Mapping Politics

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Changing Political Landscapes
Conference Proceedings

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Letter from the Editors

It is our pleasure to welcome you to the eighth volume of *Mapping Politics*. We are grateful to have had the opportunity to contribute to the journal, the Political Science Department, and to the University. The students and faculty members of Memorial University have added great value to our lives during our own studies, and editing this journal has allowed us to give something back.

The eighth volume once again highlights the incredible scholarship of the students. This volume's articles cover a diverse range of topics and issues, but more importantly are presented from a diverse set of viewpoints. The papers cover a wide range of contemporary topics and contribute to important conversations. The high quality of research and writing published in this volume once again reflects the high quality of Memorial University's students.

This has been a busy and significant year for the journal. We are pleased to be publishing 15 articles, book reviews and conference papers over three issues. This is the largest volume of work that the journal has published since it began in 2009. The first is our annual issue with a focus on political science and cognate fields of research. The second issue presents interdisciplinary work on the topic of food and is presented as a thematic special issue to celebrate HSS on Food, a year-long focus within the Faculty of Humanities and Social Science at Memorial during the 2016-2017 academic year. Finally, we are pleased to publish the proceedings of the Changing Political Landscapes conference organized by students in the Department of Political Science, Memorial University on April 7, 2017. The special issue on food and the conference proceedings will be published in late 2017 or early 2018.

Mapping Politics has also changed its governing structure this year to include an Editorial Board which provides oversight and accountability to the journal. Under a new constitution, this group of volunteers will select the Co-Editors for future volumes and is responsible for approving changes to the journal's policies. We are grateful to the Board members for volunteering their time to support the journal.

We would also like to thank the incredible team members that have contributed to the eighth volume. Each article published in this journal is subject to a double-blind peer review, a process which requires considerable time and effort from the reviewers. Our reviewers provided valuable feedback and insight to both the authors and to us editors, and deserve a great deal of the praise for this publication. This volume was also helped largely by a team of copy-editors, proofreaders, and a layout editor who are responsible for this final product.

Finally, we would like to thank the members of the Department of Political Science for continuing to support and contribute to *Mapping Politics*. Our thanks to Dr. Mehmet Caman for allowing us to use his peer-review template. Also, Dr. Russell Williams, the journal's faculty advisor, who supported the work of the journal over the year including many conversations about the reforms to the journal. And to all the other faculty members who contributed by encouraging students to submit their work or by providing feedback and advice.

MYLES EVANS & JASON D. WATERS

Introduction to the Conference Proceedings

On April 7, 2017, students and faculty gathered for a conference hosted by the Department of Political Science. More than 20 students shared their work with their peers and benefitted from feedback from knowledgeable faculty members. This was a celebration of student scholarship and an opportunity for students to gain conference experience in a familiar environment. *Mapping Politics* is pleased to present the conference proceedings of the Changing Political Landscapes conference.

The five papers included here are a small sample of the work that was presented during the conference and we are grateful to the authors who took the time to submit their work and participated in the editorial process. The decision to publish the proceedings was made after students originally agreed to participate in the conference and they went beyond their original commitments to participate in this way.

It was my pleasure to participate in planning the conference and I wish to extend my thanks to the other organizers: Steven Sutherland, Laura O'Brien, Andrew Merrell and Mira Raatikainen. We all benefitted from the guidance and support of Dr. Isabelle Côté and Dr. Sarah Martin throughout the planning process and the day of the conference. We are also grateful for the support of the entire department including the many faculty members who took the time to attend and participate. Experiences like this conference add a great deal to students' educational experience.

It is important to note that the articles included in the conference proceedings are not peer-reviewed. These papers were presented during the conference and have been included in this issue by virtue of that involvement. The papers are largely presented as written for the conference and include a variety of formats and citation styles. However, each paper was reviewed by a member of the department for academic honesty. I am grateful to Dr. Sarah Martin and Dr. Russell Williams who took on this extra work.

I hope that *Mapping Politics* will have the opportunity to publish the proceedings of future student conferences hosted by the Department of Political Science at Memorial University. The journal is privileged to belong to a vibrant academic community in the department and student conferences are an exciting part of that community.

JASON D. WATERS

Letter from the Conference Chair

While it took us some time to come up with a title for the conference, it feels appropriate that we settled on the idea of Changing Political Landscapes. As these landscapes are ever changing, so too are the topics that we as researchers, students, faculty, and political scientists face. What we had hoped to do with the conference was bring together a myriad of voices from a variety of academic fields with the common theme of politics. I would say we were very successful in doing this. Covering topics of Canadian politics, Newfoundland politics, Feminism/Gender, Environment/Food, Domestic politics, and International Relations, students from across the university provided such excellent insight into topics that some may not have considered political originally, but we as organizers knew that there were always political implications within the papers. We also were privileged to have some of the faculty in the department present on President Trump in different capacities. The discussion that followed the presentations was enjoyable and allowed for more interaction amongst everyone.

A huge thank you to my fellow organizers: Jason Waters, Laura O'Brien, Mira Raatikainen, and Andrew Merrell. Without you all, this conference would not have been even remotely successful as it was. I was proud to have created such a wonderful event with all of you.

To all of the faculty of the Memorial University Political Science department, thank you for participating in what is hopefully the first of many conferences that the department puts on. The advice and expertise that you were able to provide us with was incredibly valuable in making the day run smoothly and efficiently. A further thank you to Dr. Cote and Dr. Martin for allowing us into their offices whenever we needed a helping hand.

To our award winners, congratulations! Your work was well received by faculty and attendees alike. Chris Ivanic and Dan Campbell, your papers were well written and the faculty felt you had provided excellent insight into your topics, congratulations. Katie Cranford and Morgon Mills, your presentations were intriguing and provided so much information in an accessible way, again, congratulations.

To all those who attended and participated, I am very grateful. Without you all there is no event to speak of. You all provided such valuable insight on a variety of topics that all came together under the themes of political science.

STEVEN SUTHERLAND

About the Journal

Mapping Politics accepts submissions in all areas of political science and related fields from undergraduate and master's students at universities throughout Canada. This student led journal is hosted by the Department of Political Science at Memorial University of Newfoundland in St. John's, Newfoundland and Labrador.

Volume 8

Co-Editors

MYLES EVANS completed a B.A. in political science and a B.Comm. with a concentration in in accounting at Memorial University. He is a Chartered Professional Accountant with KPMG in St. John's. His research interests include climate change policy and federal-provincial relations.

JASON D. WATERS is a graduate student the Department of Political Science, Memorial University. His research is focused the political economy of food, with a particular interest in how alterative food economies strengthen community food security. Jason is also interested in food policy and municipal/regional governance. He is a past contributor to *Mapping Politics* and holds a B.A. (Hons) in political science from Memorial University.

Review Panel

AMY FRIEL is a writer and graduate of Memorial University with a B.A. in political science. Her work has been featured in both local and national newspapers, and has spanned subjects ranging from health and fitness to public policy and governance. She is currently working as a staff writer for iRun, a Toronto-based specialty running magazine.

JACOB HENRY completed an M.A. in anthropology at Memorial University before moving to the University of Hawaii to pursue a Ph.D. in geography. He studies the intersection of teaching and tourism in the southern African country of Namibia as well as the politics of pedagogy and language.

QUINTIN HOLBERT is a graduate of Memorial University of Newfoundland with a Bachelor of Arts (Honours) in history. He specializes in British military history with a geographic focus on Africa, and has published several academic book reviews, magazine articles, and newspaper articles on the topic. He is currently completing a funded Masters of Arts at the University of Calgary under Dr. Timothy Stapleton.

LAURA O'BRIEN is a graduate student in the Department of Political Science at Memorial University. Her research is interested in labour and applies feminist theories of care to childcare and waste management policies in search of emancipatory policy futures. Laura is also interested in community development, particularly through poverty reduction and the empowerment of marginalized communities.

STEVEN SUTHERLAND is a graduate student at Memorial University in the Department of Political Science. His is currently working on his thesis, which studies the use of football (soccer) as a tool used by New Labour to develop its Third Way ideology in Britain. His research interests include public policy, political economy, and identity politics all within a sporting scope. In his limited spare time he is an avid soccer fan and player.

Faculty Advisor
DR. RUSSELL WILLIAMS is an Associate Professor and Head of the Department of Political Science at Memorial University. His research focuses on the intersection between international political economy and public policy in the areas of financial services regulation, the management of trade disputes, and climate change policy. He has numerous publications, including articles in the Journal of Public Policy, Review of Policy Research, the International Journal of Public Sector Management, Canadian Foreign Policy, Global Social Policy and the American Review of Canadian Studies.

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Fixing What Ain't Broke

The New Norm of Fixed-Date Elections in Canada

GRIFFYN G. CHEZENKO, *Memorial University of Newfoundland*

Abstract. Since 2001, legislation implementing fixed dates for general elections has been passed by the federal government, and most provincial and territorial governments. The notion that general election dates are now fixed, however, is flawed. In my submission to Changing Political Landscapes, I will explore the fledgling norm of fixed date elections in Canada and examine the aspects of the legislation which call into doubt the fixedness of these elections. With a review of the literature on the subject, I begin by inquiring into the emergence of this foreign phenomenon into Canadian electoral politics and the justification for its extensive adoption. Comparing the legislation across jurisdictions, I analyze the basic construct of fixed date election legislation in Canada, survey similarities and differences, and discover how fixed dates for elections are ultimately avoidable. As a result, I find that election dates are not truly fixed in Canadian jurisdictions where fixed date election legislation has been enacted.

Introduction

Since the dawn of the 21st century, fixed dates for general elections in Canada have become a widely adopted norm. Bernard Lord, the former New Brunswick premier, once opined that folks "like to know when the elections are going to be" (as cited in Desserud, 2007: 204). This is a familiar concept to Canadian voters because we are inundated with information about what goes on with our southern neighbours. It is rather comforting, as Premier Lord knows, knowing when an election will be, and that there is nothing those rascally politicians can do about it. One wonders, however, what benefit this American import provides for Canadian electoral and political systems that operate in different ways than those stateside, and why the sudden uptake on a mechanism that the Americans had implemented for their elections during the mid-19th century.

It is the purpose of this essay to examine the affirmative and negative arguments on the matter of fixed election dates. Yes, it is true that fixed-date elections (herein referred to as FDEs) are popular with the general public and politicians from all parties. Nevertheless, upon review of the literature on this topic, one is struck by tepid reception offered to the proponents of FDEs and their favoured arguments. Why the discrepancy? In an effort to make sense of FDEs and their place in the Canadian context, we will explore this topic with one question in mind: are fixed-date elections a meaningful measure of democratic reform, or are they a benign populist appendage to our parliamentary system?

The essay shall proceed immediately into a review of some background information relating to FDEs, in particular, a definition of relevant terms and an examination of the context which led to their implementation. Second, we will examine and analyze the legislation that led to the implementation of FDEs. In the third and fourth sections, we will review and discuss the arguments presented in the literature that favour and oppose, respectively, the adoption of FDEs

in Canada. This essay draws to a close with a discussion of claims presented within, and a conclusion that FDEs are ineffective and superfluous to the Canadian parliamentary system.

Background on Fixed Date Elections

We begin with a definition of the concept of fixed-date elections. They are, essentially, general elections which are held at regular and defined intervals. Put another way, FDEs are defined as "those in which the election date for government and representatives is established by law, usually through a constitutional provision" (Desserud, 2007: 206). In practice, the scheduling of elections is laid out in the respective federal, provincial and territorial electoral legislation. Uniformly, the norm across Canada is for a general election to be held at a certain point during the fourth calendar year following the previous general election, though there is no consensus on particular dates or times of year. In sum, FDEs provide a modicum of certainty to Canadian political actors by signaling narrow yet approximate time frames for future general elections.

FDEs are one normative change to the Canadian electoral process that are part of a broader "package of measures designed […] to make Parliament more accountable and democratic" (Robertson, 2007: 1). Indeed, FDEs were seen as "one of the first visible reforms successfully passed […] to address the so-called 'democratic deficit'" (Alcantara and Roy, 2014: 257; see also Milner, 2005). The concept of democratic deficit has been a persistent irritant for lawmakers, perhaps as it was a particularly salient issue with the public through the 1990s and 2000s. The perception is one of aloof politicians and unresponsive institutions fomenting corruption and dysfunction. Scholars like Donald Savoie have examined the shifting of the locus of power in Canada "from citizens towards elites" (as cited in Alcantara and Roy, 2014: 261; see also Desserud, 2007: 207). This is a trend ordinary citizens have been effectively powerless in countering. Reining in the power of the executive, therefore, is an attractive strategy, and FDEs offer one avenue that appears fairly straightforward in its execution.

The adoption of FDEs into the Canadian parliamentary system has been a relatively recent phenomenon. It is interesting and somewhat surprising to note that, prior to May 17, 2005, Canada essentially "ha[d] no experience in fixed-term elections above the municipal level" (Milner, 2005: 11). This is because the first fixed-date election law was passed in 2001 for general elections in British Columbia (Dodek, 2010: 215; Tremblay and Cauchon, 2010: 427). Prior to this, there were no fixed terms for federal, provincial or territorial lawmakers aside from the maximum term limit of five years for legislatures as stipulated in Section 4 of the Charter of Rights and Freedoms. In the years following the British Columbian initiative, all but one province and two territories have adopted FDEs for general elections in their respective jurisdictions.

FDEs are a foreign import into our parliamentary system, something with which we have become familiar due to our proximity to the United States (Tremblay and Cauchon, 2010: 426). In the American congressional system, their 'fixed' system means that effectively "nothing can be done to alter the date of the next legislative election" (Milner, 2005: 14). By now, it is widely understood that Americans vote in presidential elections every four years on the first Tuesday after the first Monday in November. Although the American model serves as the ideal case, it is important to note that such rigidity would not be compatible with the Canadian parliamentary system. There are important differences between FDEs in both countries; however, their purpose remains the same, and that is to remove from the executive branch the ability to call elections, and to have elections occur on a predetermined schedule

TABLE 1			
ADOPTION OF FIXED-DATE ELECTION LEGISLATION ACROSS CANADA			
Jurisdiction	Year adopted	Elections post-adoption	Elections on fixed date
Canada	2007	3	1
Alberta	2011	2	1
British Columbia	2001	4	4
Manitoba	2008	2	2
New Brunswick	2007	2	2
Newfoundland and Labrador	2004	3	2
Northwest Territories	2007	3	3
Nova Scotia	Election dates are not fixed		
Nunavut	2012	2	2
Ontario	2005	3	2
Prince Edward Island	2008	2	1
Quebec	2013	1	0
Saskatchewan	2009	2	2
Yukon	Election dates are not fixed		

As FDEs became the norm across Canada in the years after 2001, it is interesting to note the actors who sought to implement such legislation. Based on an examination of the timing of FDE implementation across the country, it appears that such legislation has been proposed by relatively new ministries that succeeded governments of two terms or more, except for FDE legislation introduced by the three-term New Democratic government in Manitoba and the former Progressive Conservative regime in Alberta, which adopted FDEs in their fortieth year in power (Alcantara and Roy, 2014: 260). In the other provinces, FDEs were introduced within two years of a change in government. Table 1 shows the year in which FDE legislation was adopted in each jurisdiction, as well as the number of general elections held after the adoption of FDE legislation, and the number of elections that actually occurred on their fixed dates.

