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## **Violence as a Last Resort: How Government Failures Have Perpetuated the War System in Colombia**

Sarah Caney

“A theory of the state or of revolution must assume a terrain of war to be normal” (quoted in Richani, 2002). These words, written by Antonio Negri in *The Politics of Subversion*, refer to the tendency of a nation divided by opposing factions to succumb to an indefinite state of war in an attempt to either reform or conserve existing policies. However, this statement is dependent on the assumption that these disparities cannot be solved by more democratic means, such as legislative or contractual compromises. A country’s susceptibility to this condition is reflective of the government’s inability to centralize power, thereby securing a monopoly on the legitimate use of force (Jung and Piccoli, 2001), or to establish a system whereby legal codes are understood and respected both by political actors and their constituents. This theory is directly applicable to the current situation in Colombia; the failure of governmental institutions to implement authoritative and effective policy has allowed the war system to perpetuate for decades.

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A “legitimate” government can be defined as one with “a consistency between the regime and the values and preferences of most citizens,” resulting in a situation whereby “civil society reinforces the legal system as social pressures make it costly not to comply with the law; trust and social cohesion are high, and many transaction costs are low as contracts are easy to enforce” (Thoumi, 1995). A war system would not endure in such a country. As it consists of a set of interconnected groups with their main pattern of interaction being a shared exercise of violence (Richani, 1997), a war system would be prevented in a society where the government exercises a monopoly on the use of force and is able to provide economic benefits and constitutional liberties across all socioeconomic spheres.

The Colombian government is inefficient in its protection of these provisions for the majority of its citizens. Its reliance on a patriarchal societal organization rooted in elitist sentiment, as well as its pattern of political instability, has allowed for the continued use of violence as a method of (unofficial) policy implementation. In order for a war system to survive, it must establish a positive-sum, political economy of scale in which the assets each group accrues outweigh the political and economic costs incurred (Richani, 1997). Due to the

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nature of its extensive economic inequities—it has the second-highest concentration of wealth in Latin America (Richani, 1997)—and high levels of unemployment (10.6%) and poverty (49.2%) (*World Factbook, 2008*), it is feasible that the economic benefits of a war system could outweigh those provided by legitimate governmental institutions.

### **Land Reform**

As with many other Latin American countries, patron-client relationships in Colombia have led to a government that is run for the benefit of party bosses rather than for the common good. Since government employees feel that their actions are mainly answerable to the patrons, they feel no obligation to the masses. This creates a barrier for the lower classes to achieve progress in exercising their rights through legal processes (Thoumi 1995). This is evidenced in the government's actions regarding the problem of land; the "Land Laws" of 1938 and 1944 cemented landlords' dominant control by allowing them to turn much of the land into pasture and cattle ranches, which led to a less labor-intensive market, a reduction in foodstuffs, and an increase in land prices (Richani, 2002). The peasants' land situation began rapidly declining again in the 1980s, when the country's rapid transition to capitalism led to a greater concentration of land and

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another decline in the need for local labor; compounding this was the fact that the industrial sector was in stagnation, and thus was unable to absorb the excess unemployed farmers (Richani, 2002).

### **Political Stalemate**

The clientelistic organization in Colombia prevents the government from attaining autonomy from pressure groups; such autonomy would hold beneficiaries of public policy more accountable (Thoumi, 1995). Furthermore, the establishment of the National Front ensured the political domination of two main parties: the Conservative Party and the Liberal Party (Archer, 1990). Although the creation of a system that relied on maintaining equilibrium between two groups—which had previously undergone thirteen years of violence in an effort to solve policy disputes—signaled an attempt at peace and negotiation, it also marked the end of partisan electoral competition (Archer, 1990). Thus, radical parties were driven from the political process; only the wealthy elite and the powerful had a voice in legislative decisions. As a result, the peasants and urban poor were without a legitimate means of expressing their dissatisfaction with modernization and the government's inability to transition the lower classes into a capitalist society.

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### **Controlling Violence**

In addition to the government's inefficiency regarding land reform, it has also proven unsuccessful at controlling violence. Latin America has a long history of using the military to implement policy; this proclivity was exacerbated in Colombia throughout La Violencia, the period from 1945-58 in which a civil war ensued between the Liberals and the Conservatives (Richani, 2002). More than 200,000 people died as a result; these were mostly the "peasant clients" that "made up the bulk of the landed elite's unprofessional, fragmented, and often haphazard armies" (Archer, 1990). La Violencia served to stress the fact that policy decisions were most effectively resolved through violence, rather than by democratic means. This was not lost on the peasants, who first fought under their landowning patrons, then later supported guerillas, recognizing that as a marginalized group without valid representation, violence was the only means of asserting their rights and expressing discontent (Thoumi, 1995). When a government is unable to redistribute funds in an effort to decrease inequality, the call for a revolution can always be justified by the masses.

Another cause of the government's inability to monopolize the use of legitimate force is its failure to establish an operative, capable

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justice system with clearly documented and successfully implemented legal codes. Due to case overload, the majority of criminal processes do not result in a judgment (Thoumi, 1995). This is in large part due to insufficient budgeting; in 1987 only 2% of the government's budget went to the judicial system (Thoumi, 1995). This significantly reduces the threat of repercussions to those involved in the illegal sector, effectively rendering the government's threat obsolete.

Colombia's attempt to democratize its institutions has not yet led to a separation from the *mano duro* practice ("to rule with a strong fist"), and the resulting use of violence as the most effective tool for political actors within the country. In response to peasant revolts regarding the loss of land and rural unemployment subsequent to the nation's entrance into the capitalist global market, the government responded with the 1978 Statute of Security. This legalized the use of violence against "radicalized" peasants through the use of paramilitary forces (Richani, 2002), which has triggered a rise in violence within the country today, as drug traffickers have formed paramilitary troops of their own (Richani, 1997). The government is unable to control the various guerilla resistance organizations and violent forces employed by those within the drug trade; as a result of the government's weak authority and failure to concentrate power, the military has grown

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nearly autonomous (Richani, 2002). The “re-emergence of the military as the principal organ responsible for public order...is a by-product of a long history in which the State failed to resolve conflicts without a resort to violence” (Richani, 1997). As we will later see, the amount of power that this autonomy entails is dangerous in regards to the perpetuation of violence; the military has a vested interest in prolonging a state of war.

### **Economic Policies**

Closely related to policy failures concerning land disputes, and the broad implementation of violence across conflicting political actors, is the Colombian government’s inability to formulate effective economic policies. The process of democratization brought with it a sudden shift in economic theory. Elites embraced the neoliberal economic concepts that left many small agrarian laborers unemployed and without sustenance, while regional political bosses enjoyed the surge in power they inherited along with fiscal decentralization efforts (Garman, Haggard and Willis, 2001). This served to tighten the wealthy elite’s hold on economic policy and to further diminish the lower class’s political voice (Garman, Haggard and Willis, 2001). Business elites are able to take advantage of the peasants’ and urban poor’s marginality due to the clientelistic nature of their relationship.

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As buyer/seller relationships are not necessarily anonymous (as they are in most countries that employ free trade methods), a market price does not exist; and there is no clear link between the cost of a product and its price, or opportunity cost (Thoumi, 1995). Another reason for this disconnect between the opportunity cost of a product and its price is that many fees are the result of a political transaction (Thoumi, 1995). When prices are set through negotiations between business and political elites, there are severe consequences to marginalized members of society. Businesses impose the equivalent of an excise tax on these consumers, who are provided with no method of exerting influence, not even through participation in a market-based economy (Thoumi, 1995).

This practice of enacting policy for the benefit of the political elite and patrons has led to vast inefficiencies in investments. Large sums of money have been bestowed upon public institutions without broad returns to the economy—such as mining, where profits are concentrated in the hands of the wealthy elites who manage the industry. Businesses such as these are not conducive to the increases in productivity that sustain economic growth (Thoumi, 1995). Rather, they only serve to enlarge the public sector, with the elites and the powerful being the only beneficiaries.

### **The Illegal Sector**

Furthermore, the government has been unsuccessful at distinguishing between profits accumulated from the legal sector and those that are a consequence of illegal activity. Although it has been illegal since 1931 to hold foreign exchange in or outside the country, the Central Bank has relaxed its restrictions on this statute many times, and has also bought black market foreign exchange (Thoumi, 1995). It would be difficult for the government to ignore the profits from the illegal sector that are made on the foreign market, as foreign exchange scarcity is one of the largest continued economic constraints in Colombia (Thoumi, 1995). In the year 1995, the total income from the illegal sector amounted to about 13.2% of the nation's economy (Richani, 1997) and was equivalent to the total annual sales of the 14 largest legal industrial enterprises in the country (Richani 1997). The addition of these figures into official reporting provides greater access to foreign exchange; while it is understandable that government officials would press for their inclusion, this only further blurs the line between legality and criminal activity. It is through such legal disregard on the part of the government that civilian distrust and dismissal are advanced.

### **The “Comfortable Military Impasse”**

Under conditions such as these, where the government is ineffective in instituting change and improving civilians’ social and economic positions, it is natural that marginalized groups seek alternative methods of reforming political institutions. This is precisely how a war system is created; the government’s ineffectiveness forces its citizens to generate other means of meeting their needs. Because the legal process has been abandoned, organizations seek violent means to achieve their ends.

The war system in Colombia has come to be known as a “comfortable military impasse,” whereby the three main actors (military, guerilla organizations, and drug trafficking forces) have learned to adjust to and capitalize on the present situation (Richani, 1997). Thus, they are willing to postpone peace indefinitely; it is more profitable for them to remain in their current positions. Although in many democratized countries military interests are interrelated with those of the state, Colombia is similar to other Latin American countries in that the military is largely autonomous. Therefore, it can use the war as a resource for securing more funds, and ultimately more power.

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Government spending on the military branch reached the fifth highest in the hemisphere in 1995, and within Latin America, Colombia ranks second only to Brazil (Richani, 1997). The risk that is incurred in times of war has caused a significant increase in salaries; a general's salary increased 407.7% between 1991-4, while that of a lieutenant climbed 200% (Richani, 1997, p. 50). In the decade between 1989-1999, military expenditures rose from 1.2% of the GNP to 3.5% (Richani, 2002). This increase was accompanied by very little increased responsibility on the part of the military, as its relations with other key actors in the war remained steady (Richani, 2002). Thus, a rise in allocated funds implies greater profits for military personnel.

