemplary governments that do this well.

In parallel, governments must also connect with other stakeholders to validate technical and administrative requirements. An error on the East River Park initiative was administrators designing a new park in collaboration with constituents but later realizing that it was infeasible given existing infrastructure and regulations. After rushing a redesign with city engineers and policymakers, they sidelined the community and lost trust. Idea validation requires a holistic approach incorporating implementation experts, constituents, and project leads to outline aspirational and practical goals together.

What if these stakeholders do not know all the practical components to build a project? The IIA includes major advances in climate resilience, utilities, and transportation while some cities have not renovated their public works for years. It may not be realistic for local agencies to find seasoned development experts to guide the project, let alone hire skilled labor or established organizations to implement it.

For better or worse, the sound of checks cashing is heard from contractors nationally — each with an army of salesmen to help think through spending it. Witold Henisz, a Vice Dean at the

Wharton School who focuses on the role of political, business, and social risk for development projects, explains how cities can think about working with outside groups. He believes that partnering with external groups is an excellent way to quickly bring seasoned experts to complex projects. However, he cautions that working with these groups could result in cash and institutional knowledge flowing out of communities during and after a project's completion.

Similarly, startups must decide what to build from scratch versus outsource to professional services. Administrators with diplomatic hustle carefully identify project aspects that need outside help and creatively develop local capacity simultaneously. This may require local subcontractors owning project workstreams, national providers hiring locally and establishing nearby offices, and contracts including comprehensive knowledge transfer. Nurturing local talent is critical and leads to higher employment, taxable incomes, and commercial industries. While the infrastructure funding is temporary, new talent can persist for years.

When juggling people and priorities, administrations may also forget about consistent communications. Startups know that finding new clients and partners requires good products, but also clear messaging on how the business will improve. Development takes years and slow progress can lead to constituents assuming the worst. Like sharing business updates with a Board of Directors, transparency facilitates trust and crowdsourcing ideas for improvements. Unrelenting conversations are a symptom of good project management.

Administrators may argue that constituents and federal grantors delegate decision-making authority so that, unlike a startup, they can focus on development instead of frequent check-ins. Managing the voices from concerned citizens, scrutinizing regulators, plus dozens of interrelated

agencies and contractors can feel arduous when there is ground to break. But the alternative of widespread fraud, waste, and abuse is far worse.

Fortunately, the Biden-Harris Administration has provided a set of tools to improve constituent engagement. The administration's portfolio of resources on Build.gov helps agencies to better utilize funding and to create more equitable outcomes for groups that may be underrepresented, such as rural and tribal communities. Through the interactive Maps of Progress, the administration offers unparalleled visibility into how IIJA funding translates into projects on the ground. These solutions give local governments and their constituents the tools to engage in meaningful conversation and hold one another accountable for results.

The IIJA is a once-in-a-generation opportunity to transform America. If local administrations bring together good policy and startup practices through diplomatic hustle, then they can see their communities thrive for years to come.

Michael Nelson is currently pursuing a dual MBA/MPA from Wharton and the Harvard Kennedy School. He advises social impact organizations to promote socioeconomic mobility and opportunity.

The Police Mitra: Achieving Innovative Justice in India

By Praveen Dixit

Police play a pivotal role in maintaining and strengthening internal security in India. To be effective, police must win and hold the trust of the people. Traditionally, Indian police forces follow Criminal Procedure Code, the Indian Penal Code, and other federal and state laws. Under this model, police faithfully register and investigate offenses reported by the complainants and submit legitimate offenses to courts for adjudication.

British colonial masters instituted a hierarchy of command — District Superintendent of Police under the District Magistrate — to oversee lower-level Indian police officers. In three major cities — Mumbai, Chennai, and Kolkata — Commissioners of Police wielded magistrate's powers. This model suppressed the people's aspirations behind a façade of law and order. Police served as the agents of the dictators. The public remained fearful of the colonial masters while anyone speaking or acting contrary to British rule was neutralized. The British applied this model throughout the empire.

However, the model started experiencing cracks under both peaceful and violent freedom movements. The British left India when they could no longer govern effectively, yet the model of policing has continued largely unchanged. The result is an overburdened justice system incapable of

meeting citizens' needs. The phenomenal growth in traditional and modern criminal activities, such as cyber crimes and economic violations, complicates the matter further.

Police routinely receive criticism performing duties as simple as issuing traffic citations. As a result, police have become so hesitant that they fail to deliver the services citizens need.

Traditional policing analysis models consider the historical, social, legal, and economic situation in India. These approaches are insufficient to meet the requirements and aspirations of an emerging India. Demographic surpluses of young Indians wish to be fully free from colonial influences and contribute to social policies resulting in peace, tranquility, law, and order. Many physically fit older Indians also wish to participate in establishing and maintaining a safe, secure India. In the western Indian state of Maharashtra, the police Mitra (volunteers) effectively incorporates these trends into an innovative new model.

As Commissioner of Police in Nagpur City (2008-2010), this author sought to improve police-public relations while promoting peace and justice. To achieve this goal, the author encouraged police to recruit citizens to assist with various duties. Citizens from all religions and

genders were subjected to a background investigation, and selected volunteers then received training for duties such as assisting senior citizens, mentoring at-risk juveniles, crowd and traffic control, and inspecting for suspicious objects at large public gatherings. Local volunteers accompanying police on patrols boosted public confidence, morale, and service capacity. Young Indians who participated were awarded certificates of participation in promoting peace and justice. These certificates have since been used to establish character in job interviews.

The police Mitra program bridged an important communication gap between police officers and the public at large, effectively reducing intra-societal conflict when compared to the rest of Maharashtra state. Common crimes in Nagpur City decreased by 15% over the same period, while street crime in the rest of the state increased by 12%. Nagpur City's volunteers were crucial in educating fellow citizens about preventive public safety measures in many areas. They taught people how to proactively safeguard their property, protect their children, improve personal cyber security, and avoid financial fraud schemes.

The police Mitra partnership also reduced the number of criminal complaints that were unregistered. Because volunteers added capacity on the streets, more police officers could receive complaints at or near police stations. Additional benefits include increased transparency and trust between citizens and the police; increased reporting of serious crimes; reduced corruption; and elimination of all custodial death incidents.

Critics of the police Mitra partnership may worry about citizen volunteers acting independently to deliver justice — a sort of vigilantism. In Nagpur City, we avoided this issue by ensuring that volunteers performed service only under strict guidance and supervision by police officers. No volunteers were empowered to act independently, which ensured confidence from the public.

Others with implementation concerns should note that the police Mitra scheme was implemented at no additional cost, required no changes to existing law, and was successfully replicated throughout the state.

As cities grow, police organizations must expand their capacity to serve and protect. The police Mitra model is one way to achieve positive outcomes while increasing mutual trust between law enforcement and the citizens they serve.

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