Canadians' first experience with FDEs, in British Columbia, was initiated by a new government that had been particularly sensitive to matters tied to the democratic deficit. The British Columbia Liberal party formed government after winning the 2001 general election with 57.6 per cent of the popular vote, which landed them a whopping and extremely disproportionate 97.5 per cent of the seats in the legislature (British Columbia, 2002: 37). That same party lost the 1996 general election to the BC New Democratic party, which formed a majority government despite losing the popular vote by nearly 3 per cent (*Ibid.*: 21). In response to what had been a highly unpopular New Democratic administration, the newly elected BC Liberal ministry put forth legislation to have election dates be set according to a schedule, in an effort to eliminate the manipulation of election timing by the executive branch. This would also dissuade any future government from exhausting the constitutional term limit of five years to avoid calling an election, as the defeated New Democratic regime had done ostensibly to salvage popular support.

To summarize, FDEs are thought to be an effective policy option in response to a perceived democratic deficit in our political institutions. Put another way, the democratic deficit is a set of problems that the public wants addressed, and FDEs are proposed as a simple solution for one systemic ailment. By curtailing the option of variable election dates, it is argued, we remove the

ability for governments to act in their "electoral self-interest" (Dickson, et al., 2013: 102). As well, FDEs could eliminate advantages that incumbents can exploit by calling elections at times of their own choosing, which include taking credit for positive economic news and trends—or, conversely, avoiding blame for negative economic news—as well as exercising discipline over caucus and cabinet, and taking advantage of political situations like high approval ratings or opposition disarray (Roy and Alcantara, 2012: 775-76). Furthermore, FDEs may act as a counterweight to the increasing concentration of power in the hands of political executives (Desserud, 2007: 207; Alcantara and Roy, 2014: 261). When confronted by a problem as opaque and shapeless as the democratic deficit, FDEs thus appear to legislators as a tangible and simple policy action that will indicate to voters that progress is being made in addressing a systemic weakness in our democratic institutions.

Fixed-Date Election Legislation: What Does the Law Say?

In a matter of twelve years, the federal government and the vast majority of provincial and territorial governments had adopted legislation prescribing FDEs (Alcantara and Roy, 2014: 256). We explore in this section the development of Canadian FDE laws and the important implications for FDEs in the Canadian context, which owe to their nature and relation to constitutional conventions and prerogatives. There are significant similarities among the various jurisdictions' FDE legislation, although there are some remarkable differences as well. As we conclude our analysis of the legislation, we discuss briefly the trends and possibilities for FDE legislation in Canada.

To begin, it must be noted that Canadian FDEs are not entrenched; that is, election dates are subject to change for a number of reasons. Without exception, all FDE legislation incorporates a section preceding the fixed election schedule which stipulates that governors general, lieutenant governors, and territorial commissioners are not prevented from dissolving the legislature by following through on the Royal Prerogative. In effect, this leaves intact the previous convention of prime ministers, and likewise the provincial premiers, advising the governor general from time to time to dissolve Parliament and to call an election (Hawkins, 2010: 130). FDE legislation expressly states that the viceroy is not bound to follow it nor, as per convention, are they bound to follow the advice of prime ministers on parliamentary dissolution, meaning viceregal representatives retain "a certain discretion" on constitutional matters which includes the timing of elections (McWhinney, 2008: 16). Indeed, the FDE legislation has been "carefully crafted to explicitly preserve the discretion" of the viceroy to dissolve the legislature (Dodek, 2010: 232). As we see, due to the construction of the associated legislation, FDEs are a misnomer, acting effectively as a suggested schedule for the timing of general elections without impeding on the prerogatives of the Crown.

TABLE 2	
ELECTION TIMING ACROSS CANADA	
Jurisdiction	Scheduling (Relative to Previous General Election)
Canada	3rd Monday in October in 4th calendar year after last general election
Alberta	Between March 1 and May 31 in 4th calendar year
British Columbia	3rd Saturday in October in 4th calendar year
Manitoba	1st Tuesday in October in 4th calendar year
New Brunswick	3rd Monday in October in 4th calendar year
Newfoundland and Labrador	2nd Tuesday in October in 4th calendar year
Northwest Territories	1st Monday in October in 4th calendar year
Nova Scotia	Writ issued pursuant to an order of the Governor-in-Council
Nunavut	Last Monday in October in 4th calendar year
Ontario	1st Thursday in June in 4th calendar year
Prince Edward Island	1st Monday in October in 4th calendar year
Quebec	Last Monday in September in 4th calendar year
Saskatchewan	1st Monday in November in 4th calendar year
Yukon	Writ issued pursuant to an order of the territorial commissioner

Unlike the familiar regularity of fixed election dates in the United States, there is no uniformity in the scheduling of elections in Canada. The tendency has been for election dates to fall some time during the spring or fall seasons, but even then, there is no consensus as to the best time of the year during which to hold an election. In the earliest instances, the British Columbia and Newfoundland and Labrador governments offered a date that was four years following the previous general election in their proposed FDE legislation, which is why we had May general elections on the west coast and elections in October down east. Most jurisdictions have selected a date in October for their FDEs, whereas Alberta (between March 1 and May 31), Saskatchewan (November), and Ontario (June) have opted for different times. Table 2 provides the schedule for federal, provincial, and territorial elections, and it should be noted that the timing as published here is subject to change pursuant to new legislation.

Moreover, there is no discernible pattern for the year of a general election. Again, we look to the familiar American system and the major presidential election contest which occurs in years, like 2016, which are divisible by four, although some state and congressional elections do occur outside presidential election years. As such, it is no surprise that there are provincial elections scheduled to occur in each year between now and 2021, and that none of these electoral events have been intentionally scheduled to coincide with one another. In sum, the various pieces of FDE legislation, while responding to similar issues and popular demands, have neither been constructed to synchronize the Canadian electoral calendar nor to make the electoral process more efficient by conducting simultaneous elections across multiple jurisdictions.

There are some key differences among the various pieces of FDE legislation, though most are not particularly substantial. In Alberta, the term fixed-date election is a bit off the mark; instead, there is a period of time stipulated in the Alberta's *Election Act* during which a vote may be called, which is the three month period from March through May in the fourth calendar year following the previous general election. The specific sections of legislation that deal with setting the date of general elections are noted in Table 3. Legislation in Manitoba, New Brunswick, and the

Northwest Territories all have allowances for adjusting the date of their general elections to avoid conflicting with a federal election, which permit altering the provincial fixed election date by one to six months from its original date. As well, Quebec's law on FDEs permits the Chief Electoral Officer to alter the date of the election by a week if the fixed date is unsuitable, without providing any guidance as to what that may mean.

TABLE 3	
SCHEDULE OF ELECTIONS iN LEGISLATION ACROSS CANADA	
Jurisdiction	Legislation
Canada	*Canada Elections Act*, SC 2000, c 9, s 56.1(2)
Alberta	*Election Act*, RSA 2000, c E-1, s 38.1(2)
British Columbia	*Constitution Act*, RSBC 1996, c 66, s 23(2)
Manitoba	*The Elections Act*, CCSM, c E30, s 49.1(2)(b)
New Brunswick	*Legislative Assembly Act*, SNB 2014, c 116, s 3(4)(b)
Newfoundland and Labrador	*House of Assembly Act*, RSNL 1990, c H-10, s 3(2)
Northwest Territories	*Elections and Plebiscites Act*, SNWT 2006, c 15, s 39(5)
Nova Scotia	*Elections Act*, SNS 2011, c 5, s 29
Nunavut	*Nunavut Elections Act*, SNu 2002, c 17, s 36(3.1)
Ontario	*Election Act*, RSO 1990, c E.6, s 9(2)
Prince Edward Island	*Election Act*, RSPEI 1988, c E-1.1, s 4.1(2)(b)
Quebec	*Election Act*, CQLR, c E-3.3, s 129
Saskatchewan	*The Legislative Assembly Act*, SS 2007, c L-11.3, s 8.1(2)
Yukon	*Elections Act*, RSY 2002, c 63, s 50

In Ontario, the FDE legislation allows for some fluctuation in the date of the election in the event of a conflict with religious or cultural observances. As per Section 9.1(6) of the Ontario *Election Act*, the Chief Electoral Officer (CEO) has the ability to choose an alternate polling day if they are of the opinion that the fixed date is unsuitable due to an overlap with a significant religious or cultural holiday (Hollins, 2007: 14). A similar clause exists in New Brunswick, although the ability to act in that jurisdiction rests with the premier. Prior to the 2007 Ontario provincial election, the CEO conducted an outreach initiative, contacting 278 organizations in 56 cultural communities from ten major religions, a third of whom responded (Hollins, 2007: 15). These community organizations were asked questions in an effort to determine if there were "dates of cultural or religious significance" on and around the fixed election date and if such observances would obstruct their members' ability to vote (*Ibid.*). Though such an outreach program was not required of the CEO, it gave assurances to religious communities that their practices were being respected. Additionally, it provided an alternative perspective to election officials on the conduct and timing of FDEs, and it established a proactive template on how to proceed with an electoral event with respect to the religious and cultural observances clause of the *Election Act*.

A unique and puzzling section in Newfoundland and Labrador's FDE legislation concerns the calling of elections upon a change of executive leadership. In essence, the 2004 FDE legislation introduced by the Progressive Conservative government of the day had amended Section 3.1 of the *House of Assembly Act* to say that upon the resignation of a premier as leader of the governing political party, their successor, once sworn into office, shall within twelve months request a

dissolution of the legislature so that a general election may be held. One reason for the addition of this section to Newfoundland and Labrador's FDE legislation was to address another problem linked to the democratic deficit. Danny Williams, whose government introduced FDE legislation, sought to address the problem of "calling elections just three years into a majority government mandate" (Marland, 2007: 78), a tactic exploited and an irritant exacerbated by his predecessors.

One may also see obvious inspiration for this section in Williams' own experience as opposition leader to a premier, Roger Grimes, who had served two-and-a-half years of a mandate to which he himself had not been elected. Ultimately, it is debatable whether or not this section of the Newfoundland and Labrador FDE legislation is truly effective. Williams' successor, Kathy Dunderdale, took office about ten months before a fixed election date. Dunderdale's eventual successor, Paul Davis, deferred a provincial general election by nearly two months, a move which avoided a conflict with a scheduled federal election but which also pushed the election date well past the twelfth month of Davis' premiership. What we do know is that, up until now, no other jurisdiction has sought to adopt a similar amendment pertaining to unelected first ministers in their electoral legislation.

A final word on the state of FDE legislation in Canada, and here we are looking at the few jurisdictions that have not adopted FDEs. In 2014, Nunavut became the most recent jurisdiction to adopt FDEs, with their elections being scheduled for the third Monday in October in the fourth calendar year following the previous general election (Nunatsiaq Online, 2014). There are signs that the newly elected government in Yukon may move to adopt FDE legislation in the near future (Forrest, 2016). Nova Scotians, however, have not joined their counterparts in switching from flexible to fixed dates, and there is scant evidence to explain the reasoning behind this. In Nova Scotia, the discussion around FDEs is more of a murmur, having never really caught the wider public's attention. There were suggestions upon Stephen McNeil's ascension to the premiership that legislation would be introduced to fix the date of the next provincial general election (CBC News, 2013). At the time, Nova Scotia's CEO, Richard Temporale, suggested FDEs would make the conduct of elections more cost effective and efficient, and would allow for more preparation as candidates would likely be nominated well in advance of the campaign period (Lightstone, 2014). However, McNeil ultimately balked at instituting FDEs, claiming that evidence from other provinces on their utility is disconcerting and that such initiatives are a waste of valuable time, adding that his government is "not in the business of creating legislation that people don't adhere to or wouldn't be adhered to in this province" (CBC News, 2015). One study explains that the impetus to adopt FDE legislation in Nova Scotia is not as strong as elsewhere because the current and recent governments did not succeed multi-term governments (Alcantara and Roy, 2014: 269). Indeed, the three major political parties have each won a recent general election. Regardless, even as the trend nationally is firmly in favour of FDEs, they are likely to remain a foreign concept in Nova Scotia politics for the foreseeable future.

Why Fixed Date Elections are a Positive Development for Canadian Democracy

Considering the pace at which FDEs were adopted and became the norm across the country, one assumes that the pro-FDE arguments must be incredibly convincing. FDEs are one item among a suite of reforms aimed at improving the state of democracy and lessening public cynicism with regard to political institutions. There are plenty of advocates among academics and politicians, each with their own reason to support the adoption of FDEs. In this section, we will explore the

arguments of the affirmative in an effort to determine the essential justification for this 'new normal' in Canadian politics.

The initial and obvious argument in favour of FDEs is that it takes away the privilege of the first minister to request a legislative dissolution in order to call an election at a time of their choosing. Prior to the adoption of FDE legislation, a government may have "time[d] their election calls to coincide with improvements in economic performance, favourable opinion polls, the completion of capital projects, the disarray of opposition parties," or one of innumerable other reasons (Desserud, 2007: 204). Governments are especially keen to call elections "when unemployment rates are low and […] to avoid impending downturns" in order to maximize their chances at re-election (Dickson, et al., 2013: 114). In short, governments who have the flexibility to call an election at any time may do so in order to realize short term electoral gains, but this also has the effect of fomenting cynicism among the electorate. FDEs, therefore, are seen as one means of "reducing […] cynicism towards elections and election campaigns" (Milner, 2005: 22).