The military is able to secure funds through other channels when engaged in war; many members ally with those involved in the drug trade by accepting bribes or imposing "taxes" on local peasants (Richani, 2002). They are also able to secure more advanced weaponry and intelligence from foreign interests (primarily the United States) and have negotiated security contracts (for the amount of \$67 million) with multinational oil companies (Richani, 1997).

But the military's benefit from the war system is not limited to monetary gains; it is also able to secure a nearly immutable level of power and jurisdiction. This is evidenced through the 1985 incident at

the Supreme Court of Justice, in which the military attacked M-19 guerillas without presidential orders (Richani, 2002). This event led to the death of nearly all occupants of the building—both the judges and the guerillas—and to a virtual coup. Although President Betancur completed his term, the peace negotiations the military opposed were extinguished (Richani, 2002).

### **The Benefits of War beyond the Military**

While the military branch is afforded a great deal of power, and thus possesses a large degree of influence on current affairs, the war system would not exist if it was the only political actor to profit from the situation. The “low-intensity” war in Colombia also provides more opportunity for guerilla organizations to prosper than in times of peace. One of the most prominent of these groups is the Coordinadora Nacional Guerrillera (CGN); in 1994, its profits totaled \$535 million (Richani, 2002). This number exceeds that of Colombia’s most profitable legal company—the National Coffee fund—which earned \$14 million less that year, and is more than twice the amount earned by ECOPETROL (Colombia’s state-owned oil company).

Additionally, the CGN owns many of its own businesses (mostly within the mining sector) and earns profits from investments in farms, hotels, firms, drugstores, transportation services, etc. (Richani, 2002).

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It is estimated that the average family that directly relies on the CGN's income consists of four people. Excluding those working in guerilla-owned businesses or the peasants who receive loans from the CGN "bank," about 60,000 people are supported by the CGN's annual profits (Richani, 2002). Thus, a disruption of the war system would result in economic upheaval for a large sector of Colombia's population; recognizing this, many guerilla organizations regularly bribe military officials stationed within their areas in order to "ensure maintenance of the *status quo*" (Richani, 2002).

One of the largest groups to benefit from the war system has been those involved in the drug trade; the wealth they have accumulated throughout the past few decades has led to their emergence as a new elite. Due to the country's poor justice system, Colombian drug traffickers have a comparative advantage; risk is still factored into the cost, which allows the price to surge, yet the threat of being charged is not as high in a country with an ineffective judicial branch (Thoumi, 1995). Furthermore, the elites within the drug trade business are able to earn significant profits from the marketing and distribution of drugs in the United States; as the peasants receive very little of this share, this translates into high returns for low production costs (Thoumi, 1995). The money earned by this emerging wealthy

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class is usually invested in real estate, where drug traffickers are able to gain a political voice and economic influence within the territory (Thoumi, 1995). Political economist Francisco E. Thoumi has observed, “The lack of legitimacy of political institutions makes it easy for those in the [drug trade] industry to believe in the legitimacy of their economic activities, their income, and their accumulated capital” (Thoumi, 1995). Thus, it is beneficial for those involved in this sector to engage in the constant subversion of government authority to ensure the continuance of Colombia’s current state of affairs.

Although the military, the guerilla organizations, and drug traffickers are the three main units within the war system, the peasants and other members of the lower classes are additional significant beneficiaries of the system. The high unemployment rate and substantial disparity between social classes have already been discussed, as has been the government’s inability to remedy the situation, and the lack of a political voice for marginalized groups. In light of this, violence appears to be the most effective channel for land and economic reform in regards to Colombian peasants.

It is no coincidence that the cultivation of crops for the drug trade has prospered in isolated areas stricken with poverty and a lack

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of transportation infrastructure; in some cases, peasants were not able to take produce to sell at a market because the transportation costs exceeded market prices (Thoumi, 1995). The loss of profit suffered by small farmers due to the lack of legitimate market pricing can be subsidized by additional cultivation of crops for drug traffickers.

Yet elites in the drug trade are similar to wealthy landlords in that their goal is to earn the most profit from the process. Thus, peasants could potentially be as vulnerable to exploitation as they would be if they were working on an *hacienda* or a *latifunda*. However, the war system affords peasants an advantage in this situation. Unlike the legal sector, which is dominated by a group with similar interests and is thus able to prevent the legal unionization of lower-class workers, the clash of interests between the actors of the war system plays to the peasants' advantage. Not only do guerilla organizations fight against the military's aerial eradication efforts via the periodic spraying of herbicides (Thoumi, 1995), but they impose a *gramaje* tax on growers and processors of illegal drugs, to ensure that traffickers pay on time and that they pay the market value (Richani 1997). Thus, wealthy traffickers are prevented from extracting peasant labor without adequate compensation. In this way, guerillas protect cultivators from exploitation and secure a fair price for their labor.

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The war system has promoted the development of a new business sector; this has increased the availability of jobs for those affected by the massive unemployment rates (Richani, 1997). Excess labor in cities such as Medellín, where high unemployment levels exist as a result of the decline of the textile industry, has been utilized in the form of the *sicario* (assassin) industry (Richani, 1997). Further jobs have been created with the growing popularity of personal security agents; due to the failure of the Colombian government to ensure protection of its citizens, many wealthy families have hired private guards (Richani, 1997). Clearly, those who benefit from the increased availability of jobs within this emerging sector support the continuance of this system of violence.

## **Conclusion**

Today there are many Colombians whose social, economic, and political improvement are dependent upon the various opportunities that have arisen within the context of the war system, and this can be attributed to the government's inability to legislate effective and just policy measures. If the government provided secure, efficient legal means of political expression, one can presume that the attitudes toward violence would not be the same. It is through the failure of the government to provide equal representation and to attain

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a monopoly on the use of legitimate force that the war system has prospered in Colombia; without a significant shift in policy, the practice of violence as a tool of implementation will continue indefinitely.

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# **The Divisive Primary Hypothesis in Presidential Elections**

Anthony Carello

## **Introduction**

The lengthy battle between Senators Barack Obama and Hillary Clinton throughout the 2008 Democratic Presidential nomination campaign evoked questions of whether either candidate would stand a chance in the November election. While Senator John McCain secured the Republican nomination on March 4, 2008 when former Arkansas Governor Mike Huckabee dropped out of the race, it took Obama an additional three months to defeat Clinton on June 4. In addition, Senator McCain outscored Huckabee by 1,297 delegates, whereas Obama only defeated Clinton by a slim margin of 305 delegates. House Speaker Nancy Pelosi openly expressed her concern about party infighting between Clinton and Obama: “There is absolutely no question that I have concerns about the attacks that are being made on one candidate or another. I do have concerns that the negativism can diminish our prospects for the general election” (Coile). House Speaker Pelosi’s comments were echoed by

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Democratic Party elites, who worried that the division of support for Obama and Clinton would be detrimental to the eventual nominee in the general election.

The Clinton-Obama nomination race is just one of many hotly contested primaries that have been thought to cause division within a certain political party before a major election. The close primaries between Gerald Ford and Ronald Reagan in 1976 and between Pat Buchanan and George H.W. Bush in 1992 resulted in bitter defeats for the Republican Party in November. These two instances are products of the 1972 election reforms championed by Senator George McGovern and Representative Donald Fraser. Prior to the reforms, state and national party elites controlled the delegate selection process during the nomination campaign, and, therefore, controlled who would be selected as their party's nominee. The rules changes of McGovern-Fraser Commission "transferred the responsibility of selecting a nominee from the party professionals to the party rank and file" (Atkeson, 2000). The McGovern-Fraser reforms were implemented to legitimize the nomination process by increasing voter participation and allowing underrepresented constituencies to voice their opinions. The result of these reforms is an open, democratic nominating process that is ultimately determined by the party rank and file. Referred to as the

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“candidate supremacy” or “plebiscitary” model, this process forces nominees to appeal directly to their constituents and compete for votes within party lines.

### **Literature Review**

#### ***The Divisive Primary Hypothesis***

In the midst of increased factionalism of political parties, social scientists developed a hypothesis that the party with the more divisive nomination contest will find itself significantly handicapped in the general election. This hypothesis stems from the belief “that supporters of losing primary candidates may be so disillusioned that they abstain from voting for their party’s nominee in the fall election” (Kenney and Rice, 1987). In addition, the party faces the problem of disenchanting their supporters so severely that they actually vote for the opposing party. The individual candidate factions that remain at the end of a hard-fought nomination season must be reunited in order for the nominee to succeed in the general election. The nominee must form a coalition between factions within the party; a process that is seriously hindered by a lengthy nomination campaign. Thus, the divisive primary hypothesis incorporates the idea that divisive nomination campaigns are detrimental to the formation of a strong party coalition prior to the November election (Atkeson, 2000).

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The theoretical framework underlying the divisive primary hypothesis is grounded in the fields of sociology and psychology and their explanation of group conflict. Social-psychological research has consistently shown “that individual members of groups engaged in conflict over scarce resources become intensely loyal to their group—the in-group—and develop intensely hostile feelings toward the other group—the out-group” (Kenney and Rice, 1987). At the end of the group conflict, the losing group is likely to maintain feelings of hostility towards the winning group despite their common background. Perhaps the most important finding in these studies is that these individual group members are usually unable to set aside their hostility to unite against a common enemy.

Kenney and Rice (1987) draw parallels between these studies and the divisive primary hypothesis. The conflict is a nomination campaign and the groups are the supporters of candidates from a certain party. In this case, the scarce resource is the party nomination and the common enemy is the opposing party’s nominee. Throughout the primary season, it is evident that party infighting occurs between candidates and tension heightens within the party prior to the general election. The party then begins to divide into factions as nomination activists side with a certain candidate “based on their knowledge of the

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candidate, the candidate's own character and personal qualities, the candidate's performance in previous primaries and caucuses, and his ideology and issue stands" (Atkeson, 2000). At the end of a hostile nomination campaign, it is unlikely that supporters of losing candidates will set aside their differences and return to the party fold in support of the general nomination campaign against the opposing party. Thus, it is the argument of proponents of the divisive primary hypothesis that the more intense the nomination campaign, the poorer the chances are of that party's nominee in the general election (Kenney and Rice, 1987).

### *Research on the Divisive Primary Hypothesis*

A multitude of studies have examined the effects of divisive primaries on party electoral prospects. Although some of these studies have found some support for the divisive primary hypothesis in presidential, senatorial, and gubernatorial elections, the conclusions are mixed. The general conclusion from these studies is that divisive primaries have little to no effect on congressional and gubernatorial election prospects, while they seem to have a more significant effect on presidential elections. It should be noted, however, that presidential elections have been relatively under-researched in comparison to congressional and gubernatorial elections. Much of this

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disproportion of studies is based on the fact that there have been far fewer presidential elections for scholars to include in their datasets. Lonna Rae Atkeson cites two specific methods used to research the divisive primary hypothesis—“aggregate data on election outcomes and survey data on the behavior of individual voters and campaign activists” (Atkeson 2000). Regardless of the methods, the goal of this research is to examine the link between nomination campaigns and general elections.

Andrew Hacker was the first scholar to study the divisive primary hypothesis through his analysis of senatorial and gubernatorial elections. Hacker defines a divisive primary as one where the winning candidate received less than 65 percent of the vote. Hacker’s definition is representative of many early studies on divisive primaries, as he uses an arbitrary cutoff point as a determination for divisiveness. Hacker examines the 220 senatorial and gubernatorial elections that occurred between 1956 and 1964. From his study, Hacker came to the “conclusion that the candidate emerging from a divisive primary stood a better than two-to-one chance of being defeated at the general election” (Hacker, 1965). However, Hacker also found that one-third of the candidates who survived a divisive primary managed to reunite the party and win the general election. Thus, Hacker’s initial study

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contained mixed results that neither confirmed nor rejected the divisive primary hypothesis.

In another of the initial, unsophisticated studies on primary divisiveness, Robert Bernstein refined Hacker's definition of a divisive primary to any primary in which the winning candidate finishes less than 20 percentage points higher than the runner up (Bernstein, 1977). Using data from nearly 600 Senate primaries from 1956-1972 to explain election outcomes, Bernstein was the first to include controls for incumbency and partisan orientation of the state in his analysis. Bernstein firmly concluded that divisive primaries reduce a candidate's chances for winning the general election. In 1984, Patrick Kenney and Tom Rice duplicated the results of Bernstein using a multivariate regression analysis that controlled for incumbency, party orientation, and the unique politics of the South. Kenney and Rice extended Bernstein's study and found a strong relationship between divisive primaries and the general election success of gubernatorial candidates (Kenney and Rice, 1984).

As the number of presidential elections increased to a number sufficient to provide an adequate dataset for a regression, scholars began to examine the divisive primary hypothesis at the presidential level. The first of these studies was conducted by James Lengle in

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1980, who examined state-level presidential primary data from 1932-1976. Lengle used Bernstein's dichotomous variable that defined a divisive primary as one where the winner defeats the runner up by fewer than twenty percentage points. After controlling for incumbency and party orientation, Lengle found that a divisive primary in a certain state hurt the eventual winner's chances to win that state in the general election, with a more pronounced effect for Democratic candidates (Lengle, 1980). A 1995 study by Lengle, Diana Owen, and Molly Sonner expanded the dataset to include more elections, confined the study to the Democratic Party, and compared the effects of primaries and caucuses separately. However, Lengle, Owen, and Sonner still confirmed the conclusion of previous studies that divisiveness does hurt the winning candidate (Lengle, Owen, Sonner, 1995).

The first study to contain a sophisticated variable to measure divisiveness in presidential elections was Kenney and Rice's 1987 report. Their study examined states that held presidential primaries between 1912 and 1984. Kenney and Rice argue that previous studies have incorrectly determined that Democratic and Republican primary divisiveness are independently related to the November vote.

According to Kenney and Rice, "[i]t is not enough, then, to measure

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the divisiveness of each party's primary simultaneously; the two primaries must be considered relative to each other" (Kenney and Rice, 1987). To account for the relationship between Republican and Democratic divisiveness, Kenney and Rice create a single interval measure by subtracting the Republican nominee's percentage of the primary vote from the Democratic nominee's percentage of the primary vote. Thus, a negative score would indicate that the Republican nominee is advantaged in the general election, while a positive score would mean that the Democratic nominee is favored in November. The Kenney and Rice model controls for traditional state voting patterns, minor-party movements, incumbency, and the unique politics of the South, and concludes that divisive primaries have a strong negative effect for the candidate in the general election (Kenney and Rice, 1987).

Additional studies in support of the divisive primary hypothesis "have focused on the behavior of individual party activists (caucus goers and party chairpersons) and primary voters during the nomination and general election stages of the campaign" (Atkeson, 2000). Research from Johnson and Gibson (1984), Comer (1976), Stone (1984, 1986), Southwell (1986), and Buell (1986) has confirmed the theory that there is a negative carryover effect that is consistent

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with the divisive primary hypothesis (Atkeson, 2000). The negative carryover effect illustrates that supporters of losing candidates are less active on behalf of the party's nominee than are supporters of the winning candidate (Johnson and Gibson, 1984).

However, there has been a recent movement among certain election scholars who believe that the negative effects of primary divisiveness are overstated. Referred to as revisionists, these scholars argue that measures of candidate quality need to be included in the analysis of the effect of divisive primaries on general elections. This is based on the idea that not all incumbents are equal, and weak incumbents attract more competition and generally have more difficult general election campaigns (Atkeson, 2000). In 1981, Richard Born conducted the first analysis of divisive primaries that included a control for candidate quality. Born examined House elections and found that divisive primaries had only a small negative effect on election results. In addition, Born concluded that this effect was "not sufficiently acute in itself to cause defeat" (Born, 1981). In a similar study, Kenney and Rice (1988) found no effect of divisive primaries on Senate and House elections. Mark Westlye (1991) updated Kenney and Rice (1988) and found a modest effect in the Senate. However, Westlye's major contribution to the study of divisive primaries was

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finding that incumbent vulnerability has a greater impact on general election results than does incumbent primary divisiveness (Westlye, 1991).

The most sophisticated study to date on the effects of divisive primaries on general election outcomes was prepared by Lonna Rae Atkeson (1998). Atkeson alters the dataset used by Kenney and Rice (1987) to create a national model of presidential elections from 1912-1996. By changing the Kenney and Rice (1987) regression to national level analysis “a national context can be examined and can provide us with the added capability of including additional election year controls in the model that capture candidate quality” (Atkeson, 1998). This is based on Atkeson’s belief that presidential elections are national events where voters take into account the performance and ideologies of candidates on a national level. Atkeson uses Gallup Poll results from the incumbent’s final year as president as a control for candidate quality. In addition, Atkeson accounts for the general context of the election by including the unemployment rate at the end of the incumbent’s term as a measure of the strength of the economy. Atkeson generally concludes that the effect of divisive presidential nomination campaigns on general election outcomes is reduced when

candidate quality and general election context are considered (Atkeson, 1998).

**Towards a Better Understanding:  
Candidate Quality and Election Context**

Despite the multitude of research on the divisive primary hypothesis, there is still room for a good deal of improvement. Atkeson (1998) does well to create a national model that can take into account election year characteristics, but she leaves out a number of important issues that contribute to the eventual success or failure of the candidate. This paper will expand on the presidential study by Atkeson, (1998) through the inclusion of additional controls for candidate quality and general election year context, and by adding two additional presidential elections.

In addition to the approval rating of the incumbent candidate, this analysis includes economic indicators, gross domestic product and inflation, that measure the strength of the economy during the incumbent's presidency and are not included in Atkeson's study. The traditional voting patterns of particular groups such as minorities, voters with high incomes, voters with high levels of education, and southern voters are also controlled for in this study. Finally, a variable for the presence of an incumbent candidate and a variable for the U.S.

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involvement in a war during the presidency of an incumbent are included. These additional candidate quality and election context controls may explain a considerable amount of the variation in the vote for the incumbent party candidate.

### **Data and Methodology**

#### *Dependent Variable*

This study employs a panel dataset from the American National Elections Survey (ANES) cumulative file, which includes all national elections from 1948-2004. In contrast to previous studies, I use a dichotomous dependent variable, which is equal to 1 for all those who voted for the incumbent candidate and 0 for all those who voted for the opposing candidate. Rather than previous studies which primarily use Democratic percentage of the two-party vote in the general election as the dependent variable, the dichotomous variable emphasizes the effect of incumbency in general elections and does not assume that the percentage of the vote received by the Republican candidate is the mirror image of the percentage of the vote gained by the Democrat candidate. An ANES variable measuring the percentage of vote for the two major parties also aggregates the effect of the major third party candidates in presidential elections. Candidates such as Strom Thurmond on the States' Rights Party ticket in 1948 and George

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Wallace of the American Independent Party in 1968 received electoral votes, while Independent Ross Perot won 18.9 percent of the popular vote in 1992. In addition to candidates who have garnered significant amounts of the presidential vote, candidates such as 2000 Green Party nominee Ralph Nader—who only received 2.4 percent of the popular vote—may shift close elections in favor of either major party. Thus, the aforementioned variable is recoded so that the incumbent party in each election year is equal to 1 and the opposing party and the major third party—because no major third party has won a presidential election—is equal to 0. This dependent variable allows me to explicitly measure the impact of divisive nomination campaigns on both candidates from both of the major parties, while still incorporating challenges from third party candidates.

### ***Measuring Primary Divisiveness***

The independent variable of interest is the divisiveness within the incumbent party in the primary elections. The selected measure of incumbent primary divisiveness is the percentage of the primary vote received by the candidate who received the most total primary votes. In continuing with the assertion that presidential elections are national entities, I used an aggregated percentage that accounts for total percentage of votes received by the incumbent party frontrunner in

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each caucus and primary in the presidential nomination process. Thus, the smaller percentage of the total popular vote received by the candidate who received the most votes in the nomination campaign, the more division exists within the party. I added an additional independent variable to measure the primary divisiveness within the opposing party, using the percentage of primary vote received by the opposing party frontrunner.

### *National-Level Independent Variables*

In order to accurately measure the effects of primary divisiveness on general election vote, a number of controls were included in the regression that account for the context of the particular presidential election year. The academic literature studying the economy in relation to voting patterns illustrates that voters “have tended to hold governments accountable for bad economic times, reducing their support for parties holding government office in conditions of high unemployment or inflation or of low economic growth” (van der Brug et. al., 2007). Thus, macroeconomic conditions can have a significant effect on voter preferences in certain election years. The first of these controls considers level of economic growth experienced under the incumbent party, as measured by real gross domestic product (GDP). This variable was created by measuring the

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percentage change in GDP from the President's third year in office to his fourth year in office, or the general election year.