Election timing is an important aspect of all democratic systems, but this is an especially strong consideration for legislators in systems where election dates remain unfixed. Calling an election at the right moment could portend gains at the ballot box. For a majority government, the decision to launch an election campaign depends on the size of the present majority and on the likelihood that said majority could be increased (Balke, 1990: 214). This is especially true for governments formed by ideological parties who require large majorities in order to successfully proceed with the adoption of their legislative agenda (*Ibid.*: 213). Launching into an election at a government's preferred time is considered an opportunity for the party in office to consolidate their support and maintain their grip on power. With the introduction of FDEs, the advantages and privilege of election scheduling are effectively squelched.

Another objective of FDE legislation is that it creates fixed terms in power. Typically, Canadian elections occur on a quadrennial basis. In New Brunswick, for instance, general elections have occurred on average once every 48.3 months since 1785, and governments rarely go far beyond a four-year term in office (New Brunswick, 2004: 56; see also Dodek, 2010: 225). The New Brunswick example is indicative of the generally accepted Canadian norm of four-year terms for majority governments (see Ferris and Voia, 2009: 881), a trend similar to our American neighbours but one that is not necessarily the norm in other Westminster-style democracies. In Australia and New Zealand, for example, governments are elected for terms of three years (Milner, 2005: 29, 37), whereas in the United Kingdom, the recent trend has been towards longer terms of five years' duration (Levy, 2010). Why the pattern in Canada tends toward quadrennial elections is not clear in the literature, but what we can determine is that FDEs have effectively ensured the length of Canadian officeholders' terms at four years.

Fixing the date of elections could empower backbenchers relative to the first minister and cabinet. With flexible election dates, first ministers can threaten their caucus with an election call in an attempt to quell rebelliousness and insubordination (Desserud, 2007: 208). This erodes the ability of ordinary members to voice concerns and criticisms about the government's agenda without the fear of disciplinary consequences, which could range from a reduction in certain privileges up to expulsion from caucus. FDEs may subject a first minister to a "death by a thousand cuts" if flexibility on the timing of the election call is eliminated (McWhinney, 2008: 16); ideally, however, the adoption of fixed dates would compel the first minister to be more attentive to their backbenchers' "opinions and views, and [to] be more cognizant of their own need for the support of the legislative assembly" (Desserud, 2007: 208). FDEs, therefore, are seen as a means of making the executive branch of government more responsive and responsible to legislators writ large.

Alternatively, supporters of FDEs will point out that the certainty of an election date will lead to increases in voter participation. Milner suggests that having a fixed election date will allow for better "planning and staging of public events, seminars, adult education activities, and public information campaigns" which will lead to increased interest and engagement in the electoral process (2005: 23). It is also suggested that knowing when an election will occur will aid in countering the significant declines in turnout among younger voters and will provide a boost to the teaching of civics (*Ibid.*: 24). Another argument that suggests a rise in turnout rates resulting from the implementation of FDEs is that which concerns the legislator's responsiveness and engagement with constituents. Knowing when an election will be held, the argument goes, would make legislators less beholden to party leaders and more responsible to constituents, leading to an increase in "citizen confidence and participation in the political process" as fewer voters will fall under the cynical impression that their representatives "will have little or no voice once elected" (as cited in Desserud, 2007: 208). Although claims have been made suggesting rising turnout resulting from FDEs, a good number of them have come across as "Pollyanna-ish" (Dodek, 2010: 229) as turnout increases in fixed-date elections have largely failed to materialize.

A more convincing argument is the claim that FDEs lead to better planning and increased efficiency. Civil servants would benefit from the certainty and stability of knowing with whom they will be working, and would have a clear idea as to the length of a government's term in office, which would allow bureaucrats "to better plan for the implementation of government policy" (Dodek, 2010: 228). Legislators would be able to plan their agendas and to schedule the "use of limited resources," such as time, money, and space, to more efficiently conduct their work (Milner, 2005: 21). Additionally, the planning and administration of elections would be made easier due to the forewarning of a fixed election date. The preparation required to put on a general election is immense. Acquiring staff, enumerating voters, and producing ballots, documents, and supplies are some of the laborious, time-consuming tasks that election officials face when readying for an election, and a fixed date would allow for more effective and efficient planning on the part of election agencies (Desserud, 2007: 209).

One final argument favouring the adoption of FDEs—and likely the most powerful contention—is that they are widely popular. As far back as the year 2000, polling indicated that more than half of Canadians were in favour of fixing the date of general elections (as cited in Desserud, 2007: 203). More to the point, it has been demonstrably shown that partisans from across the political spectrum are supporters of FDEs, as evidenced by the governments of various ideological backgrounds who have adopted FDE legislation (Alcantara and Roy, 2014: 259-60). Furthermore, initial evidence emanating from an empirical study on the timing of elections and voter sentiment suggests that there is no advantage realized by governing parties in jurisdictions with FDEs, which adds credence to the claim that FDEs are popular because they limit the electoral advantages of those in power (Roy and Alcantara, 2012: 779). In sum, FDEs are a popular, easy-to-grasp reform of our electoral system that is perceived to limit the power of the executive branch in determining the timing of electoral events for partisan advantage, while at the same time permitting ordinary legislators and voters a greater say in democratic and legislative processes.

The Case Against Fixed-Date Elections

By and large, the primary argument against FDEs is the promotion of the status quo: if the system isn't completely broken, why fix it? Other assertions, however, delve deeper into the matter and look at FDEs and how they interact with the fundamental foundations of our parliamentary

system. Here, we evaluate the claims of FDE opponents in an effort to understand what they find repulsive about FDEs and what aspects they seek to uphold of the former convention of flexible election dates.

An issue with FDEs is not so much that they attempt to set in advance the date for a future general election as much as it is the effect such legislation has in limiting lawmakers' terms in office. As it stands, there exists already a constitutional term limit of five years. Furthermore, FDE legislation is meant to prevent governments from going to the polls too early, but effectively, the legislation shortens the maximum length of time that elected officials may retain their office (Desserud, 2007: 209). FDE legislation, if we recall correctly, is meant to prevent snap election calls and abbreviated terms for majority governments; however, in practice, the legislation has had the unintended consequence of preventing governments from remaining in power for the full five years that are constitutionally permissible.

Another practical implication of FDEs is their effect on governance, in particular when governance is obstructed due to lack of legislative support. In the event that a government failed to secure a majority at an election, or in the event of a coalition government's collapse;, or in the event that a government loses the support of some caucus members, a system of 'pure' fixed election dates would hinder the governing process and create institutional paralysis. In the rare event that an alternative majority could be cobbled together, the governance of the jurisdiction could continue unabated; on the contrary, the likelier scenario is one of dysfunction, where "[l]egislation would not be passed, and [those in power] would administer rather than govern" (Desserud, 2007: 210). Such a situation, though unlikely in the Canadian context, illustrates an important practical consideration on the effectiveness of governments lacking majority support who are also constrained by a fixed election date.

Along those same lines, the concept of confidence in Westminster-style parliamentary democracies is essential to one's understanding of the maintenance of authority and power. In short, commanding the confidence of the legislature is equated with majority support, even if said support comes from opposition legislators. The privilege of governing is acquired only if one commands the confidence of one's peers in the House. Consequently, ordinary members have a check on the power of the executive in their ability to offer or withdraw their confidence to those in the governing party. But what check do those in government have against ordinary members? The ability of the first minister to request a snap election serves as an executive check against the power of the legislature to withdraw its confidence in the government. In the event of a loss of support, the advent of parliamentary gridlock, or the exhaustion of a governing agenda, a new mandate may be sought from the electorate by requesting a dissolution from the viceroy (McWhinney, 2008: 16). This is the normal operating procedure in places where flexible election dates are instituted.

Problems arise when FDEs are added to the mix. Explicit votes of non-confidence aside, a government with a diminished ability to carry out the duties of office would effectively be hamstrung and unable to extricate itself from the legislative morass. Without an ability to request a dissolution, a government would be unable to quell caucus unrest or take advantage of opposition disarray with the threat of an election. Meanwhile, ordinary legislators retain their ability to keep the executive in check by offering or withholding confidence. In essence, if we look at the tension between the executive and legislative branches in terms of a duel, FDEs disarm the governing side while allowing ordinary legislators to retain theirs.

Notwithstanding the aforementioned opposing claims, there are two significant problems with FDE legislation. The first arises from the constitution. There is but one surefire way to ensure

that fixed election dates are respected and that legislative gridlock on one or several matters does not impede the governance of a jurisdiction, and this is done by amending the constitution. Of course, such a change would be akin to remodeling the Canadian parliamentary system into something resembling a watered-down version of the American congressional system (Desserud, 2005: 49; Desserud, 2007: 212). In effect, this would require disentangling the executive and legislative branches, a foreign concept in a Westminster-style parliamentary democracy. No longer would confidence be necessary to govern; by the same token, gone would be the ability to call elections at a time and for a reason of one's choosing. If not for the dark clouds of reality, such reforms might have seen the light of day. For that matter, the history of constitutional change in Canada is fraught with frustration and failure, ergo the institutional and systemic constitutional changes that would be required to entrench FDEs in our system are wildly implausible verging on wholly impossible.

The other—and arguably the biggest—problem with FDEs is the nature of their construction. Earlier, we reviewed FDE legislation at the federal, provincial and territorial levels and, in every case, the legislation clearly maintains the prerogative of the Crown to dissolve the legislature (Tremblay and Cauchon, 2010: 428). Further, the legislation leaves unchanged a first minister's ability to request a dissolution at any time for whatever reason (Hawkins, 2010: 130). More to the point, the viceroy is not obligated to heed legislation for they are "governed by constitutional conventions," and in the instance of legislative dissolution for an election, the "most relevant constitutional convention is that the [viceroy] only dissolves parliament at the [first] minister's request" (Tremblay, 2009: 25). The plain fact also remains that the viceroy need not heed a first minister's request and may, at their discretion, decline the request for dissolution and seek others to form a government (McWhinney, 2008: 15). In short, constitutional conventions trump ordinary legislation, and as a result, the utility and integrity of FDE legislation is seriously called into question.

The royal prerogative and the design of the legislation combine to create an existential crisis for FDEs. In a nutshell, the entrenchment of FDEs is overwhelmed by constitutional obstacles, and ordinary legislation to establish FDEs simply does not work in an effective manner (Desserud, 2007: 216). The law regarding FDEs lacks "an effective means of enforcing a dissolution and election at the end of four years," and in any case, ignoring the legislation would lead only to political consequences, if any (Stoltz, 2010: 19). Already, there are numerous examples of fixed election dates being ignored, usually by means of hastening an election call. The most notorious of these was the federal election of 2008, wherein prime minister Stephen Harper requested a dissolution due to a lack of opposition support for his minority government (Tremblay and Cauchon, 2010: 439). Despite a legal challenge arguing an early election was in contravention of federal FDE legislation, the Federal Court of Canada rejected it on the basis that there were "no constitutional convention[s] constraining the prime minister from advising an election before the October 2009 date prescribed in the statute" (Heard, 2010: 129; see also Hawkins, 2010). Moreover, the claim that the viceroy would be compelled to dissolve the House to allow for an election in October 2009 because that date is written into federal FDE law proved to be an absurdity (Dodek, 2009: 20). If anything, as Dodek suggests, the provision of an explicit date has sown more confusion than confidence in the nature of Canadian FDE legislation.

As with governing, there are times when longer or shorter terms in office are justifiable. Not all elections are called to take advantage of a political situation. There are times when a government is simply avoiding conflict with another electoral event, or perhaps a new party leader is seeking an electoral mandate after ascending to the leadership of a governing party. While it

may seem that flexible election dates provide an advantage the governing party, in practical terms, such flexibility allows the executive to respond to political challenges and externalities that could only be mollified by calling an election.

Discussion and Conclusion

Apart from an innate aversion to superfluousness, there are serious doubts as to the utility and justiciability of FDEs and the legislation that enacts them. On the face of it, FDEs appear to be a solution in search of a problem. Don Desserud points out that some proponents of fixed election dates actually seem to favour limits on the time between elections (2005: 49). The movement towards FDEs did not explicitly come about as a means of implementing term limits. Even so, there is already a constitutional limit in place on the length of time that a legislature may sit, which acts in effect as a maximum limit on a legislator's term in office. Term limits are another American import that could partially address the democratic deficit by curtailing a politician's ability to serve innumerable consecutive terms. The Canadian prime minister is not encumbered by the same chronological restrictions that confront an American president. More to the point, even if both leaders face a fixed election date, only the American faces an entrenched date over which they exercise no control. Canadian election dates therefore are not fixed, and are merely suggestions to which the first minister may or may not pay heed.

In other areas, the benefits of FDEs may be more of a mirage. The former Chief Electoral Officer of Ontario, John Hollins, does not believe that FDEs are "cheaper," "easier," or lead to "a better turnout" (2007: 16). Planning may be aided with the luxury of time, but in order for plans to be successful, they require solid execution, and it is in these areas that election officials can do better. Furthermore, turnout does not necessarily rise due to the implementation of a fixed election date, and Hollins points to municipal elections and elections in the United States as examples of FDEs with habitually paltry turnout rates (2007: 16; see also Dodek, 2010: 229-30). Voters may know ahead of time the exact date of an election, but that does not mean that they will bother to show up at the polls.

In spite of their deficiencies, there are amendments that could be proposed to strengthen the current set of FDE laws. Levy suggested that Canadian lawmakers look to their British counterparts for inspiration, noting that several amendments to Canadian FDE laws could be derived from proposed FDE legislation in the United Kingdom (2010: 17). The key changes include setting FDEs five years apart as opposed to the present convention of four years, requiring two-thirds of the House of Commons to vote in favour of early elections, and establishing a fourteen-day period, in the event that a government loses a vote of confidence, during which other parties and members may attempt to form a government (*Ibid.*). While such amendments may address certain shortcomings in legislation, they all come up short in addressing the fundamental flaws that afflict Canadian FDEs. So long as the Royal Prerogative remains a foundational aspect of Canadian parliamentary democracy, general elections in Canada will never truly be fixed. And so long as FDE legislation remains popular with the general public, it is unlikely to ever be repealed.

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Colombia's Fork in the Road?