In addition to GDP, a variable measuring the national unemployment level was added to the regression. Similar to negative economic growth, increasing unemployment can indicate bad economic times in a manner that is more visible to potential voters, who may blame increased job loss on the president (Atkeson, 1998). The national unemployment rate, as measured in the Current Population Survey conducted by the Bureau of Labor Statistics (BLS), for each general election year was used as another indicator of the general health of the economy.

The third and final economic indicator controlled for was the level of inflation in each election year. Using BLS data from the Consumer Price Index, I calculated the percentage change in inflation from the President's third year in office to his fourth year in office.

In addition, a variable is needed to control for the presence of an incumbent candidate in the presidential campaign. Previous studies have concluded that incumbent candidates running for reelection in federal offices have a distinct advantage over nominees from opposing parties, because they often secure a large base of supporters and boast four years of presidential experience (Ansolabehere & Snyder, 2002).

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Thus, a dummy variable is included and is equal to 1 for all election years in which the incumbent is present in the nomination campaign and equal to 0 for all years in which the incumbent is not present.

As Commander in Chief of the Armed Forces, the President of the United States is considered to play a significant role in decisions to engage in armed conflict with other nations. The foreign policy of the United States is continually one of the major issues that shape voter preferences. Hence, a variable is added to control for the effect of war during the incumbent party's time in office. From 1948 to 2004, I consider only four major armed conflicts—the Korean War (1950-53), the Vietnam War (1959-75), the Persian Gulf War (1990-91), and the War on Terror/Iraq War (2002-present). I employ another dummy variable equal to 1 for election years when the United States is actively engaged in war and equal to 0 for all years when the United States is not involved in war.

### *Individual-Level Independent Variables*

In addition to general election context, the quality of each individual candidate plays a significant role in the general election outcome. Previous election studies have failed to recognize that not all presidential incumbents possess the same qualities, and they often overstate the advantages of certain incumbent candidates (Atkeson,

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1998). To control for the quality of the incumbent candidate, I use an ANES variable that measures popular presidential approval.

Respondents to the survey were interviewed every four years and asked whether they approved of or disapproved of the performance of the president in his last four years in office. By adding this control to the regression, it is now possible to determine the relative strength of each incumbent up for reelection and control for any advantages they may possess over opposing party candidates.

Several traditional voting patterns are present in American presidential elections. In addition to controlling for the characteristics of particular presidential candidates, it is important to control for the characteristics of particular voters. One of the most prominent patterns in American presidential voting is the sectionalism of the political South. States located in the Deep South have traditionally deviated enormously from the national vote, which is most recently attributable to its staunch support of the Republican Party after the Civil Rights Movement of the 1960s (Schantz, 1992). Although other regions of the United States demonstrate allegiances to particular political parties, the support of the Republican Party in the political South is twice as pronounced as support for the Democratic Party in New England (Schantz, 1992). I employed an ANES variable that

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distinguishes between Republican-dominated Southern states, including Alabama, Arkansas, Georgia, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas, that significantly deviate from the national vote. In addition, I recoded another ANES variable that identified the party of the president to equal 0 for years when the incumbent was Democrat and equal to 1 for Republican incumbents. I created an interactive variable, “southrep,” which consists of the political South variable multiplied by the Republican Party variable to control for Southern sectionalism.

Another important phenomenon in presidential election voting is the relationship between socioeconomic status and party affiliation. Recent political science literature explains that as the income of registered American voters increases, the more conservative they tend to be in relation to a number of political issues such as government spending, abortion, and minority rights (Himmelstein & McRae, 1988). Thus, I created another interactive variable to control for the tendency of those with high incomes to vote for Republican presidential candidates. Created by multiplying an ANES variable measuring family income and the aforementioned recoded Republican Party incumbent president variable, this variable controls for conservative voting trends in families with high incomes.

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In addition, scholars have argued that, as the level of voter education increases, voters are more likely to vote for the Republican candidate in presidential elections (Himmelstein & McRae, 1988). As the level of voter education progresses from middle school education to higher education, the tendency to vote conservative on political issues increases, peaking in the first years of college. Therefore, I recoded a seven category ANES variable measuring respondent education level to equal 0 for all those with up to high school diploma or equivalency and equal to 1 for those respondents with at least some college education. Another interactive variable was created by multiplying the education variable by the Republican Party incumbency variable to control for the effects of education level on presidential voting.

Finally, I controlled for the tendency of minority voters to vote for the Democratic nominee in presidential elections. It is clear from previous studies that, from era of the Civil Rights Movement to the present, non-white voters are extremely liberal on political issues (Himmelstein & McRae, 1988). To account for this trend, I recoded a six category respondent race variable to equal 0 for those who reported that they are White and to equal 1 for those who responded that they were Black, Asian, Native American, Hispanic, or of another race. In

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this case, I recoded the party identification variable to equal 1 for those who are Democrats and 0 for those who are Republican to isolate the Democratic voters. The interactive variable controlling for minority voting trends was created by multiplying the respondent race variable with the same presidential party variable now coded 1 for Democratic incumbents and 0 for Republican incumbents.

### *Logistic Regression*

Combining the dichotomous dependent variable with the twelve previously explained independent variables, I create a model predicting the percentage of vote received by the incumbent party in the general election. The formalized model is:

$$INCV = b_0 + b_1INCDIV + b_2OPPDIV + b_3G + b_4INF + b_5U + b_6INC + b_7WAR + b_8APP + b_9SR + b_{10}INCOMER + b_{11}ER + b_{12}RACED + e$$

where *INCV* represents incumbent vote in the general elections between 1948 and 2004; *INCDIV* is the level of primary divisiveness within the incumbent party; *OPPDIV* is the level of primary divisiveness within the opposing party; *G* is the yearly percentage change in GDP in the election year; *INF* is the yearly percentage change in the CPI in the election year; *U* is the unemployment rate in the election year; *INC* is the dummy variable for the presence of an incumbent in the election; *WAR* is the dummy variable for United

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States involvement in war during the election year; *APP* is approval rating of the previous president; *SR* is the control for Southern voting patterns; *INCOMER* is the control for voters with high incomes; *ER* is the control for voters with some higher education; *RACED* is the control for minority voters; and *e* is the error term.

## **Results**

Due to the fact that I employ a dichotomous dependent variable measuring the effect of primary divisiveness on both the incumbent party's general election success, I perform a logistic regression in addition to the traditional ordinary least-squares (OLS) method. According the parameters shown below in Table 1, the logistic regression model performs quite well. The Nagelkerke R-square value, which attempts to provide a logistic analogy to the  $R^2$  value in OLS regression, is equal to .549, meaning 54.9 percent of the variance in incumbent party general vote percentages is accounted for by the independent variables in the regression. I use the regression coefficients from the OLS regression to estimate the size of the effect of each independent variable on the dependent variable (Table 2). Nine of the twelve independent variables are statistically significant at .05 levels or better, while an additional variable is statistically

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significant at the .10 levels or better (Table 1). Thus, the accumulated data seems to fit the logistic model fairly well.

**Table 1: Logistic Regression**

	<b>B</b>	<b>S.E.</b>	<b>Sig.</b>	<b>Exp(B)</b>
<b>Incumbent Party Primary Divisiveness</b>	.023	.003	.000	1.023
<b>Opposing Party Primary Divisiveness</b>	-.009	.005	.058	.991
<b>Growth</b>	-.151	.073	.040	.860
<b>Inflation</b>	8.856	2.699	.001	7016.106
<b>Unemployment</b>	-.227	.089	.011	.797
<b>Incumbent Dummy</b>	-.283	.100	.005	.753
<b>War Dummy</b>	.023	.158	.886	1.023
<b>Presidential Approval</b>	3.474	.067	.000	32.251
<b>Race*Democrat</b>	1.340	.140	.000	3.818
<b>South*Republican</b>	-.090	.084	.283	.914
<b>Education*Republican</b>	.210	.076	.005	1.234
<b>Income*Republican</b>	.216	.034	.000	1.242
<b>Constant</b>	-2.444	.963	.011	.087
<b>Cox &amp; Snell R Square</b>	.412			
<b>Nagelkerke R Square</b>	.549			

The independent variable of interest, primary divisiveness in the incumbent party, is strongly significant in the positive direction. The positive regression coefficient shown in Table 1 implies primary

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divisiveness within the incumbent party is related predictably to the incumbent's percentage of the general election vote. In other words, as the level of divisiveness within the incumbent party primary increases, the incumbent party's share of the general election vote decreases. However, the OLS regression coefficient for this variable also indicates that this effect is rather marginal. More specifically, its value of .003 means that a one percent increase in the vote received by the incumbent party primary frontrunner would increase the probability of voting for the incumbent party's candidate by 0.3 percent. In addition, the incumbent divisiveness variable has a p-value of less than 1 percent, qualifying it as statistically significant because it is below the 5 percent cutoff. The strong positive relationship between incumbent party primary divisiveness and general incumbent election vote contradicts the conclusion of the Atkeson (1998) model, upon which this model is based. Atkeson (1998) concludes that primary divisiveness little to no effect on general election results for the incumbent party. However, Atkeson (1998) controls only for unemployment rate and presidential approval rating, while my model includes a number of other statistically significant control variables.

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**Table 2: OLS Regression**

	<b>B</b>	<b>Std. Error</b>	<b>Standardized coefficient</b>	<b>t</b>	<b>Sig.</b>
<b>(Constant)</b>	.054	.129		.422	.673
<b>Incumbent Party Primary Divisiveness</b>	.003	.000	.100	6.892	.000
<b>Opposing Party Primary Divisiveness</b>	-.001	.001	-.031	-2.127	.033
<b>Growth</b>	-.017	.010	-.060	-1.723	.085
<b>Inflation</b>	1.235	.359	.082	3.441	.001
<b>Unemployment</b>	-.028	.012	-.088	-2.328	.020
<b>Incumbent Dummy</b>	-.036	.013	-.031	-2.689	.007
<b>War Dummy</b>	.003	.021	.002	.134	.894
<b>Presidential Approval</b>	.660	.008	.651	81.638	.000
<b>Race*Democrat</b>	.182	.017	.087	10.608	.000
<b>South*Republican</b>	-.013	.011	-.013	-1.165	.244
<b>Education*Republican</b>	.028	.010	.026	2.815	.005
<b>Income*Republican</b>	.029	.005	.099	6.503	.000
<b>R-squared</b>	.466				
<b>Adj. R-square</b>	.465				

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Thus, my model explains to a greater degree the variance in the incumbent election vote and finds the independent variable of interest to have a significant effect.

The economic growth variable yielded a strong negative relationship between percentage change in GDP and general election vote for the incumbent party. According to the OLS regression coefficient, a one percent increase change in GDP percentage change from one year to the next would decrease the probability of an individual voting for the incumbent party candidate by 1.7 percent, holding all other factors constant. The GDP variable is statistically significant, as it has a p-value of .4 percent. While the fact that economic growth during a political party's occupation of the White House would hurt its chances in the upcoming presidential election may seem counterintuitive, the significantly poor economic conditions of the late 1970s and the early 2000s saw the rate of GDP growth either slow dramatically or dip into the negatives. Thus, the poor economic conditions sustained during the incumbent's presidency may have cost him votes in his reelection campaign.

The variable measuring the yearly percentage change in inflation exhibited a strong positive correlation with the general election vote of the incumbent. The variable's regression coefficient

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was 1.235, indicating that a one percent increase in inflation percentage change would increase the probability of voting for the incumbent party candidate by 123 percent. Although this effect seems large, yearly changes in inflation usually range from 0.1 to 0.2 percent. The p-value of the inflation variable was below one percent, indicating that it is statistically significant.

Another economic control variable, unemployment rate, showed a weak negative correlation with the dependent variable. The coefficient value of  $-.028$  indicates that a one percent increase in unemployment results in 2.8 percent lesser probability that an individual would vote for the incumbent party candidate. In addition, the p-value for the unemployment rate variable is 1.1 percent, making it statistically significant. Although the correlation was relatively weak, this result was expected, as it directly reflects my previous assertion that voters often blame the incumbent party in the presidential election for poor economic conditions, especially increased unemployment.

The dummy variable controlling for the presence of an incumbent presidential candidate running for reelection generated a negative correlation with the general election vote. The incumbent dummy variable is statistically significant at the 5 percent level

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because its p-value is less than 1 percent. Although several incumbent presidents in the elections from 1948-2004 have won reelection, the slight negative effect of incumbent candidate presence in the election may be caused by the extremely poor performance of certain United States Presidents contending for reelection. For example, incumbent Gerald Ford, who secured the 1976 Republican presidential nomination despite an extremely vicious primary campaign with Ronald Reagan, was defeated by Democrat Jimmy Carter in the general election. In addition, Carter's loss to Reagan in 1980—489 electoral votes to 49 electoral votes—and Bill Clinton's defeat of incumbent President George H.W. Bush—370 electoral votes to 168 electoral votes—marked the two worst incumbent losses, in terms of electoral votes, in presidential history (CQ Press, 2005).

Not surprisingly, the regression yielded a strong positive correlation between presidential approval rating and incumbent general election vote. The coefficient value of .660 means that a one point increase in presidential approval rating would increase the probability of voting for the incumbent party candidate by 66 percent. The presidential approval rating variable is statistically significant, with a p-value of less than one percent. Thus, if voters approve of

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presidential performance, they will continue to vote for the incumbent party, even if the same candidate is not up for reelection.

Of the independent variables controlling for voter characteristics, three were statistically significant: the variable controlling for minority voters, the variable controlling for voters with high incomes, and the variable controlling for voters with high levels of education. All three variables yielded p-values of less than 1 percent, indicating their statistical significance. The significance of these variables shows that the tendency of voters with high incomes and high levels of education to vote Republican and the tendency of minority voters to vote Democrat in presidential elections has a direct effect on the success of the incumbent party in the general election.

The three remaining independent variable failed to reach statistical significance. While these results were unexpected, there are a number of factors, including the small number presidential election data upon which to draw and the change in voting patterns after the Civil Rights Movement, that could have contributed to the high p-values of these variables. Thus, the results indicate that primary divisiveness within the opposing party, southern voting patterns, and the United States involvement in armed conflict did not have a

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pronounced effect on the success of the incumbent party in the presidential elections from 1948-2004.

Overall, the logistic regression model employed in this study performed very well. The relatively high value of the Nagelkerke R-square demonstrates that primary divisiveness along with the general election context explain a significant amount of the variance in presidential voting. However, it is clear that presidential approval rating has the most significant effect on the success of the incumbent party in the general election. In addition, the majority of the independent variables qualified as statistically significant, with p-values under 5 percent. Finally, the incumbent primary divisiveness variable, which was the variable of interest, yielded a relatively strong positive correlation with incumbent general election vote, allowing us to conclude that the divisive primary hypothesis is justified in its application to presidential elections.

## **Conclusion**

In this study, I introduced an improved model to explain the outcomes of presidential elections. I included additional independent variables not considered by Atkeson (1998), such as inflation, unemployment and war. The dichotomous dependent variables employed in my studies, coupled with two separate independent

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variables for primary divisiveness within each party, are an improvement over previous studies. This methodology allows me to separate out the effects of primary divisiveness on each party's success in the general election. Finally, a binary logistic regression was employed in addition to an ordinary least squares regression to test the divisive primary hypothesis.

The findings of the study indicate that the effect of primary divisiveness in federal elections has been overstated by previous studies that found strong links between divisive primaries and general election outcomes. Once the general election context and candidate quality are controlled for, it is clear that the influence of divisive primaries on general election outcomes is greatly diminished. The effect of divisive primaries in my study seems to be stronger than in the similar study by Atkeson (1998) but still not as strong as earlier studies that employed aggregated data. As primary divisiveness is not primarily responsible for the variation in general election vote, it appears that the main factor in determining the success of presidential nominees is candidate quality as determined by the voters.

Finally, a suggestive next step in the research on what allows a candidate to succeed in federal elections would be the inclusion of other potential independent variables. These variables may include,

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but are not limited to, campaign spending figures and the content analysis of press reports, campaign speeches, and candidate advertisements, to evaluate the effect of contentious primary battles on the November vote.

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## **The Holodomor: Continuing Controversy in Ukrainian Politics and External Relations**

Blake Hulnick

Following Stalin's rise to power in the early years of the Soviet Union, one of the regime's first priorities was a rapid collectivization of the agricultural process, beginning as early as 1917. Where agrarian peasants in the "bread basket" of the new Soviet Union, encompassing much of present-day Ukraine, once cultivated grain on an individual basis, they were now called upon by the Soviet authorities to shift to a cooperative agricultural mode. The transition was rocky, replete with peasant revolts and other resistance to Moscow's central planning scheme. By 1931, however, the collectivization process was proceeding apace, and authorities implemented a grain procurement plan with quotas for collection from individual regions. Quotas were based on harvest estimates from the previous year, and when harvests, particularly in Ukraine, failed to meet these expectations in 1932, the Soviet government took drastic measures, including authorizing coercive methods of grain procurement, and, where grain was not available, the seizure of all other available foodstuffs. The resulting

famine in 1932 and 1933, especially pronounced in the ethnically Ukrainian areas of Ukraine and Russia, claimed the lives of several million people.

The apparent ethnic specificity of the famine's effects and Stalin's known conflicts with Ukrainian nationalism led many to term the event an ethnically targeted campaign, or genocide. The precise number of people who died in the famine, subsequently termed the "Holodomor" by Ukrainian historians, remains the subject of intense debate. Similarly, the causes and motivations for the grain procurement methods and the destruction they caused remains a particularly divisive issue among politicians and historians in Ukraine, Russia, and the Ukrainian diaspora. In this paper, following a discussion of relevant background information on the historiography of the Holodomor, I explore the continuing impact of the debate surrounding this event on Ukraine's domestic politics and international relations, particularly with the Russian Federation. I argue that the Holodomor continues to play a major role in all aspects of the above, and that contending historical narratives act as a determinative factor in the course of contemporary Ukrainian governance, especially in a region that continues to be so bitterly scarred and divided by its historical legacy. Most importantly, I show that debate over the

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Holodomor is motivated less by its intrinsic significance than its usefulness as a divisive and effective political instrument in contemporary politics.

### **The Debate over Numbers**

The debate over the Holodomor continues to unfold in part because, for most of the Soviet period, discussion of the famine was completely forbidden. While people have long been convinced of various facts surrounding the incident, information only now emerging from old Soviet archives is reshaping the debate. For example, documents recently released from KGB archives in Kiev demonstrate more conclusively than before, according to some analysts, that the famine was intentionally planned from within the Soviet power structure, rather than the mere result of poor yields and bad planning (Fawkes, 2006). The new records also emphasize the brutality of the Soviet coercion mechanism: “One document is an order from Moscow to shoot people who steal food. It is signed by Stalin in red ink” (Fawkes, 2006).

Among the problems facing politicians and historians attempting to grapple with the history is a lack of reliable information. The leading historians of the Holodomor have widely divergent estimates of the number of lives it claimed. Robert Conquest, perhaps

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the earliest and most famous of these, suggests in his book, *Harvest of Sorrow* (1986) that as many as five million people died in Ukraine alone. Newer historians question the accuracy of his method, which relied on Stalin's own population growth statistics before other information was available (Maksudov, 2007). Unfortunately, some of the archival records with the potential to validate Conquest's higher estimates have not been translated into English for broader academic consumption (Marples, 2005). Historian Sergei Maksudov places his estimate between 4 and 4.5 million lives, and prominent Ukrainian historian Stansilav Kulchitsky claims between 3 and 3.5 million (Maksudov, 2007). With the death of American-born historian James E. Mace, there are no prominent English-speaking historians remaining who dedicate their research exclusively to the Ukrainian Holodomor, so new academic interpretations may be slow to emerge.