President Santos' Treaty with The Revolutionary Armed Forces of Colombia (FARC)

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Abstract. Colombia is considered Latin America's most stable democracy, and at the same time, it is war-torn by the internal conflict with the guerrilla group, the Revolutionary Armed Forces of Colombia (FARC). The armed conflict with the FARC has lasted for fifty-two years and has claimed the lives of 220,000 innocent civilians. The year 2016 marked the historical and controversial moment that President Santos of Colombia signed a peace treaty with the FARC, ignoring the results of a referendum that was intended to ratify the treaty. Importantly between the years 2015 and 2016, years in which the negotiation was taking place, Colombia's cocaine output increased by 37 percent, which calls into question the FARC's real motives in the peace treaty. This paper will argue that in neglecting to recognize the FARC's role in drug trafficking allows for future repercussions in Colombian politics and does not ensure that the democracy of which Colombia has boasted can be maintained. Furthermore, this paper will argue that in bypassing the results of the referendum allows leeway for the next government to oppose the peace treaty and create severe consequences for Colombia. In sum, President Santos has embarked Colombia on a journey it did not choose, leaving the future uncertain.

Introduction

Latin American countries are infamous for their rocky road towards democracy, with a history replete with military coups and violence between the major political parties. However, Colombia does not fall into the category of an unstable democracy, where it has boasted of a strong democratic tradition, having only two military interventions in its governments since 1958 (Lorente, 2010). Throughout its modern history, Colombia is infamous for the armed conflict with the Revolutionary Armed Forces of Colombia, from here onwards called "FARC." The armed conflict with the FARC has claimed the lives of 220,000 civilians and has converted Colombia into one of the major producers and exporters of illegal drugs, specifically cocaine (Otis, 2014). The year 2016, marked the historic and controversial moment President Santos of Colombia signed a peace treaty with the FARC, which, as of the time of this paper, has produced an end specifically to the armed conflict (Isacson, 2017). Of the many conditions imposed by the FARC, the most significant was to ignore their role in drug-trafficking. Thus, this paper will argue that in refusing to acknowledge the role the FARC has had in drug-trafficking hinders a genuine peace process, where the government is unable to ensure that the democratic stability, of which Colombia has boasted, can be maintained.

The internal conflict with the FARC has lasted for fifty-two years (Colombia's FARC rebels- 50 years of conflict, 2016) and has produced atrocious consequences that are ever present in the Colombian population. It was specifically drug trafficking that allowed the FARC to transform itself during the 1980's and 1990's into a strong guerrilla group that could challenge the

Colombian government. Before the peace treaty that the government of President Santos enforced with the FARC, former President Uribe took a hard-line stance against the guerrilla group with aid from the United States, aimed at strengthening Colombia's institutions and combating drug trafficking, saw a dramatic drop in violence (Renwick & Felter, 2017). Kidnappings decreased by 80 percent and homicides dropped by 40 percent. Significantly, with the crackdown against the FARC, saw the guerrilla group losing ground where membership loss was down to an estimated seven thousand members in 2012, from sixteen thousand in 2001. Thus, one must ask, if the government was gaining significant advances against the FARC, entering territories previously controlled by the FARC, if the peace treaty truly is in the best interest of the future of Colombia? Furthermore, it must be noted that the FARC only agreed to the peace negotiations after suffering considerable losses. In other words, did they adopt a strategy that would ensure their survival, and if so, what does a peace treaty that does not recognize drug trafficking as a crime mean for the democratic future and stability of Colombia?

This paper is structured as follows. First, it will provide a history of the FARC, analyzing the base for their foundation as a rebel group and ideological views. Secondly, it will review the crimes committed by the FARC, specifically drug-trafficking. Thirdly, it will examine the current peace process, studying the implications that the conditions of the treaty will have on Colombian politics and the issues that are not addressed in it. Further expanding on the peace treaty, it will review how President Santos's actions do not express the results of the referendum and by ratifying the treaty through approval of Congress by the means of "Fast-Track" to bypass a second referendum, allows leeway for future repercussions in Colombian politics. Furthermore, it will focus on the behaviour of drug-traffickers and their pursuit of political power and analyze the effects this can have on the country. Finally, this paper will comment on the outlook of Colombian politics and the implementation of the treaty.

History of the FARC

Origins of the FARC

So, who are the FARC and what is their objective? The factors that would allow the birth of the FARC begin with the negative consequences of colonial rule by Spain in Colombia (Leech, 2011). Colonial rule produced ruling elite, which divided itself into two political parties, the Liberals and the conservatives. Political differences and tensions between these two, mainly among their peasant supporters, whose desire to show loyalty to their party, would result in outbreaks of violence, that were not the result of class struggles, but of preserving the interests of the political elites.

Why did the peasants fight in the interests of the elite? It was mainly for reforms that would improve their quality of life (Leech, 2011). The political tensions and division between the two parties would result in the origin of many of Colombia's present day problems (Thousand Day War, 2011). There were series of civil wars which rampaged Colombia and they would culminate with the "War of a Thousand Days" beginning in 1899 and ending in 1902. Further prolonging the tension and war, was the continuous targeting of members of the opposition by the government in place, which in 1900 saw Vice President Jose Marroquin take over the government and imprison President San Clemente, who would go on to die in prison in 1902.

Although it is cannot be confirmed, it is estimated that 100,000 people died over the course of this war (Bushnell, 2010) and those who suffered were the most vulnerable members of society, the peasants (Thousand Day War, 2011). During this time, the economy of Colombia had taken a

large toll, reducing the government to bankruptcy, and allowed Panama (with support from the United States) in declaring independence from Colombia under the Treaty of Wisconsin. After having supported Colombia's loss of Panama, the United States agreed to recompense the government with a payment of $25 million USD (Leech, 2011). This payment would become known as the "Dance of the Millions", benefiting the petroleum and manufacturing sectors and coffee and banana production. Importantly, it left out a majority of citizens who did not receive these benefits, which would result in the necessary conditions for the birth of the FARC.

The Violence or "La Violencia"

What would become known as "La Violencia" resembled the riots and tensions provoked in earlier years, when political divides between the elites resulted in violence. The Liberal Government at the time (1946), lost power after a party split (Bushnell, 2011). Most of the trouble and outbreaks of violence can be attributed to the actions pursued by the Conservatives, whose disdain for the Liberals, resulted in them inspiring trouble and violence. The climax of violence resulted in the assassination of popular Liberal leader, Jorge Eliecer Gaitan. Although the evidence pointed to a lone wolf act, the Liberals construed that the Conservatives were behind his murder and their followers began to ransack Conservative stores.

The rioting took place mainly in Bogota, where Gaitan was mayor, and this stirred fear that the violence would result in a peasant-based social revolution (Leech, 2011). Moreover, the violence was not retained to strife between the Liberals and the Conservatives, but included violence between the peasants and the oligarchy. Further complicating the situation was the involvement of the United States, who began training and providing military assistance to the Colombian military in hopes of deterring a communist revolution. The inability of the government to suppress the violence resulted in General Rojas Pinilla taking power in 1953.

General Rojas offered an amnesty to the armed peasants, in hope of putting an end to the conflict (Bushnell, 2011). However, backtracking on his first decision, the government began targeting the demobilized Liberal guerrillas and a year later, a military offensive was ordered against all armed peasants who had refused to demobilize (Leech, 2011). While the peasants sought refuge from the government attacks, the political parties of Colombia united to form the National Front, resulting in an end to the political violence inspired by these. The offences against the peasants continued and would result in them mobilizing themselves elsewhere for protection, under the advice of the Colombian Communist party, creating the ideal circumstances and environment for the birth of the FARC.

Birth of the FARC

The displaced peasants settled in the eastern departments of Caquetá and Meta, and in Southern Tolima, regions that are now governed by the FARC (Leech, 2011). Originally, the purpose of moving away from government controlled areas was mainly for self-defence. It would be a member of the Communist Party of Colombia (PCC), who would become the first leader of the FARC, Jacob Arenas. Along with another member of PCC, Manuel Marulanda, in 1964, Arenas began to form the guerilla group which would be called the Revolutionary Armed Forces of Colombia or "Las FARC" (Stanford, 2015). The official birth of the FARC would take place after the Colombian military attacked Marquetalia, which resulted in the First Guerilla Conference and in 1966 after the Second Guerilla Conference, the FARC came into existence. The FARC

proved successful in the rural areas, but politically it was left marginalized (Leech, 2011). Having been founded by peasants, the FARC sought to transform society and overthrow the government, focusing on local power over regional power.

The main reason that has worked to the advantage of the FARC is that the government of Colombia has never fully controlled all Colombia, where principal cities such as Bogota and Medellin are separated by tropical jungles and vast mountainous areas (Leech, 2011). So, the FARCs influence spread throughout 1965-1976, where peasant colonizers sought refuge from cattle ranchers and the army which supported them, who were taking over the land that the colonizers did not have the resources to defend and to care for (Pearce, 1990). Wherever the state was absent, the FARC fulfilled its role and became the governing authority, which allowed the FARC to survive the 1970's (Pearce, 1990).

Ideology and Influence of the FARC

The FARC was founded by members of the Communist Party of Colombia, originally being the military wing of the party (COHA, 2007). The ideological driver behind the guerrilla group is Marxist- Lenin ideology. Their primary goal has been to overthrow the Colombian government and replace it with a Marxist-style government, and they advocate for land reforms to benefit the poor (COHA, 2007) and are against the privatization of natural resources (Renwick & Felter, 2017). Although the FARC claim to be the defenders of the poor, their overwhelming lack of support suggests that their goal is not in the best interest of those they claim to protect (COHA, 2007).

So, are the FARC guardians of the poor or criminals? In its inception, it is fair to conclude that the FARC has had humble origins in a violent past. The group consisted of peasants seeking refuge from a Colombian government backed by the United States who sought to demobilize and rid themselves of socialist and communist peasants. Furthermore, the rights of peasants were blatantly being violated during and the period after "La Violencia". However, although the group first sub-served the peasants, their ultimate goal was not a social transformation, but complete political control. So, why does the FARC still receive some support? It is theorized that some join for self-defence, others for ideology, and some for the ideology of self-defence, feeling excluded from society. To understand how the FARC has evolved into a powerful force in Colombia, it is necessary to understand link between the crimes committed by the FARC and their involvement in drug-trafficking.

Drug-Trafficking and Crimes committed by the FARC

The criminal activity of the FARC has involved kidnapping, extortion, rape, and assassinations (Renwick & Felter, 2017). They have also engaged in the planting of landmines which has killed or disabled more than ten thousand people. In the kidnapping, it is estimated that the group kidnapped twenty-five thousand people between 1970 and 2010 (CNMH, 2013). Although the crimes that were committed by the FARC are crimes against humanity, refusing to acknowledge the role that the FARC has had in drug-trafficking allows leeway for severe repercussions in Colombian politics as the peace process advances.

To sustain itself, the FARC needed an income, and it turned to the fastest way of accumulating vast sums of wealth, drug-trafficking. In the year 2000, it is reported that Colombia exported around 90% of cocaine in the world (CNMH, 2013), the trafficking of illegal drugs

provided the FARC with most of its revenue (Renwick & Felter, 2017). Furthermore, in 2009, it was reported by the U.S. government that 60% of the cocaine exported to the United States from Colombia was trafficked by the FARC (Drug Control, 2009). Although calculating the income of the FARC is not entirely accurate, revenues obtained from drug trafficking were estimated to be between $1.1 billion USD by the United States Attorney General Office, and $3.5 billion USD by the Colombia government. As of 2015, Colombian authorities found a massive cocaine processing complex which is under control by the FARC in western Colombia (Renwick & Felter, 2017) and since then, cocaine output has risen by 37% and reached an all-time high in 2016, where 710 tonnes were produced (Coca-growing in Colombia is at an all-time high, 2017). It is vital to understand the FARC's role in drug trafficking, as it is the source of their power and the fifty-year protracted conflict with the government of Colombia. The profits that the FARC has received from drug trafficking expanded their membership from 6,000 in the year 1982, to 20,000 in the year 2000.

Significantly, the FARC was in existence decades before the trafficking of illegal substances would assume a vital role in Colombia (Otis, 2014). It was in 1982 that the FARC was first involved in drug trafficking, by taxing smugglers and drug producers. In the 1990s, when prominent cartels lost power and influence, the Andean coca crop was moved to regions that were under FARC control, which resulted in them acquiring 400,00 acres in the year 2000 that could produce 680 tons of cocaine, where they previously only had a few thousand acres. The new power and wealth consolidated the power that the FARC had over rural civilians.

Their role in drug trafficking has earned them the status of the richest and largest guerrilla army in the world (The guerrilla groups in Colombia, 2017). Moreover, the US justice department reported that the FARC supplied more than 50% of cocaine in the world. Not only has the FARC been involved in crimes against humanity and illegal drug trafficking, but their actions in kidnappings and extortion has resulted in them being placed on US and European lists of terrorist organizations. Five million Colombians have been displaced from their homes concerning drug relate crime, which has also resulted in the stealing of land contributing to 42.8% of the poverty rate in the countryside of Colombia (Departamento Administrativo Nacional de Estadisticas, 2014). Furthermore, the income obtained from drug trafficking has allowed the FARC to gain access to the international arms market, which allowed them to continue their war against the government and innocent civilians (Farah, 2011). Therefore, the question remains, who were the FARC fighting against? Were their motives socially inspired or were the revenues obtained by the top leaders so profitable that promulgating a leftist ideology to accumulate supporters, where behind the façade, their real motives were the accumulation of wealth and power?

Peace Treaty with the FARC

The fundamental issue with the Peace Treaty that the government of Colombia has agreed to with the FARC is precisely its neglect in recognizing the FARC's role in drug trafficking and the underlying implications it has in Colombia's future. Not only is it a source of enormous profits and wealth, but it is a source of power, as demonstrated by the FARC consolidating their rule over rural civilians. Specifically, the wealth accumulated by the FARC directly related to drug trafficking will not be confiscated. Although the government has already undertaken a process to track the drug money, it has proved unsuccessful (Yagoub, 2016). So primarily, the most important issue is: "how can the government of Colombia seize the illegal money if the FARC are not accused of drug trafficking? And if an investigation has already taken place and the FARC's wealth

was not declared illegal, what will happen to the money accumulated by the top officials over the years?"

Per section four, paragraph one, of the final treaty between the FARC and the government of President Santos, it attributes the internal conflict in Colombia to issues not related to the cultivation of illegal substances and the trafficking of illegal drugs (Acuerdo Final, 2016). In addressing the drug trafficking in Colombia, the government of President Santos refuses to acknowledge the FARC's role and their responsibility in the propagation and spreading of trafficking and cultivation of illegal drugs which has prolonged the conflict in Colombia. What is even more interesting is that the final treaty is correct in stating that the conflict began before the appearance of drug trafficking in Colombia, but it fails to mention that the scale of crimes committed and power accumulated by the FARC after its appearance is too great to ignore.

Furthermore, section four of the final treaty, states that the cultivation of illegal drugs is linked to poverty, marginalization and a weak government presence, and the presence of criminal organizations dedicated to drug trafficking (Acuerdo Final, 2016). Has the government of President Santos not been made aware that the FARC, after major cartels lost their influence and power, forced rural civilians into the cultivation of coca plants (Otis, 2014), reaping the benefits and threatening these communities, is not also the result of organized crime? Even more, the question remains as to how the FARC can assist the government of Colombia in eradicating the cultivation of illegal drugs, specifically the coca plant, if it is demobilized? Illegal drug cultivation and trafficking is a source of violent crime, mainly because of the wealth it creates. Already, in regions where the FARC has left and the government has not advanced and established a strong presence, violence is once again on the rise (Graham-Harrison, 2017). Importantly, it goes to say that not all members of the FARC are readily agreeing to give up their arms, for most, it is the only way of life they have known, where the opportunity to join other guerrilla and rebel groups is a huge possibility.

The Final Treaty also names one of the objectives of the government of Colombia, and that is to install a strong government presence in areas that the FARC has given up (Acuerdo Final, 2016). The important issue to note is that these regions did not ever have a strong government presence, and if President Santos does not begin sending reinforcements immediately, this vacuum will be the source of instability and primary cause of the possible dissolution of the peace process. Colombia has suffered for many years from civil wars and internal conflicts with guerrilla groups and armed rebels, but the most important lesson has been ignored, and that is that if conditions are to be improved and lasting, sometimes the road to stability is weary and long, but nevertheless effective.

Referendum and Ratification of the Final Treaty

Not only is the lack of acknowledging the FARC's role in the trafficking of drugs an issue, but the means through which the Final Accord was ratified allows for future repercussions in Colombian politics. President Santos had determined that the Final Accord with the FARC would be approved through a referendum, stating that if the Colombian citizens rejected the treaty, the country would return to war (Cobbs & Casey, 2016). After having declared that there were no other alternatives, only war or peace, the question on the ballot just asked, "do you support the final agreement to end the conflict to construct a stable and enduring peace?" The results of the referendum were 50.2% for the no vote, and 49.8% for the yes vote, with the no vote winning by a small margin. It is rhetorical to ask a nation tortured by internal conflict and war if peace is

something they desire or do they prefer war. What the results of the referendum showed was that although many opted for a shortcut to a stable environment, was that the accord did not address the fundamental issues of the conflict, and could not ensure that a stable and "enduring" peace would be the result.

The results of the referendum did not change President Santos' stance on the final treaty between his government and the FARC. To quickly pursue his objectives, the revised peace deal did not go through a second referendum, but was ratified through Colombia's Constitutional Court (Maas, 2016). President Santos' hurry to demobilize the FARC resulted in Congress being allowed to "Fast-track" legislations of priority. To avoid a period of debate on each law, Congress could vote a "yes" or "no" on each law, and President Santos was granted power to issue executive decrees, allowing the implementation of the agreement. It is important to note that President Santos's government forms a majority in congress, which would produce the results he so eagerly desired (BBC Monitoring, 2016). However, what President Santos has apparently failed to notice is that there have been failed peace treaties before in Colombia and perhaps prolonging the debate on important issues on the agreement, was the best option.

Importantly, with President Santos pushing the peace treaty forward, it is necessary to note that his term as president is coming to an end in two years' time. If history serves as a lesson, then the failed truce with the gangs in El Salvador is strikingly similar to the actions being pursued by President Santos. After having successfully negotiated a truce with the gangs in El Salvador, and watching the murder rate fall by 40% in 2012, a change in government radically reversed these actions (Hernandez & Hamilton, 2016). When the new government of President Salvador Sanchez Ceren took power, the truce was dissolved, and once again the gangs resorted to violence to maintain their status. President Mauricio Funes denied his role in the negotiation of the truce, but sources close to him later confirmed the President's role, where they negotiated a deal with the leaders of the gangs to put an end to the violence (Martinez, 2013). The lesson is this: the results of the referendum did not support Pres. Santos' treaty with the FARC, ratifying the treaty through Congress using "Fast-Track," and ignoring the role of the FARC have in drug trafficking, leaves a leak in the system that will burst if the next government does not support these efforts, or if Pres. Santos does not introduce a strong government presence in the power vacuums left by the FARC in the nearby future.

FARC; Drug Lords to Political Emperors?

Perhaps, the most unstable aspect of the peace treaty is allowing some members of the FARC a role in politics (Murphy & Acosta, 2016). Not only is their involvement in politics a threat to Colombian democracy, but the wealth accumulated from drug trafficking has not been confiscated. The implication this can have on Colombian politics is drastic, where the drug money can be used to finance political campaigns and consolidate their power in politics. Or perhaps the FARC have perfected the tactics used by drug lords to obtain complete control over their home country, after they have accumulated vast wealth. Reminiscent of Pablo Escobar and his brief period as a congressman in Colombia (Stringer, 2013), the FARC will not be charged or arrested on drug trafficking crimes and banned from political power, which leaves the future uncertain.

Conclusion

Colombia is a country stricken and war torn by civil wars and armed conflicts with guerrilla and rebel groups. President Santos actions and intentions could be perceived as noble, in attempting to reduce the number of murders and restoring peace to his beautiful country. But, what President Santos refuses to acknowledge is that shortcuts can sometimes make the journey longer than it need be. Not only is this treaty a dance with the devil, but there is no assurance that FARC cannot have access again to international arms since the wealth it accumulated from drug trafficking can now be considered "clean money." Furthermore, in allowing the FARC an opportunity to participate in politics does not assure that they will remain demobilized and that peace is ensured. If Latin America's experience with socialist and Marxists leaning government has proved anything, is that once in power they intend to maintain authority. Likewise, as president Uribe has advocated is that the No vote was not against peace, but it is in favour of ensuring a stable democracy that can maintain peace. Finally, one question lingers: "can peace be obtained at the expense of justice? Or is it just bowing to the demands of criminals?"

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"Why Didn't Our Boys Just Shoot Him and Leave a Little Note?"

The Trial of Adolf Eichmann in Israel

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Abstract. Historically speaking, the trial of former Nazi Adolf Eichmann was an unavoidable spectacle of the 1960s. For some, it could have been seen as a farce due to its inherent impartiality as the accused was illegally kidnapped out of Argentina and the proceedings were held in the fledgling state of Israel. For others, it reopened unpleasant wounds and brought back the horrors of Nazi Germany. For the world, it was an educational opportunity that allowed a new generation to learn about the atrocities of the Holocaust. My paper examines Eichmann's role in the Holocaust, his trial and subsequent sentence, the question of the legitimacy of the proceedings, and the trial's significant impact on how society viewed the Holocaust. From public opinion on Israel to new philosophical ideas, the Eichmann trial challenged people to reevaluate everything that they had known about Nazi barbarities, specifically those committed against the Jews. The reason why the Israelis did not simply "shoot him and leave a little note" was because his trial would, in fact, serve a political purpose. Was Eichmann really that important? Was he as central to the Holocaust as Israel would like the world to believe? There is a substantial amount of evidence that indicates Eichmann was not quite so important and that, instead, his highly-publicized trial was used to further the belief that the Holocaust was a uniquely Jewish experience thus validating the existence of the newly-created state of Israel in the Middle East.

Panel Paper

"Why didn't our boys just shoot him, and leave a little note?" (*The Times,* 1961). The trial of Adolf Eichmann was an unavoidable spectacle of the 1960s. For some, it could have been seen as a farce due to its inherent impartiality. For others, it reopened unpleasant wounds and brought back the horrors of Nazi Germany. For the world, it was an educational opportunity that allowed a new generation to learn about the atrocities of the Holocaust. We will first look at both Eichmann's role in the Holocaust as well as his trial and subsequent sentence. Above all, Eichmann's trial had a significant impact on how people viewed the Holocaust. From public opinion on Israel to new philosophical ideas, the Eichmann trial challenged people to reevaluate everything that they had known about Nazi barbarities, specifically those committed against the Jewish people. The reason why the Israelis did not simply "shoot him and leave a note" was because his trial would, in fact, serve an eventual purpose.

Otto Adolf Eichmann was born in Solingen, Germany in 1906 (Arhoni and Deitl, 1997: 18) to Protestant parents (Yablonka, 2004: 13). He attended Kaiser-Franz-Josef State Secondary School and later, worked as a salesman for some time before being persuaded to join the Schutzstaffel (SS) by a family friend (Arhoni and Deitl, 1997: 18). Eichmann had been a mediocre student, could never hold a consistent job, and was seen as largely a failure to his family. He moved up through the ranks of the SS somewhat surprisingly, given his background. His colleagues considered him to be an expert on the Jewish people, as he took it upon himself to learn Yiddish

and gave lectures on Zionism to the SS. He had read Theodor Herzl's *The Jewish State* and Adolf Bohm's *The History of Zionism* (Yablonka, 2004: 13-14). He later became the head of the Reich Main Security Office (RSHA)'s Section IVB4 in 1941, which concerned itself with "Political Churches, Sects and Jews" (Kitchen, 2006: 278). He would hold this position until the fall of the Third Reich.

Eichmann was a peculiar character as he was described by his colleagues as "pedantic, conscientious and without any specialized knowledge," since they did not care for his fascination with what they saw as a subclass race (Arhoni and Dietl, 1997: 20). Moreover, he attempted to make up for his shortcomings with "fanatic dedication" (Arhoni and Dietl, 1997:20). He was praised for his work, and in January 1938, he was given official recognition for "broad knowledge of the organizational and ideological methods of the enemy, the Jews" (Arhoni and Dietl, 1997: 20). Eichmann had, supposedly, finally found where he belonged and his dedication was such that he would follow his *Führer* to death if need be (Stangneth, 2016: 54).

After the annexation of Austria in March 1938, Eichmann was appointed the head of the emigration office in Vienna and within 18 months had forced some 100, 000 Jewish Austrians to leave the country (Yablonka, 2004: 14). At this point, the Nazi regime's goal was still emigration (Arhoni and Dietl, 1997: 21), however the Wannsee Conference in 1942 ironed out the details of the "Final Solution" (Yablonka, 2004: 14). Eichmann took the minutes at this conference where Reinhard Heydrich announced his intention to rid all of Europe, including Britain, Sweden, and North Africa, of the Jewish race. At his trial, Eichmann recalled that there was a lengthy discussion at Wannsee about the merits of different types of mass murder (Kitchen, 2006: 305). This is not surprising, since as early as September 3rd, 1941, Cyclon-B was already being used to gas enemies of the Nazi regime in Auschwitz (Arhoni and Dietl, 1997: 33).

Over the course of the war, Eichmann was considered by many to be the architect behind the colossal transfer of the Jewish people to Eastern Europe, and later, to the concentration camps. He began in Austria, and at the end of the war, he arrived in Hungary to deport 500, 000 Jewish Hungarians in just a few short weeks (Yablonka, 2004: 14-15). In his book, *The Eichmann Operation,* Zvi Aharoni, a former Mossad agent, stated that Eichmann was responsible for the organization of "the industrialized extermination of a whole race" (1997: 21). His nicknames ranged from Manager of the Holocaust, Engineer of the Jewish Genocide, the Final Solutionist, the Bureaucrat, and the Mass Murderer (Stragneth, 2014: xvi). David Ben-Gurion, the Prime Minister of Israel during Eichmann's trial called him "one of the greatest Nazi criminals" (Yablonka, 2004: 16). David Astor referred to him as one of the worst Nazis to have survived the war, and could not believe that he had the audacity to try to live a normal life after what he had done (1961: 6).

On the other hand, people like Hannah Arendt expressed sympathy for Eichmann. She asserts that Eichmann had been following orders and had never killed anyone, Jew or non-Jew (Arendt, 1963: 15). In *Eichmann Before Israel*, Bettina Strangneth stated:

> "Depending on whose account you read, he comes across variously as an ordinary man who was turned into a thoughtless murderer by a totalitarian regime; a radical anti-Semite whose aim was the extinction of the Jewish people, or a mentally ill man whose innate sadism was legitimated by the regime." (2014: xvii)

Eichmann became an extremely controversial figure, and his trial was widely publicized. There were many different views of this ex-Nazi, and it seemed that everyone had an opinion.

Moreover, much contradicting evidence about Eichmann's character existed, thoroughly confusing anyone who delved into researching him.

As expressly stated earlier, Eichmann had an affinity for Jewish studies. He admired Theodor Herzl, the founding father of Zionism, and he was known as sort of an expert amongst his SS peers. In fact, while stationed in Vienna, he issued an order to punish anyone who desecrated Herzl's grave and even visited it himself on the 35th anniversary of Herzl's death (Mulisch, 2005: 15). He was a pro-Zionist and conceded that the annihilation of the Jewish people was "one of the greatest crimes in the history of humanity." He apparently bore the Jewish people no ill will and acted solely out of his responsibility to the regime (Hartouni, 2012: 23). Eichmann himself said during his interrogations in Israel that he had encouraged Zionism, or the creation of a Jewish homeland, since it fell nicely in line with the Nazis' desire for Jewish emigration (Von Lang and Sibyll 1983: 24-25). It is this version of Eichmann that was seen as a mere "transportation officer," (Hartouni, 2012: I) who shouldered little blame for his actions, as he was "just a small cog in Adolf Hitler's extermination machine" (Strangneth, 2014: xv).

There is also plenty of evidence that suggests Eichmann was an anti-Semite. In Hungary he was known for such slurs as: "I am the bloodhound!", "I'll set the mills of Auschwitz grinding!", and "I'll do away with the Jewish filth of Budapest" (Strangneth, 2014: 49). When he was captured, the headline in London's *The Times* referred to him as the "Gestapo's Chief Jew-Baiter" (1960: 12). His most infamous quote was that he "would jump into his grave laughing, in the knowledge that he was responsible for the death of five million Jews" (Mulisch, 2005: 5). He bragged that the term "Final Solution" was his brainchild (Strangneth, 2014: 31). According to Arendt, Eichmann's greatest downfall was his desire to boast and brag (1963: 26). He claimed that the Jewish ghetto system was all his idea, and that he came up with the plan of shipping the Jewish to Madagascar. Both of these last two pieces of information are verifiably false, but for one reason or another, he wanted people to believe that they were true. For Rudolph Kastner, the leader of Hungarian Jewry, Eichmann was depicted as a god (Bilsky, 2001: 140). Kastner attempted (and failed) to negotiate a deal with Eichmann that offered 10, 000 trucks for the Nazi war effort in exchange for sparing the lives of a million Jews (Bilsky, 2001: 137). Eichmann was seen as a deity since he was the one responsible for the destruction of the Jewish people, but he also symbolized hope since it was he who could save them.