### **The Politics of the Holodomor**

Alongside an ongoing struggle by politicians, nationalists, and historians to gain a broader acceptance and awareness of this event, the late Soviet period proved fertile ground for disseminating information critical of Stalin, as Soviet authorities sought to channel and deflect negative sentiments about the failing regime. In 1988, Ukrainian writer Oleksa Musiyenko published one of the earliest reports in a Kiev

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journal, taking advantage of the newly anti-Stalin climate. She accused Stalin of orchestrating a brutal grain procurement campaign in Ukraine, resulting in the 1933 famine. She also coined the word “Holodomor” in this report for the first time (Kulchytsky, Part 3, 2005). Since this term and the unifying narrative surrounding it entered the popular parlance, Ukrainians have drawn frequent comparisons between the Holodomor and the much better known Holocaust, leading to a new and separate controversy altogether.

Generally, acknowledgement of the Holocaust in Ukraine has proven controversial, in part because the victimization narrative of the Ukrainian people is placed into competition with that of the Jews, and Ukrainians are no longer portrayed as the period’s sole victims. When President Yushchenko proposed the construction of a Holocaust museum in Ukraine in 2000, some scholars raised opposition, saying the construction of a Holodomor museum was more urgently needed. Similarly, Canadian members of the Ukrainian diaspora raised opposition to a Canadian Holocaust museum that did not acknowledge the Holodomor (Himka, 2005, p. 5). The debate has often become ugly, with nationalist elements in Ukraine insisting that Jews, some of whom were members of the Communist apparatus, had partial responsibility for the crimes, and other academics insisting on a double

standard of evidence for Holodomor and Holocaust memories, both often substantiated by hearsay rather than formal records. More commonly, however, historians with an interest in disseminating information about the Holodomor use the Holocaust history as a model for how to frame their own narrative, often referring to it as the “Famine-Genocide” and the “Famine-Holocaust” in international media (Himka, 2005, p. 8).

### **Famine or Genocide?**

Widespread disagreement persists concerning whether the event actually constituted genocide, even among the ranks of international historians. As Stansilav Kulchytsky reports, as recently as 2005, most historians remained unconvinced by Ukrainians’ attempts to differentiate the Holodomor from the wider USSR grain procurement-induced famine in 1931 and the 1932 famine that occurred in various other Soviet Republics (Kulchytsky, Part 1, 2005). An examination of the historiographic evolution of the Holodomor in academia underscores how controversial the topic remains in Ukrainian domestic politics, and in international exchanges particularly where Russia is concerned.

Gaining acceptance for the Holodomor as genocide is difficult for the intellectual elite when the Ukrainian populace remains

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inconsistently informed about the event, and opinions continue to be mixed. On the 70<sup>th</sup> anniversary of the famine, Ukrainian Communist Party leader Petro Symonenko delivered a highly politicized speech before Parliament, claiming the famine was attributable to crop shortages and drought, expressing a position diametrically opposed to most of the academic output over the last two decades. Historian Stansilav Kulchytsky maintains that most of his peers, in the generation born between 1921 and 1950, find it extremely difficult to accept that the Soviet regime was as brutal as the Holodomor-as-genocide narrative would suggest: “Many of my peers *a priori* refuse to believe that the Soviet government could deliberately exterminate people. There are many who still believe ‘enemies of the people’ actually existed. A post-genocidal society ... is a sick society” (Kulchytsky, Part 1, 2005). Though of the genocide school himself, Kulchytsky thus proposes a compelling explanation of why so many in post-Soviet Ukraine still reject his narrative and continue to accept the Stalinist alternative—namely, that elements within Ukraine and Russia hoarded provisions, sold them privately, or otherwise sought to sabotage the central planning at the state’s expense, and were thus somehow deserving of harsh consequences.

### **Memorializing the Holodomor**

Fully aware of this hesitance to accept certain historical interpretations, the Ukrainian government has put an increasingly large emphasis on creating memorial icons of this and other events since the fall of the Soviet Union. Initially, Ukraine's presidents emphasized comparatively unsubstantive symbolic gestures, such as a Holodomor plaque in Kiev's St. Michael's Square. Most of the early-1990s books on the Holodomor were published using outside donations, not government funding (Kulchytsky, Part 4, 2005). With each passing year since the Orange Revolution, a greater emphasis has been placed by the government itself on commemorating the event (Sheeter, 2007). Often, this action has drawn criticism for instrumentalizing history and reopening historic wounds to motivate the electorate, at times in ways that are directly at odds with those methods advocated by scholars and historians.

Former president Leonid Kuchma created an official Memorial Day in 1998 to commemorate the victims of the Holodomor, to be celebrated on November 25 (Fawkes, 2006). The Yushchenko administration continues to observe this holiday, but only after his government tried and failed to move it from autumn to spring so the

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holiday would not conflict with the anniversary of the Orange Revolution. The event demonstrates the instrumentalization at work in an administration that has placed commemorating the Holodomor high on its domestic agenda, and frustrates historians who see potential for a genuine opening for a frank and nonpolitical discussion of Soviet history (Kulchytsky, Part 4, 2005).

Recently, President Yushchenko has come before Parliament calling for a series of laws designed to commemorate the Holodomor, and has drawn stark distinctions between those who accept his interpretation of the event and those who view it otherwise. On November 27, 2006, Parliament voted on his law to declare the Holodomor genocide against the Ukrainian people. This legislative event is instructive in indicating the underlying Ukrainian political conflict:

The vote essentially reproduced the fault lines of the Orange Revolution, with the Socialists joining forces with the Tymoshenko Bloc and Our Ukraine, while only two deputies of the Party of Regions, and no Communists, were in favor. Opponents accused the president, who initiated the draft law, of 'politicizing' a human tragedy (Arel, 2007).

In 2007, Yushchenko introduced a law amending the national code to make it a crime to deny the occurrence of the Holodomor, using the widespread illegality of Holocaust denial as precedent, and implicitly placing the two events on par with one another. In addition,

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he has proposed ordering the government to publish a comprehensive list of all victims, produce a feature film, print a commemorative postage stamp, and dismantle statues of political figures implicated in the tragedy (“Holodomor and Holocaust...”, 2007).

Most significantly, these political fault lines exist on a spectrum made apparent by the Holodomor debate. The Communists in Parliament and other far left-wing groups deny the Holodomor occurred at all, even as a result of poor Stalinist planning. Communist historian Sergei Gmyrya decried the legislation, saying, “This is like dancing on the graves of the dead. Before it’s been proved this was an act of genocide, the Orange authorities are doing their best to persuade everyone that it was” (Fawkes, 2006). Similarly, following the vote, Communist leader Pyotr Simonenko said, “[Yushchenko] draws people’s attention to history so as not to answer questions about the problems of today—he speaks of the dead, not thinking about the living” (Sheeter, 2007). The Party of Regions acknowledges the event, but favors replacing the reference to genocide with “crime against humanity perpetrated by the Stalinist totalitarian regime.” This is a crucial linguistic difference that hints at their political concerns: “Deep down, the Party of Regions, and Russian-speaking Eastern Ukrainians, more generally, are uncomfortable with the label of genocide because

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of their fear that it could drive a wedge between ethnic Ukrainians and ethnic Russians in Ukraine” (Arel, 2007). Where the Orange government seeks to orient Ukraine on course with the West, using the most divisive treatment of the Holodomor narrative to do so, the opposition is uncomfortable burning bridges with Russia on domestic policy. All the while, the far-left rejects the narrative altogether, decrying the politicization of history that is damaging to the public perception of their increasingly anachronistic political ideology.

### **The International Politics of the Holodomor**

In domestic disputes about whether and to what extent Ukraine should be involved in international organizations, the political arguments about the nation’s orientation persist, and debate about the Holodomor is once again a frequent forum for the manifestation of these divides. President Yushchenko vociferously advocates Ukrainian NATO entry, with the support of many western governments including the United States, in addition to entry into the European Union. The Party of Regions, under Viktor Yanukovych, favors EU membership, but opposes NATO entry over concerns about alienating Russia. (“Holodomor and Holocaust...”, 2007) The same division—on the same grounds—exists in the ongoing debate over entry into the

Russian-led “Single Economic Space,” alongside which the Holodomor argument also surfaced.

President Victor Yushchenko’s remarks before the Canadian Parliament show a similar fixation on the Holodomor as a rallying point for alignment with the West. Referring to a speech delivered last year, the Russian state news agency reported:

Yushchenko said that NATO membership for Ukraine was motivated by the long years of repression his country suffered as part of Soviet Union [sic], citing the 1932-33 famine or Holodomor, which claimed up to 10 million lives. [Canadian Prime Minister] Harper pledged to back a bill formally recognizing the Holodomor as a deliberate act of genocide (*RIA Novosti*, 2008).

Russia, predictably, opposes Ukraine’s and Georgia’s attempts to gain NATO entry, calling it an outdated Cold War alliance, even as Ukraine insists its membership would pose no threat to Russia or its other neighbors. The Canadian government’s reaction demonstrates that Ukraine’s Holodomor-related maneuvering is not just effective in its domestic politics. Instead, it provides a convenient opportunity for Western governments to symbolically support Ukraine and facilitate Ukraine’s increased distance from the Russian Federation.

The Commonwealth of Independent States (CIS), comprised of former Soviet republics and assembled after the fall of the Soviet Union, collects high-level ministers to periodically meet and discuss relations among the countries. At one such meeting in 2006, entry into

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the aforementioned Russian free-trade zone became divided along the lines of an emerging Eastern European coalition. The current Single Economic Space consists only of Russia, Belarus, and Kazakhstan. Ukraine and Georgia used the meeting as a forum to protest Russian economic policies seen as hindering growth prior to their own possible entry. Similarly, in commemorating the Holocaust before the United Nations in 2005, Ukrainian Representative Valeriy Kuchinsky noted the improved attitude toward minority rights and recognition of the Holocaust since the Orange Revolution, before proceeding to call for international recognition of other tragedies; namely, the Holodomor (Kuchinsky, 2005).

Together with Azerbaijan and Moldova, Ukraine and Georgia have formed the “GUAM” coalition, often used in an attempt to counterbalance Russian influence, and that division was apparent at the CIS meeting. Ukraine attempted to schedule discussion of the Holodomor on the meeting agenda, hoping to present arguments about why the event constituted genocide. The Ukrainians failed in the attempt, because Russia was able to orchestrate a procedural blockage preventing debate with the assistance of Belarus, Uzbekistan, Kyrgyzstan, and Tajikistan. Armenia, Turkmenistan, and Kazakhstan declined to take sides, and Moldova, Georgia and Azerbaijan voted

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with Ukraine (Socor, 2006). As a result of the meeting's events, Ukrainian Foreign Minister Borys Tarasyuk gave a series of scathing remarks, calling the CIS "useless" and "unresponsive to situations that are most sensitive to member states" (Socor, 2006). As was the case in domestic Ukrainian politics, discussion and controversy surrounding the Holodomor continues to be an instructive case in determining which groups are aligned toward the West, and which continue to align themselves with Russia. By presenting the Holodomor as a sensitive and important Ukrainian domestic priority, politicians have succeeded in creating an effective proxy war with Russia, around which political groups and neighbor countries must choose their allegiances and rally their publics.