The fall of the Third Reich put a decisive end to Eichmann's career. He was fortunate enough to evade capture by the Americans after he escaped to Argentina. Soon after, his wife and children joined him and they assumed new identities, with Eichmann taking the name of Ricardo Klement (Yablonka, 2004: 15). His whereabouts were very much a mystery for a long time. For instance, the year before he was captured, *The Times* published that he had been seen in Kuwait (*The Times*,1959: 9).

The Nuremberg Trials began at the end of 1945 to bring members of the Nazi regime to justice for their war crimes. During the proceedings, his name was brought to the public for the first time as the administrator of the Final Solution (Pearlman, 1963: 9). He was believed to be dead, and was described as ghost hovering over the trials. Though it was futile, the defendants at Nuremberg attempted to push all the blame onto Eichmann for their actions. This may have been out of sheer desperation on their parts, or perhaps it was the simple fact that they thought him to be dead, and the dead cannot testify.

One other notable occurrence happened between the end of the Second World War and Eichmann's eventual capture in 1960. The British Mandate of Palestine was experiencing considerable turmoil due to tensions between the Zionist Jews and the Palestinian Arabs and in

1947, the United Nations put forth a partition plan as a compromise. The Palestinian Arab village of Deir Yassin was massacred at the hands of Irgun, a Jewish terrorist paramilitary group, which started the flood of hundreds of thousands of Palestinian refugees into neighbouring Arab countries, creating the Palestinian refugee crisis as we know it today. In May 1948, the independent state of Israel was declared, which the Americans and the Soviets immediately recognized, however was met by resistance from Egypt, Iraq, and the former Transjordan (Wheatcroft, 1996: 231-35). This upset of the status quo in the Middle East is crucial to the understanding of the Eichmann trial.

Mossad, the Israeli intelligence service, captured Eichmann in Argentina on May 11, 1960 (Arhoni and Dietl, 1997: 146). The Israelis had received fragments of information regarding Eichmann's whereabouts as early as 1957. This was a somewhat exceptional case due to the fact that Israel's priorities in the 1950s were far from hunting Nazis. They were trying to stabilize themselves as a new state after the War of Independence and were in the middle of an economic crisis. The 1950 Nazi and Nazi Collaborators (Punishment) Law put in place by the Israeli government was requested by the thousands of new Holocaust survivor immigrants, but it did not result in the active search for remaining elusive Nazis. Mossad itself was not yet fully established as an intelligence service, and functioned as a small-time investigative group for internal security threats (Yablonka, 2004: 9-13). The capture of Eichmann could somewhat be considered a coincidence, however waiting in the recesses of many survivors' minds was the desire for revenge.

Before we examine the impact of the trial, it must be noted that the circumstances of the trial often negatively affected people's perception of Israel. In 1961, Charles Glock, Gertrude Selznick, and Joe Spaeth conducted a study called *The Apathetic Majority* whereby they interviewed a portion of the population of Oakland, California about their opinion on the Eichmann Trial (1966). The study revealed that 28 per cent of the participants believed the trial to be illegal for one reason or another. One participant was quoted as saying: "They had no right to arrest a man in another country and kidnap him out. According to international law, they didn't have the right. Definitely, it's illegal" (Glock et al, 1966: 88-89). The Argentine government commented that though they understood Israel's need for vengeance, they did not appreciate the breach of their sovereignty and condemned Israel for not going through proper channels to extradite Eichmann (*The Times*, 1960: 10). Another issue with the legality of the trial was the impartiality of the Israeli judges. As the Holocaust is a deeply disturbing moment in Jewish history, it is logical to assume that Jewish judges would have a significant conflict of interest causing some considerable bias. Public opinion went so far as to suggest an international court or a mixed tribunal for Eichmann instead (Papadatos, 1964: 40-42). Another problem was the question of whether Israel had the right to actually prosecute Eichmann for his crimes. He was a German citizen, the acts were perpetrated outside Israeli territory, and furthermore, Israel did not exist as a state when these acts were committed. All of these challenges are a far cry from Ben-Gurion's statement that "it is historic justice that [Eichmann] be tried by a Jewish state. Only a Jewish state can try him, from a moral point of view" (Glock et al, 1966: 87).

All of these viewpoints aside, Adolf Eichmann's trial began on April 10, 1961. There were 15 charges laid against him: eight for crimes against the Jewish people, four for crimes against non-Jewish people (specifically Poles, Slavs, and those deemed "gypsies"), and three for membership in illegal groups (as determined by the Nuremberg trials). Eichmann did not plead guilty and instead claimed "moral guilt" in the death of the Jewish people, which attempted to solidify his defense that he was simply following orders (Glock et al, 1966: 12-13). During his trial, Eichmann stated before the judge, when faced with evidence about the deportation of the

Jewish people that: "I could not decide anything on my own authority, I received my orders, and the matter was dealt with in accordance with the orders" ("The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem, Volume IV," 1993: 1449). He also stated in his interrogations, "with the delivery of the transports to their designated terminals in accordance with the timetables set by the Scheduling Conference, [his] authority came to an end" (Arhoni and Deitl, 1997: 34). However, Arendt (1963: 14) explored the idea that it had been Eichmann's "duty to obey" and she asserted, like his lawyer, Robert Servatius, that he was "guilty before God, not the law." Nevertheless, Eichmann was found guilty on all 15 counts, his appeal went unanswered, and he was sentenced to death by hanging on May 30, 1962 (Glock et al, 1966: 14).

Though Eichmann died almost 55 years ago, the debate surrounding his trial still continues to this day. This is due to the considerable impact that the trial had on people. For simplification purposes, these impacts can be broken down into four categories: the reopening of old wounds, the educational purposes of the trial, the political aims, and the philosophical debate generated around Arendt's "banality of evil."

Firstly, and quite obviously, the Eichmann trial, fifteen years after the end of Hitler's rule, brought horrors to the forefront that people wanted to forget. Firstly, the Eichmann trial brought the horrors that people had spent 15 years attempting to repress back to the forefront of their thoughts. Many people, Holocaust survivors and the general population alike, wanted to forget the Second World War and the atrocities associated with it. Especially in Israel, survivors turned their attention away from their experiences in the camps and notions of revenge to rehabilitate themselves and their families (Yablonka, 2004: 12). In 1961, *The Times* published an article called "Disquiet in Israel Over Eichmann Trial" which outlined all the challenges facing Holocaust survivors now that their past had been unearthed and they were being forced to live through the painful memories again. The article states:

> "For one thing, too many homes lodge too many ghosts which gradually had been laid to rest and are now beginning to stir and make ready to come forth. Obviously the re-telling of their narrative must provoke many of them to appear before those who survived the morning. The effect of this should not be exaggerated, of course. It may even be for the greater good that the ghosts should walk.: (*The Times*, 1961: 9)

In Germany, the intergenerational clash was only aggravated by the Eichmann trial. The "culprit generation", those who had lived through the Nazi era, suffered from collective amnesia and were considered "infantile." The younger generation, those born during or after the war, experienced inexplicable guilt for what had happened and resented the older generation for their smugness and self-righteousness (Kitchen, 2006: 349). Both the Auschwitz Trial in 1963 and the Eichmann Trial were uncomfortable reminders of a past that many did not want to remember.

Secondly, the trial served as an educational tool to teach a new generation about what had happened under the Nazi regime. The Eichmann trial appeared as a perfect opportunity for the world to be reminded about the dangers of anti-Semitism (Glock et al, 1966: 5). Ben-Gurion even conceded that bringing Eichmann to justice was not the purpose of the trial, but rather to expose the world to the truth of what the Nazi regime did to Europe's Jewry ("Israel's Right to Try Eichmann," 1960: 11). The Eichmann trial was also the first trial where survivors were present and publicly vocal (Mulisch, 2005: xxii). For the first time, the suffering of those who endured the Holocaust was validated. It changed the world's perception about the victims of the genocide (Lipstadt, 2011: xi) and challenged not only the anti-Semitism that was present in Germany, but also anti-Semitism all over the world. The chief prosecutor of the trial, Gideon Hausner, expressed

that in prosecuting Eichmann, he was speaking for all six million Jewish victims of the Holocaust. He continued, "But alas, they cannot rise to level the finger of accusation in the direction of the glass dock and cry out *J'accuse* against the man who sits there" (Felman, 2001: 214-216). His use of French here was subtle and yet significant; making reference to Emile Zola's outrage over the Dreyfus Affair in France, thus questioning the existence of deep-rooted international anti-Semitism.

Unsurprisingly, the Eichmann trial had political aims as well. Shoshana Felman argued in her article "Theaters of Justice" (2001: 208) that Ben-Gurion actually planned this trial as a means to achieve his own political goals. The questions that were on everyone's mind: was Eichmann really that important (Yablonka, 2004: 17)? Was he as central to the Holocaust as Israel would like the world to believe?

He is often seen as the sole person responsible for putting the Jews on the trains to concentration camps; however, he was only known to do this in Austria and Hungary, as aforementioned. In other pro-Nazi or Nazi-occupied states there were others charged with this duty. For example, in Slovakia, it was Dieter Wisliceny, a German SS officer, who was dispatched to organize the deportation of the Jewish Slovaks. He was considered a "deputy" of Eichmann and attempted to impoverish the Jewish people in Slovakia to encourage emigration by creating a social problem (Ward, 2013: 215). All of this, of course, could not be possible without the support of Jozef Tiso, the Catholic priest and leader of the newly-declared Nazi-satellite state of Slovakia, who asserted that the Jewish people needed to be eradicated like the parasites they were to liberate the Christians from their presence (Ward, 2013: 229). The Hlinka Guard, the remnants of Slovakia's storm troopers, engaged in anti-Semitic practices and was instrumental in the deportations since they looted the vacant Jewish homes as soon as they were forced to leave (Jelinek, 1976). Ironically enough, Eichmann defended Tiso during his trial, saying the Slovak leader was a moral Catholic priest who wanted nothing to do with the deportations (Ward, 2013: 244). If Eichmann was the sole perpetrator of the deportations, as Israel would like the world to believe, it is curious that Wisliceny would be listed alongside of him as an equal (Fisher, 1958: 95).

One other group of accomplices that Arendt implicates in her book (1963: 60-61) were the Jews themselves. She accuses the *Judenrat* of cooperating in the "destruction of [their] own people." She regarded them as "instruments in the hands of murderers." For her, the Jews who worked with Nazis were just as much to blame as Eichmann. It was these Jewish people in Warsaw who were exempt from deportation, along with Jewish people who worked in factories for the German war effort and the Jewish police. This convenient agreement also included the immediate families of those implicated (Gutman, 1982: 2004). However, in such trying times, it is basic instinct for humans to try to save themselves and their families at any costs. It is not surprising, then, that this was the case.

In terms of political agendas, one argument is that the trial was used to further the belief that the Holocaust was a uniquely Jewish experience (Yablonka, 2004: 9). This serves to justify the existence of the newly-created state of Israel as the victims of the Holocaust did not die in vain, but rather died so Israel as a nation could live (Wheatcroft, 1996: 264). It can also be seen as "revenge by restoration"; that Israel was founded to "show the world that the Nazis had failed to exterminate the Jewish nation." For Hanna Yablonka, the Eichmann trial is as important to the understanding of Israel as it is to understanding the Holocaust itself (2004: 7). Moreover, the equation of anti-Semitism and anti-Israel rhetoric is often made, and this comparison is a dangerous one. Ironically, Eichmann, in his Argentine writings, is actually accused of this. He

criticized Israel's participation in the Suez Canal crisis and is immediately labelled as an anti-Semite (Strangneth, 2014: 226-27). It is not surprising then, that Arendt, who showed sympathy for Eichmann, was despised in Israel. She was denounced by Jewish critics and was accused of betraying her people (as she, herself, was a German Jew). The Eichmann trial could be seen as a way to justify the existence of Israel. Playing on world sympathies for the Holocaust survivors and their ordeal would certainly be effective.

Finally, the Eichmann trial gave birth to a philosophical debate that still captivates historians and academics to this day. Hannah Arendt attended the highly-publicized trial as a journalist for the New Yorker and wrote *Eichmann in Jerusalem: A Report on the Banality of Evil*. After it was released, Arendt was heralded as a "self-hating Jewess" who wrote a "pro-Eichmann series" (Wheatcroft, 1996: 263). The book attempted to debunk much of the mythology surrounding his place in the Holocaust. For example, she explained that his famous quote about leaping laughing into his grave was not about "five million Jews" but instead "five million enemies of the Reich" (Arendt, 1963: 26). Arendt's report became a phenomenon. Strangneth commented that since *Eichmann in Jerusalem* was published, every work on Eichmann has "also been a dialogue with Hannah Arendt" (2014: xxii). The concept of banality of evil that Arendt puts forward is that Eichmann was not stupid nor was he demonic. Instead, he acted out of thoughtlessness in that he "never realized what he was doing" (Arendt, 1963: 134). One critic likens her idea of the banality of evil to bacteria, since it can cause plagues that wipe out entire nations but remains simply bacteria (Hartouni, 2012: 117). Arendt suggested, "No deep-rooted or radical evil was necessary to make the trains to Auschwitz run on time." Geoffrey Wheatcroft in his book, *The Controversy of Zionism*, explained that "Eichmann himself was a vapid and pointless human being, a bureaucrat who had applied himself to the task of killing Jews as he might have done to improving a water supply or a banking system, all part of a day's work" (1996: 264). The point was that Eichmann was not a monster, but he was actually something much worse - a man. It is easy to explain away the Nazis as aberrations, but it is much more terrifying to realize that they were just human beings, and that means all humans, despite our idealism, are capable of horror as well.

The Eichmann trial was a pivotal landmark in Holocaust history. Its placement in the 1960s, 15 years after the Nuremberg Trials, ensured that it would have a considerable impact on how the world viewed the Holocaust. It reopened old wounds, allowed for education on the dangers of anti-Semitism, served a political goal in Israel, and gave birth to one of the most prominent philosophical debates in modern history. The issue of innocence versus guilt is not necessarily the most prominent question in the discussion of this topic. Eichmann bore the legal culpability to some extent and deserved the punishment that followed. The better question is if his trial should have been relevant to the course of history or if it was used deliberately (or unwittingly) to achieve an ulterior goal. It is probable, especially coupled with the conception of the Holocaust as a uniquely Jewish experience, that it was utilized as a strategic move. Arendt's report on the banality of evil actually refuted the uniqueness of the Holocaust in a subtle way. In explaining that everyone was capable of what Eichmann did, she stripped away the glorification of the Holocaust and instead, attributes genocidal tendencies as a simple facet of human nature. After all, the Holocaust was not the first genocide of the twentieth century, nor was it the last.

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Comparing Sexual Harassment Alternative Dispute Resolutions Mechanisms at Universities in Canada and the United States

Getting Policy Right

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Abstract. The United States and Canada have markedly different legislation dealing with sexual harrassment policies on university campuses. In the States, there is a federal standard which publicly funded universities must meet, or they risk losing federal funding. Conversly, in Canada eduation is a provincial jurisdiction and the result is a patchwork of standards. This essay examines the American standard, Title IX, and then employs it to show theoretical problems with the sexual harassment policy in place at Memorial University. It further purports that the inefficacy of title IX is due to the courts interpretation of the act, and not its contents.

Introduction

Sexual harassment is an epidemic across North American universities. The United States has made concrete headway on this issue by implementing a federal standard. Publically funded American universities are expected to conduct investigations and hearings on sexual harassment complaints with a degree of uniformity. However, in Canada education is a provincial power which makes it difficult to establish uniform sexual harassment policies and procedures across the country. The result is a patchwork of standards, with some provinces implementing legislation, and others leaving it up to institutions to design their own procedures.

Memorial University of Newfoundland has designed its own procedures for dealing with sexual harassment complaints. The procedure is outlined in the Memorial University Student Code[1], and the Memorial University Sexual Harassment policy.[2] There are serious procedural issues with the practices employed by Memorial particularly concerning the standard of evidence, interim measures, and transparency.

Title IX of the Education Amendments of 1972[3] along with the Cleary Act[4] establish the federal standard in the United States. It enumerates the appropriate standard of evidence, interim measures, and transparency obligations for publically funded universities. These standards greatly enhance the effectiveness and legitimacy of the university dispute resolution system by balancing the rights of complainants and respondents through the use of the balance of probabilities standard of evidence, mandating numerous interim measures, and requiring that on campus crime statistics be made public. Investigators and advisors of sexual harassment claims must receive Title IX

[1] Memorial University Board of Regents. "Memorial's Student Code of Conduct" (2015) https://www.mun.ca/student/conduct/code_of_conduct.php
[2] President, through the Sexual Harassment Advisor. "University Policies: Sexual Harassment" (2010) http://www.mun.ca/policy/site/policy.php?id=192
[3] The United States Department of Justice. "Title IX of the Education Amendments of 1972"
[4] The Cleary Act. Pub.L. 101-542.

accreditation in order to ensure that there is a degree of uniformity across college campuses and prevent malpractice.

Despite the use of various policies to increase transparency, and balance the rights of accused persons with complainants, Title IX has been dogged by ineffectiveness. This is due to the failure of the legal system to enforce the standards outlined in Title IX, though activists have has had legal victories as well. The past ineffectiveness of Title IX is not due to any problems with the content of the bill, and, these problems would not necessarily appear in the Canadian system.

Burden of Proof

In dispute resolution it is important to know which standard of evidence is required in order to prove guilt or innocence, or determine liability. In criminal proceedings guilt is proven beyond a reasonable doubt, hereafter BARD, which was discussed by the Supreme Court of Canada in the decision of R v Lifchus. Reasonable doubt cannot be imaginary or frivolous but rather must arise from the record, the belief that an accused is likely guilty, or probably guilty is not enough to satisfy the burden. The standard is just short of absolute certainty, and requires surety that the accused committed the offence[5].

In civil proceedings a claim must be proven by the much lower balance of probabilities or the preponderance of the evidence standard, which is commonly accepted to be over fifty percent. In Canada, "there is only one standard of proof in a civil case and that is proof on a balance of probabilities."[6] The balance of probabilities is not an exacting standard but it can be understood simply as "whether it is more likely than not that the event occurred."[7] When employing the standard in civil cases it is easy to make mistakes, such as taking into account the inherent improbability or the seriousness of the event in question. In the Canadian context these factors are considered irrelevant to the burden of proof. The application of this standard is not without nuance, and juries are given explicit instructions by experts in the law so that they can properly apply it. Analogously in the United States advisors and investigators of Title IX complaints are required to undergo training on the adjudication of complaints in order to meet the federal standard.

Across forms of dispute resolution the use of an explicit burden of proof is common practice for good reason. Canadian Universities need to choose one standard so that victims know to what extent they must prove that misconduct has taken place. The problem that many Canadian Universities have, including Memorial University, is that they do not clearly state *which standard* is being applied. Victims should not be left wondering to what degree they must prove that their claims are true. Further, without uniformity the process is open to discrimination and malpractice. Judges, those responsible for deciding the results of an investigation or hearing, are able to hold sexual harassment to a higher standard of evidence than other types of complaints. This is likely to occur given that they are not trained in the application of standards and even if they apply the civil standard adjudicators are likely to incorporate inherent improbability as well as seriousness into their analysis. It should be no harder for a woman to prove that she is being sexually harassed than for a man to prove that he is being bullied. Given how common misconceptions about sexual assault and harassment are in the judicial system, steps should be taken to make sure that this form of dispute resolution does not have the same issues. In not explicitly setting a standard on this

[5] R v Lifchus. [1997] 3 S.C.R 320
[6] F.H v McDougall, 2008 SCC 53
[7] Supra 6 at para 44

matter adjudicators set a *double standard* for victims of sexual harassment, one based in myth and misconception.

Title IX establishes that complaints are decided on the balance of probabilities explicitly. This has increased impact as American law uses three standards, BARD, balance of probabilities, and clear and convincing. The standard of clear and convincing lies between the civil and criminal standard, requiring the evidence show a contention be in excess of "more likely than not" but not quite reach the surety required of BARD. Legal minds have had a tendency to gravitate towards a higher burden for criminal conduct within the civil system. However, the Americans and the Canadians agree that the civil standard applies in the context of sexual assault and harassment. Simply, raised standards apply to situations where an accused's constitutional rights hang in the balance as in criminal cases. The civil system employs the lower standard because society as a whole does not have an interest in the outcome, that interest being the life, and liberty of its individuals. The standard of BARD come sfrom the positive obligation of the state not to imprison innocent people whereas in civil law, or university alternative dispute resolution (hereafter ADR), there is no such obligation. The application in the context of sexual harassment in university ADR is justified by leveling the playing field across complaints. It should be no easier for a man to prove that he is being bullied than it should be for a women to prove she is being sexually harassed.

Interim Measures

Interim Measures are not uncommon across alternative dispute resolution mechanisms especially within international arbitration. They generally allow for the preservation of individual or state rights while cases are pending. This is beneficial especially in the context of international arbitration where proceedings can take years. In the university context it is important to decrease the likelihood of detrimental conduct occurring as time goes on in combination with creating appropriate support mechanisms moving forward. Given the high pressure environment of university learning, steps should be taken to decrease the impact of a proceeding on the participants throughout the investigation and moving forward.

Within Memorial's student code there are two interim measures which are available to a victim of university misconduct before the final outcome of their complaint has been determined. They are *suspension without notice* and *removal from residence*. Both of these interim measures are directed at removing the accused from the situation, which may be detrimental to the resolution process. Many victims do not wish for the accused to know of their allegations for fear of retaliation. These interim measures do not help this class of victim. Further they skirt the due process which should be afforded to the accused, allowing the university to punish someone as if they were guilty before they are proven guilty. Procedural fairness is a cornerstone of dispute resolution and bypassing due process regardless of the nature of the evidence undermines the accused's right to defend themselves. Across forms of dispute resolution it is standard practice to allow an accused to bring a defence prior to a penalty being imposed and removing the right to do so undermines the objective of the system; to provide a true and equitable verdict for the parties involved.

Memorial's university-wide Procedures for Sexual Harassment Concerns and complaints paints a somewhat different picture. It sets out that interim measures may be taken "to protect the health, safety, and security of other members of the University community."[8] The procedures make

[8] University-wide Procedures for Sexual Harassment Concerns and Complaints. at s.f

little attempt to show what this entails in concrete terms, and due to lack of transparency little is known about the effectiveness of this policy.

In the United States, interim measures include: academic accommodations, medical and mental health services, change in campus housing and/or dining locations, assistance in finding alternative housing, assistance in arranging for alternative college employment arrangements and/or changing work schedules, a "no contact" directive pending the outcome of an investigation, escort services, transportation accommodations, and assistance identifying an advocate to help secure additional resources. Notice that the vast majority of these measures involve insuring the wellbeing of the victim without alerting the accused. Victims of sexual harassment have widely varying needs which must be accommodated to help them cope and move forward with their university lives. By giving them options the university dispute resolution process becomes exponentially more effective. Because the list is explicit and federally mandated students are more likely to avail of its benefits, and universities are more likely to comply with the standard.

Transparency

Transparency allows society to hold systems of power accountable. The police are required to release statistics on crime and investigations so that society can see areas where individuals are being treated unfairly. Similarly the judicial system is open to the public, bar extenuating circumstances, so that judges and lawyers can be held accountable for their actions, and statistics may be linked to overarching problems. The public is entitled to know the crime statistics within given area, and these statistics directly influence decision making. People might examine the stats when determining where to buy a home, or where to send their children to school. With the neo-liberalization of the university structure in both Canada and the United States, it is easy to see why many universities are reluctant to release statistics on sexual harassment, assault, and other crimes. There is an economic disincentive in doing so, as it tarnishes the reputation of the university and is perceived to hurt enrollment.

Transparency is especially important with regard to sexual assault and harassment, where myth and misconception have caused problems in the criminal justice system. Reports of sexual assault are classified as unfounded by police at disproportionately high rates; the rate sits at 16% while being only 7% for other violent crime. This information is available through statistics Canada, and shows that systemic discrimination still occurs within the police force.[9] Misconceptions on the nature of consent, and reasonable conduct after trauma are still common in Canada as illustrated by the conduct of Robin Camp, a federal court justice who in 2015 asked a complainant in a sexual assault case why "couldn't you just keep your knees together?"[10] Because misconceptions such as these are common in the handling of sexual assault cases, and sexual

[9] DuBois, Teresa. "Police Investigation of Sexual Assault Complaints: How far Have We Come Since *Janes Doe?*". Sexual Assault in Canada: Law, Legal Practice and Women's Activism. (2013) pg. 191-211. At pg. 196. As well as Sex Information and Education Council of Canada. "Sexual Health Issue Brief: Sexual Assault in Canada: Legal Definitions, Statistics, and Frontline Responses" at pg. 3-4. And Roberts, et al. "Trends in crimes of sexual aggression in Canada: An analysis of police reported and victimization statistics. International Journal of Comparative Criminology. 18, 187-200. (2013)

[10] http://www.cbc.ca/news/politics/canada-judge-judical-review-robin-camp-1.3311574

assault falls under the umbrella of sexual harassment, transparency procedures are an integral part of any sexual harassment policy.

Under the Memorial University procedures a penalty may be placed upon the complainant if the complaint is determined to be "frivolous or vexatious". As no description is given to show what exactly makes a complaint "frivolous or vexatious", it is easy to see how this can be abused. With no explicit burden of proof, or definition, there is nothing preventing any and all complaints from being considered vexatious or frivolous. The university should document and release statistics on the number of complaints so that the quality of the dispute resolution mechanism may be accurately measured, and complainants are not unduly punished.

The problems with Title IX

In 2012 President Barack Obama wrote on op-ed reflecting on the history of Title IX.[11] The op-ed speaks fancifully of the document effectively "addressing inequality in math and science education to preventing sexual assault on campus to fairly funding athletic programs". The reality, however, is far from the optimistic musings of Mr. Obama. Title IX has been dogged by inefficiency in its attempts to dispel discrimination. Its egalitarian dreams are haunted by bureaucratic nightmares.

This is not to say that there has been no progress made with Title IX. Like many other legal entities the progression is slow. Such is the nature of the relationship between civil rights and the law. It was decades after the *Brown v Board of Education* before the decision made concrete changes in the public schools of America. Title IX is a long game strategy, and tempered by context its volatile history can be understood.

Title IX flexed its muscles first in the case of *Alexander v Yale*[12] showing the American public that the bill was meant for more than appeasing civil rights activists. A number of plaintiffs filed lawsuits against the university after being sexually harassed by their professors; one demanding sex in exchange for an "A" grade, and threatening a "C" if refused. A decision of the D.C Circuit Court affirmed the power of Title IX deciding that the "school's failure to adequately remedy sexual harassment could constitute sex discrimination prohibited by Title IX." The courts have recognized the role of Title IX in creating a safe learning environment for students. The problem is that the duty of the courts to enforce the legislation has been contorted.