It is useful to take note of Russia's response to Ukraine's central treatment of the issue, to the extent that it characterizes relations between the two nations. German historian Wilfried Jilge describes Russian resentment of the event's politicization:

The foreign ministry of the Russian Federation explains that in the context of the Ukrainian debate over the Holodomor, criticism of the famine as a genocide along ethnic and national lines is not laudable, and warns of a politicization of the topic. The responsibility of the Soviet regime for the famine belongs to the "shared memory" of Ukraine, Russia, Kazakhstan, and other peoples of the former Soviet Union. The Russian side finds the

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Ukrainian president's support of the genocide thesis to be implicitly anti-Russian (Jilge, 2007).<sup>1</sup>

Russian officials have often been quoted as saying it is insulting to other nationalities that also suffered under Stalinist repression and crop requisitioning to claim that the process was solely directed at Ukrainians in order to score political points.

### **Conclusion: The Meaning of the Holodomor**

In all likelihood, discussion of the Holodomor will remain symbolic. Even if Russia admits that the Soviet government intentionally targeted Ukrainians with famine on ethnic grounds, only a few right-wing Ukrainian politicians assert Russian financial culpability for the event. This is an argument based on Russia's claim as the legal successor to the former Soviet regime (Kulchytsky, Part 4, 2005). Kulchytsky makes an important point in noting that the academic attitude toward Russia in relation to the Holodomor might be far more moderate than the Ukrainian political climate suggests. It is, after all, because of voluntary Russian archival opening that most of the new, hard evidence for Holodomor-as-genocide is available in the first place. In view of that fact, it seems most appropriate to view the Holodomor not as a contemporary political topic of intrinsic

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<sup>1</sup> The author's translation from Jilge's original German publication.

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significance, but rather as a point around which emerging political alliances have begun to rally. It is a Ukrainian means of asserting distance from Russian influence by harnessing significant historical resentment. In the West, it is equally important as a means of drawing Ukraine away from Russia using popular and well-tested arguments about respect for human rights and victims' memory. Undoubtedly, divisiveness surrounding the Holodomor will continue into the future as long as Eastern European political realignment remains an ongoing process.

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## **Why is the Rule of Law in China Unsuccessful?**

Danielle Rauli

*“Our public security system is the product of a dictatorship,’ Mr. Qin wrote his family when he was on death row. ‘Police use dictatorial measures on anyone who resists them. Ordinary people have no way to defend themselves. Instead of rule of law, we have chaos.’”*

—Qin Yanhong Chinese citizen wrongly convicted of murder,  
as written in a letter home, quoted in Kahn, 2005a

### **Introduction: The Rule of Law: What Is It and Why Is It Important in China?**

In its most rudimentary definition, the rule of law refers to a system in which “law is able to impose meaningful restraints on the state and individual members of the ruling elite” (Peerenboom, 2002, p. 2). Two existing theories divide the concept of rule of law: thin and thick. “Thin” rule of law implies formal aspects, or any features that a legal system must possess in order to function effectively as a system of laws (Peerenboom, 2006). On the other hand, “thick” rule of law incorporates similar ideas with an emphasis on morality, such as forms of government or conceptions of human rights.

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It is widely debated as to whether China's governmental system incorporates any strong rule of law, thick or thin. Many scholars define China as a "rule by law" nation; that is, the government is above the law. This is directly the opposite of a "rule of law" state, in which no one is above the law. It is even asserted that China's Communist Party (CCP) uses weak attempts toward establishing rule of law as a "mask for oppression and injustice" (Peerenboom, 2002, p. 2). And even those who believe China does maintain a rule of law often weigh the CCP against Western liberal democratic standards, concluding that the CCP's legal system is a thin, weak establishment of rule of law at best. Given this, many critics are also skeptical of the CCP's capacity to establish a strong rule of law. In this paper I will argue that although the rule of law is presently fragile in China, there is a current trend toward strengthening legal traditions in the nation. With the implementation of comprehensive reforms, China has the potential to move toward the more thorough legal traditions of its western trading partners.

Certainly for any nation, the ability to maintain and enforce the rule of law and the coinciding principles can be problematic; however, in China it has been especially difficult. This is largely due to the Chinese political structure and history, as well as the Chinese notion of

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“zhengfa xitong (政法系统)” which “deliberately combines the political and legal worlds” (Keith and Lin, 2003, pg. 623). This zheng-fa system often places emphasis on the position of the people’s leader, and as a result has led to the notion that “policy, as interpreted by the Party leader, was more important than, and could even substitute for, the comprehensive stipulation of law” (Keith and Lin, 2003, pp. 623-624). While this ideology seemed feasible leading up to and during the Mao era, in the face of current globalization and international attention, the zheng-fa “excuse” for a limited rule of law is no longer suitable.

Due to globalization, an ever-expanding market-based economy and the international spotlight that comes with hosting the 2008 Olympics, the emphasis on China’s rule of law system has never been so strong. While it is safe to say that China has recently improved its rule of law system, when weighed against western liberal democratic standards, it is simply not up to par. Western nations, most notably the United States, are continuously pressuring China to reform its system as it becomes a larger player in the world market as well as in international negotiations. China also wishes to mold a legal system that boosts the CCP’s legitimacy in the eyes of its citizens and the rest

of the world, without the cost of compromising its socialist structure. However, before either the West or China can begin negotiations on China's rule of law system, it is necessary to understand *why* the rule of law is limited in China. Why is the rule of law in China so unsuccessful, and what policy changes are needed to ensure a more sound legal system?

### **Why Is the Rule of Law in China So Weak?**

The reasons for a weak rule of law in China can be broken down into four subcategories: the judicial system, the legal profession, and the legislative system, as well as general Chinese culture and attitudes toward the rule of law.

#### ***The Judicial System***

A weak rule of law in China almost goes hand-in-hand with the Chinese judicial system. The lack of judicial independence from the CCP continues to be a crippling factor for rule of law reform. The court system is almost entirely controlled by the CCP and local governments, and judges are appointed solely by the party and local governments. According to the Carnegie Endowment Fund for International Peace, "because Chinese courts are really a part of state bureaucracy, they typically lack the political authority to enforce decisions" (Pei, 2005, p. 8). Judicial corruption also plays a key

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factor in undermining the authority of the courts. Judges, who are appointed by party members and rarely have extensive knowledge of the legal system, often take bribes in exchange for a favorable outcome in a case. As stated by Chinese government scholar Jamie Horsely in “Rule of Law in China: Incremental Progress,” “Until recently, judges were drawn from the ranks of the retired military. Appointments were based more on political correctness than on relevant experience or legal knowledge”(Horsley, 2008, p. 102).. Even though the system has somewhat improved in the last decade, she reports that only 40 percent of judges today hold a university degree. Another factor which poses a great challenge to legitimacy of the courts is criminal lawsuits. This is evident in China’s statistics regarding the death penalty. According to Amnesty International, in 2008 China performed 72% of the world’s executions, and imposed 79% of the world’s death sentences – more than all other countries combined (Amnesty International, 2009). In the *New York Times* article, “Deep Flaws, Little Justice in China’s Court System”, Joseph Kahn asserts that the police and courts “rely mainly on pre-trial confessions and perfunctory court proceedings to resolve criminal cases rather than extensive legal review” (Kahn, 2005a). This often leads to wrongful accusations and uninformed court decisions that could result in sentences ranging from many years

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to life in prison -- for some, even death. In such a system where no respect for the court process is evident, it is easy for the courts to appear as nothing more than a formality.

### ***The Legal Profession***

The Congressional-Executive Commission on China (CECC), created by the U.S. Congress to monitor governance issues in China, estimates there is roughly one lawyer for every ten thousand individuals in China, as compared to a ratio of one to 550 in the United States (Nanlan, 2005). According to the U.S. State Department, the number of government lawyers providing legal aid remains inadequate to meet demand. Those that do provide legal aid are often corrupt, unqualified and inexperienced. This is because, like the judiciary, lawyers are dependent upon the government. In addition, it is common that a party cannot afford a lawyer, due to the limited legal aid system. Lack of experience on the part of the lawyers is also a continuing problem. In a case study of 130 civil disputes brought to trial, it was found that 27% of the lawyers remained silent, 43% made brief comments, and only 4% made actual references to procedural or substantive law (Peerenboom, 2002). This is due to a number of factors. For instance, until 2001, PRC lawyers were not required to have a law degree or any other type of college degree to sit for a bar

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examination. As a result, in the mid-1990's, almost a third of China's lawyers had no formal education beyond high school. Many lawyers also prefer to rely on social connections rather than legal analysis to achieve case goals. They oftentimes engage in unfair competition in order to attract clients, including royalties, kickbacks, payment of introduction fees, and clientele practices called "guanxi". Guanxi refers to the system of social networks in which protection of friends, family and co-workers is put above the law. As a result of this corruption network, lawyers tend to take on pro-bono cases for relatives and close friends, and scam other clients to make a profit.

### *The Legislative System*

Lawyers in China are often deemed unknowledgeable of the law; however, the "law" in China is almost impossible to comprehend. China's legislative system is notoriously complex and ineffective, only exacerbating the problem of its weak rule of law. According to Chinese media statistics, 1,932 government officials were convicted for corruption in 2005, including six at the minister level (Shirk, 2007, p. 32). A major contributor to the pervasiveness of corruption and such a disabling legal system is the poor quality of legislation. Peerenboom addressed this issue in a chapter titled "The Legislative System: Battling Chaos." According to Peerenboom, not only is

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“power dispersed, but the lines of authority for law-making are not clear. In many instances, it is difficult if not impossible to state whether an entity was acting within its authority” (Peerenboom, 2002, p. 256). Compounding the problem is the poor quality of legislation, including poor drafting of laws due to the lack of experience on behalf of drafters, which results in poor (if any) implementation. Perhaps the legislative system’s most pervasive contribution to a weak rule of law is the sheer inaccessibility of citizens to the laws. Publications remain a large problem. Many regulations are still unpublished, and those that are published are incomprehensible to party officials let alone the public. And finally, the legislative system is hampered by the relatively low esteem of the Chinese constitution. According to Peerenboom, the constitution is not “treated as the supreme law, nor is it enforced” (Peerenboom, 2006, p. 109). With an increasingly dense constitution and lack of transparency and knowledge when dealing with legislation, it is not difficult to understand why China’s legislative system contributes to a sub-par rule of law system.