In the cases of *Gebser v Lago Vista Independent School District*[13] and *Davis v Monroe County Board of Education*[14] the Supreme Court of the United States raised the standard for university liability under Title IX so high that a large degree of troubling conduct is able to slip through the cracks. Victims of sexual harassment must not only show that they were harassed and that the school failed to take action, but they must also prove that the school had "actual knowledge" of conduct which is "severe and pervasive". The result is that schools are rarely held accountable for failing to meet the standards of Title IX.[15]

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[11] Obama, Barack. "Op-ed by President Obama: President Obama Reflects on the Impact of Title IX". The White House, Office of the Press Secretary, June, 23rd, 2012

[12] Alexander v Yale University. 559, Docket 79-7547. 631 F.2d 178 (1980)

[13] Gebser et al. v Lago Vista Independent School District. USSC No. 96-1866. [1998]

[14] Davis v Monroe County Board of Education. USSC No. 97-843. [1999]

[15] Bodsky, Alexandra et al. "The promise of Title IX: Sexual Violence and the Law" Dissent, (2015), Vol.62 (4), pg. 135-144

Despite the failures of the judicial system to adequately enforce the legislation, the few victories have served as a normative framework which fuels progression. There is a space between social movements and legal text. Within this gap is where Title IX works, it plays in the grey between the world of the public and the world of policy. As the bill was tabled, opposition members attempted to have it repealed, or strike at its integrity in other ways; such as trying to exempt sports organizations which generate revenues. These attempts met with failure due to the political will behind the civil rights movement beginning with Title VII[16], and evolving into Title IX. The existence of this type of legislation emboldens social advocates; the law may not be on their side all the time but the fact that it exists brings legitimacy and efficacy to social movements by expanding their normative constraints. Legal education can also be used to shape the future of the bill through the use of educational campaigns. Title IX was not perfect feminist legislation, but it had a number of elements which appealed to the feminist community. Through educational campaigns focusing on these elements social movements are able given fuel to move forward.[17] Title IX is hailed by many feminist organizations as a success, such as the Women's Law Center[18], the Feminist Majority Foundation[19], NOW[20], and the American Association of University Women.[21]

Conclusion

Title IX brings with it a number of benefits to university sexual harassment ADR. It mandates the use of the preponderance of evidence standard explicitly, enumerates a number of interim measures, and outlines the obligation of universities to publish campus crime statistics. The Memorial University student code would benefit from these policy changes, and it would create more equitable outcomes for victims. The civil standard allows for victims to know explicitly how much evidence they need in order to prove that sexual harassment has occurred, and helps to stop the misapplication of the standard. Making a broad range of interim measures available to victims allows them to move forward with the complaint process while being able to comfortably maintain their already stressful university lifestyle. Mandating the release of campus crime statistics prompts students to take extra care when there are crimes occurring on campus, and allows for the public to ensure the effectiveness of policy. Though Titles IX has had a number of judicial failures, this is not due to the policy implications of the bill, and the bill has been a useful tool in the arsenal of student civil rights advocates for years. Given the prevalence of Sexual

[16] Title VII of the Civil Rights Act of 1964. Pub. L. 88-352. Lays out protections against employment discrimination based on race, color, religion, sex, and national origin.
[17] Katuna, Barret et al. "Unobtrusively Stretching Law: Legal Education, Activism, and Reclaiming Title IX" Social Movement Studies, (2015). 15:1, 80-96.
[18] National Women's Law Center's 40th anniversary of Title IX. 21st of June, 2012. http://www.nwlc.org/our-blog/happy-40th-birthday-title-ix-read-all-posts-nwlc's-title-ix-blogcarnival
[19] For the Feminist Majority Foundation's definition of Title IX, visit: http://www.feminist.org/education/ titleix.asp
[20] For the National Organization for Women's 'Education & Title IX,' visit: http://www.now.org/issues/title_ ix/
[21] AAUW. "3 Things that Paced the way for Women Astronauts" http://www.aauw.org/2013/06/24/3-things-that-paved-the-way-for-women-astronauts/

harassment on university campuses both in Canada and the United States it is time for universities to start looking to improve their dispute resolution processes, and the best first step would be adopting Title IX guidelines.

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Public Discourses and the Intellectual Origins of Labrador Nationalism

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Abstract. Within the province of Newfoundland and Labrador, Labrador has a distinct geographical and cultural identity satisfying many of the conditions of nationhood. In fact, given the ubiquity of nationalist symbolism and discourse in contemporary Labrador, it is easy to overlook how recently the idea of a unified regional public came to be. Its emergence between 1969 and the mid-1970s transformed Labrador society on a scale little short of revolution, chiefly by shifting control over discourse and practical affairs into local hands. Yet this public did not arise suddenly. Rather, it sprang from colonial traditions brought by figures like Wilfred Grenfell, Harry Paddon, and Lester Burry, who supplied not only a model for discourse but also the physical means for communication, through radio and improved transportation networks, while shifting the cultural centre of the region inland and openly advocating for the consolidation of a regional society. It would take twenty years from Confederation for the idea of a Labrador society to become naturalized, with Labradorian intellectualism sped along by unprecedented demographic, economic, social, and technological changes, primarily associated with resource development. Considering pre-1969 public discourses in Labrador, including indigenous, settler, and outsider perspectives, will help us to contextualize, understand, and ultimately to celebrate the sudden rise in Labradorian intellectual and literary output in the early 1970s—an output which produced the basis for our political and national identity today.

Panel Presentation Text

I am here to talk about the origins of nationalism in Labrador—which, despite the title of this morning's panel, is not part of Newfoundland. But Labrador is not truly a territory of its own, either. Its geographical boundaries have never corresponded with the jurisdiction of a government, and it is also not really a nation, if Benedict Anderson is our guide, because despite showing other tendencies of nationalism, like "boundary-oriented and horizontal" thinking (27), most Labradorians do not imagine their community to be sovereign. Still, Labrador does have a *public*, which social and literary theories of publics can examine.

I date the emergence of that public to the early 70s, when Labradorians began to assume control over local discourse and practical affairs, and established most of the social and cultural institutions that endure in Labrador today. The key moment occurred when Labradorians distinguished themselves more from non-Labradorians than from each other—when, in Michael Warner's phrase, Labrador became "a social totality", notionally inclusive of all its members (65).

"Labrador" was not a culturally compelling term, for Labradorians at least, well into the twentieth century. The Innu of Labrador had more in common with the Innu of Quebec than with their Inuit neighbours, for example—and vice-versa—and some of the southern fishing

communities had more in common with Newfoundland than with any of their aboriginal neighbours. (This is all still true, in many contexts.)

In order for people to start thinking of themselves as Labradorians: (1) the idea of "Labradorian" had to be conceived; (2) a collective of Labradorians had to be delineated; and (3) the idea of "Labradorian" had to be communicated to that collective. Labradorians could not become Labradorians until they were addressed as such, first by others and then by themselves. To understand Labrador's modern history, one must consider how and by whom its people were addressed in the years leading up to the 1970s.

Let me begin at the end. Our literary history of Labrador nationalism culminates with Elizabeth Goudie's 1973 book *Woman of Labrador*, which settled Labrador literature's dominant themes and subject matter, its dominant genre, and the choice of the trapper as Labrador's foundational national myth.

Woman of Labrador divides Labrador into two worlds: the vanishing world of the trappers in which Goudie's older children were raised, and the new world of wages and technology into which her younger children were born, after the creation of the air force base at Goose Bay. This contrast is the basis for political mobilization.

Many memoirs have followed Goudie's example, often with assistance from anthropologist editors, but the biggest local proponent is *Them Days* magazine, an oral history quarterly founded in 1975. It is easily the most-read publication in Labrador, and its subject matter and aesthetic remain amazingly hegemonic. For example, the Great Labrador Novel Contest in 1997 encouraged members of the public to submit the first page of a novel, and of the hundred or so collected, nearly all of them show exactly the same idea of what a novel should be—that is, a memoir of time in the woods. For that matter, fiction is almost non-existent in Labrador, in any medium.

Why did this happen? How do *Woman of Labrador* and *Them Days* have such an influence on Labradorian imagination? Let me ask this another way. If Goudie is the end of our chronology, then Lydia Campbell is the beginning (see Fagan). Her *Sketches of Labrador Life* were published by *The Evening Telegram* in St. John's in 1894-1895, made a small splash, and then were largely forgotten until their republication by Them Days in 1980.

But if Goudie's book aimed to represent Labrador's past to Labradorians, and to warn against an impending future, Campbell's presented Labrador to an audience *outside* of Labrador. In the 1970s, Labrador was ready for Goudie's message; but in the 1890s, there was no Labrador to listen to Campbell.

So what changed in between? Let us shift from aboriginal female writers to white male social reformers. In Campbell's day in the 1890s, we also had Wilfred Grenfell, whom most of you will know about. Let me just quote biographer Ron Rompkey: "Grenfell is most fruitfully understood not as a doctor or even as a missionary or as a hero, but as a social reformer whose instruments were political and cultural" (xiv). His effect on Labrador's society was enormous. Still, the society he sought to reform was a coastal fishing society, and from the beginning, he characterized Labradorians as his countrymen: "these hungry pale faces of people of our own race and blood" (Kerr, 79). He did not imagine Labrador as a distinct or aboriginal society. But his lieutenant, Harry Paddon, did.

Paddon lived in North West River, in the centre of Labrador, and he soon developed a more inclusive and modern sense, of who Labradorians were—as well as a desire to mobilize them politically. A year after arriving, he "realized he no longer spoke for the London board, but for the trappers, fishermen, traders, and aboriginals he treated day by day" (Paddon, xxvi). He lived out

his entire life in Labrador, and as mineral exploration began in the 30s, he worried that "The native races may be exterminated or put on reserves, and a new population may destroy the identity of the community that we have known" (243). Paddon also expounded general, nationalist views of Labrador society. In 1927, he wrote the "Ode to Labrador," still a recognized anthem, and the first major, symbolic declaration of Labradorian solidarity (see Butler and McGrath).

Another issue is that Labrador's borders were not settled until that same year, 1927. But a country—or a nation—needs not only boundaries, but also interconnectivity within them. Members of the nation's public have to be able to communicate with one another. A central figure here is Lester Burry—a United Church missionary at North West River, who became the first official elected by Labradorians to represent Labrador. A friend and classmate of Joey Smallwood's, Burry was Labrador's delegate to Newfoundland's National Convention, and contributed to the decision to join Confederation in 1949.

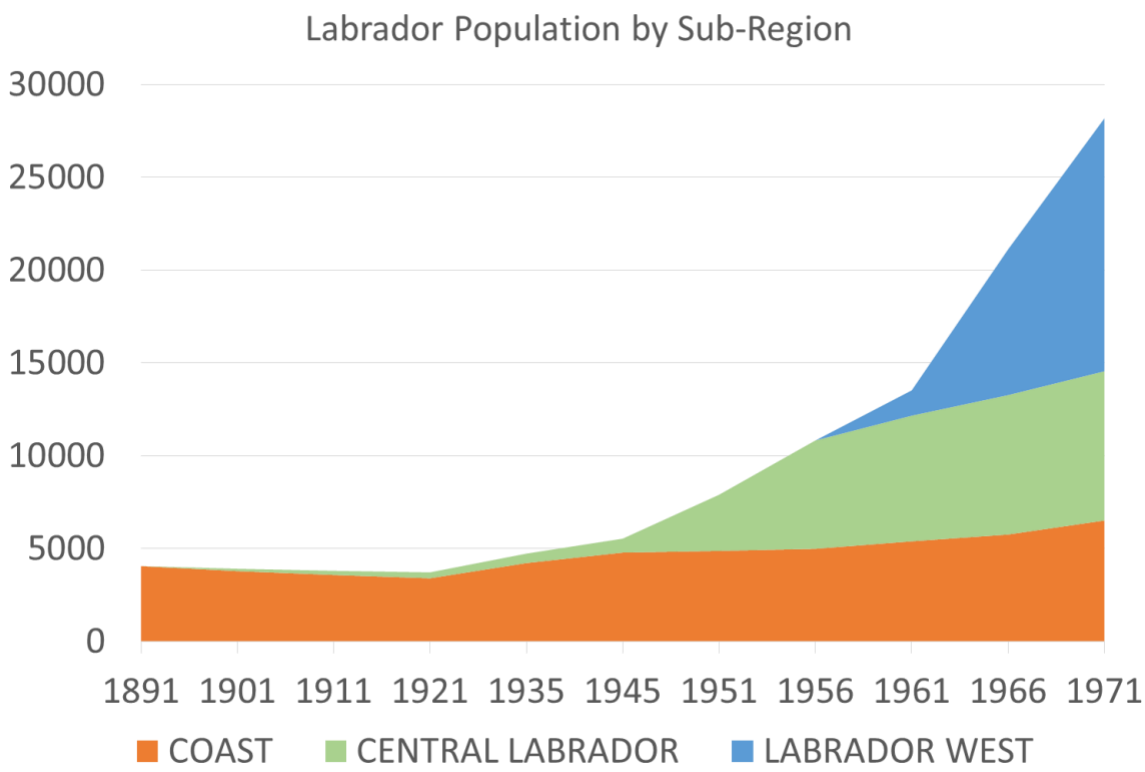
Like Grenfell and Paddon, Burry's work exceeded his profession, reaching, as biographer Hector Swain puts it, to "the totality of Labrador life" (iv). In this regard, perhaps his greatest contribution was radio—and in this way he was not unlike Smallwood himself, whose *Barrelman* broadcasts were so significant in developing a nationalist discourse in Newfoundland (see Webb).

Burry hand-manufactured radio sets for use by Lake Melville area trappers on their traplines, where they would stay for weeks at a time, with little to no human contact. He distributed these sets and conducted daily radio broadcasts, including sermons and news, for twenty years.

Elizabeth Goudie, despite all her reservations about social change in Labrador, describes the results simply: "We were all happy. We had been cut off from the outside world for so long" (quoted in Swain, 40). For the first time, someone was uniting Labrador into a public, despite their isolation not only from the outside world, but from one another inside their own world.

So, by 1949 the centre of Labradorian identity shifted from the coastal fishing communities to the residents of central, inland Labrador. Labrador had also been clearly demarcated legally and politically, and radio and transportation networks were beginning to enabling the development and dissemination of a Labradorian identity.

But I set the dawn of Labrador nationalism to about 1969-1970. The twenty years in between represent the time for one generation to grow up in the new reality, more or less. And the story of that time is one of massive industrialization, best related in sparing detail, by a chart (see Mills for source data).



At Grenfell's arrival and Campbell's writing in the 1890s, Labrador had about 4,000 residents, and more than 90% were coastal. At Confederation in 1949, there were about 8,000 people, and 40% lived in central Labrador. So a whole new public had appeared. Twenty years later Labrador had almost 30,000 people, of whom nearly half lived and worked on iron mines and hydroelectric developments in the west, and less than a quarter lived on the coast. This positioned the central population as relatively "original"—that is, compared to the real newcomers out west and in their own midst, they were able to position themselves as authentic Labradorians: their traditions pre-dated major industrial development, and although they too were a new population, they were much more likely to have local heritage, often including Aboriginal ancestry, which maintained their cultural continuity to earlier years. That allowed them to forward a thesis about Labrador; and the presence of an encroaching other (mostly Newfoundlanders) obliged them to do so. So, full circle, here we have the audience for *Woman of Labrador*. Here we have Labrador nationalism.

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