### ***Cultural Barriers***

Lack of legal knowledge, the judiciary and the complex legislative system are accountable for an insufficient rule of law in China; however, these institutional shortcomings pale in comparison to

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the cultural barriers that are rooted deeply in society. As discussed in an editorial in the New York Times, one author wrote,

“Your hopes that China might change by absorbing “the rule of law” seem to assume that the country’s authoritarian rulers are a major obstacle to the spread of law. In fact, popular attitudes are even more of a barrier” (Link, 2007).

It is true that China’s cultural habits and social traditions present a major obstacle to improving the rule of law in China. Traditionally and historically, China has lacked a “rule of law culture” (Peerenboom, 2006), and establishing effective rule of law in the country is not something that is held in high esteem. Instead, many use social connections to get around the law, feeling that bribery and kickbacks are more effective means of obtaining what they want. As stated in the chapter “The Virus of Corruption” in *China: Adapting the Past, Confronting the Future*, corruption has “always been a way of life in China” (Bouye, Denton, and Dickson, 2002, p.301) The authors proceed to state that “The exchanging of gifts and lavish meals is an established part of business ritual. Chinese journalists think nothing of accepting gifts from interviewees” (Bouye, Denton, and Dickson, 2002, p.301). Aside from having no tradition of rule of law, the CCP also rejects the kind of liberal democratic government typically associated with the rule of law. Therefore, in order to enact rule of law

reform, Beijing's government must find a way to institute widespread respect for constitutional law without compromising its own power and legitimacy.

### **Evidence for a Strengthening Rule of Law in China**

While the rule of law in China has a long way to go before establishing even a thin rule of law system, the CCP has recognized the need for reform to handle a growing market economy and to boost their domestic legitimacy. Understanding the need to present China as a modernizing culture that has leverage on the political and economic level, the CCP has begun to implement improvements in the system that substantially aid the progress of reform.

One of the most important aspects of an improving system is the reform of the legal profession. Law school curricula and teaching methods are becoming more and more diverse, including the “introduction in 2000 of clinical legal education that combines teaching with hands-on practical experience representing real clients” (Pei, 2005, p.8). The CCP has also begun to consult legal scholars in the new and improved process of policy-making. Chinese lawyers are also beginning to engage more directly in politics. Now, over 400 lawyers serve as local people's congress deputies at all levels, and almost 2 percent of registered Chinese lawyers serve on political

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consultative congresses (Kahn, 2005b). Corresponding with the increase in people seeking legal counsel is the increase of cases in the courts, which reflects a growing confidence in the judicial system. Perhaps the most interesting element of the new legal reform is the type of case now being pursued by China's lawyers. Public interest cases that deal directly with specific social problems are garnering public attention, because lawyers are drawn to these issues through the media. Some lawyers even take on "politically sensitive cases involving criminal defendants, activists, and religious worshippers" (Yang, 2007, p. 153). However, doing so often puts Chinese lawyers in direct conflict with local governments, and sometimes, can even cause a suspension from practice. Although governmental restraints on the legal profession are still pervasive, the legal system is certainly moving in a positive direction of reform.

China has also recently experienced some progress in improving administrative law. This is largely through the National People's Congress, an institution that claims to "exercise the power of the people on the state level" (Shirk, 2007, p. 171). However, recent attempts have begun to make the NPC more transparent and responsive to the needs of the people. NPC deputies undergo various training programs and legal experts are being recruited to serve. By

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increasing public participation and the number of hearings, the CCP hopes to improve the credibility of the NPC and become more in tune with social issues that continually resurface. This is also reflected in the expanding village election system. The village elections as well as the NPC deputy elections are “becoming incrementally more competitive” (Bouye, Denton, and Dickson, 2002, p. 302), and some deputies are seeking to more effectively carry out their constitutional duty to supervise the government. Although the reforms to the NPC and the expanding village election system indicate promising attempts at institutional reforms by the CCP, there is still a long way to go. The fate of China’s experiment in legislative reform may hinge on whether Beijing will commit itself to extending the process to all levels of government.

### **Policy Recommendations**

With the goal of establishing more transparency in mind, there are many methods by which the CCP can reform the legislature, the courts, and even the general public’s way of thinking, to alter the rule of law in favor of a transparent, more cohesive system. The first and foremost fundamental step in strengthening China’s rule of law is establishing transparency. The government ought to “give the Chinese citizens the legal right to access information and the means to enforce

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law through the courts” (Peerenboom, 2002, p. 256). Without making the legislative bodies and court system more transparent, the Chinese government runs the risk of deepening its poor rule of law system.

Secondly, the CCP must recognize the need for more institutional reforms in the courts, as well as a more independent court system. Since the judiciary is, essentially, the backbone of enforcing this rule of law system, it is imperative that the CCP mend the current judiciary situation. At a minimum level, the CCP could change the way courts are funded and the way judges are appointed, by shifting the responsibility from local governments to a more centralized system. Also, the CCP could reduce its role in judicial appointments, perhaps by allowing the National People’s Congress control over who is selected. In addition, “increased professional training to enhance competence” (Peerenboom, 2002, p. 258) is essential to structural court reform. Without the authority to enforce the laws and court decisions, the legitimacy of the judiciary is greatly weakened in the eyes of Chinese citizens, thereby rendering it ineffective. Also, the pervasive issue of widespread court corruption needs to be promptly addressed. Perhaps a suggestion to help reduce court corruption could be to raise judges’ salaries, thereby reducing the incentive to use bribery and clientelism as a means of collecting money. Another

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means of increasing the legitimacy of the courts is to increase the social status of judges in general. As it is now, being a member of the judiciary is not necessarily a respected profession in China. However, perhaps if the wage and social status of judicial members were raised, it would attract more qualified candidates to fill the position.

Much like the judiciary, the legal profession is not well-respected in China, and proves to be another example of a system needing substantial reform. As the judiciary system lacks qualified judges, the legal system is also full of unqualified lawyers. In order to obtain more qualified lawyers, the CCP needs to ensure that the process of becoming a lawyer is more rigorous. While there have been significant attempts in recent years to raise standards through more testing, legal training is necessary in conjunction with testing. In addition, legal aid needs to be more readily available, so as to increase the number of cases that are handled each year. This reform deals specifically with the CCP's Ministry of Justice (MOJ). Since 2005, the MOJ has sponsored more than 3,000 legal clinics, increasing the number of clients from 700,000 to 1.6 million (Johnson, 2003).. However, legal aid still does not reach all sectors of society. While it is offered to residents of highly impoverished areas, the regulations on who receives the aid are strict and often complex. To better reform the

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legal system, the CCP needs to make legal aid an essential part of legal culture, widening its availability to more sectors of society and classes of people, both urban and rural. Lastly, lawyers need to be recognized as a force for social change. China's lawyers usually "shy away from politically sensitive cases to avoid jeopardizing their lucrative commercial practices" (Johnson, 2003) simply because they believe that their role in such cases will have no bearing on the end result.

While I am not suggesting that lawyers begin to take on highly politically-sensitive cases, I am suggesting that attorneys ought to take more risks to increase their credibility and to make themselves a force for social change. Perhaps lawyers could take on more cases of underrepresented areas, or they could simply take on less monetarily-rewarding cases. By restoring faith in the legal system through the eyes of Chinese citizens, lawyers can encourage strong and positive social change from the bottom up. There is evidence of an increasing role for lawyers in repressive regimes, such as in Taiwan and South Africa, where the legal profession managed to be at the forefront of reforms. This could also be true for China.

Strengthening the role of the National People's Congress is a legislative law reform that could open the door for stronger rule of law. Perhaps even a radical suggestion would be to increase electoral

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freedom by permitting direct elections for delegates above the village level (on a county or township level) or to decrease the Party's role in selecting the members of the NPC. The size of the NPC also needs to be reduced. At present, the 3,000 member NPC is so large that it functions largely ineffectively. Also, the NPC only meets once a year. Decreasing the size of the NPC and increasing the number of meeting times could result in a higher-quality legislative review system.

Institutional reforms and changes to organic laws are crucially important to establish a more transparent and effective rule of law in China; however, the ability of these changes to take effect lies in the roots of society. It is imperative that laws and institutions “nurture a society that is guided by legal rules and that appreciates its rights and responsibilities under the law” (Keith and Lin, 2003). This type of society calls for a major transformation of the Chinese attitude towards the rule of law in general, a task that will certainly prove difficult. However, there are ways in which the government can boost the reputation and legitimacy of the rule of law. One effective means could be through the use of media and social organizations that promote “legal education campaigns,” as well as using the media to restore faith in the judiciary and legal systems. Moreover, the CCP ought to encourage a free press to back their reform stance. Journalists

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should have a good knowledge of the law in order to help raise legal consciousness and to offer informed reports on legal issues. Also, the CCP could bring about minor education reforms that include simple law-related curricula in China's primary and secondary schools. This could help young children internalize the increasing importance of their nation's legal code. In order to cut corruption, police should also be thoroughly trained and knowledgeable with respect to the law, and local government officials need to strongly discourage the use of bribery, kickbacks and clientele practices.

### **Conclusion**

The reason for China's recent turn toward reforming the rule of law, according to Randall Peerenboom, has "been the belief that legal reforms are necessary for economic development" (Peerenboom, 2002, p. 258). In emphasizing the importance of law to economic development, Chinese legal scholars align themselves with Western economists who argue that rule of law is conducive to economic growth. As a 1999 World Bank report states, "countries with stable government, predictable methods of changing laws and a strong judiciary saw higher investment and growth than countries lacking these institutions" (World Bank, 1999, p. 23) Given that China is moving more and more toward a market economy and becoming a

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major player in the international market, the likelihood that President Hu Jintao will continue on the path of reform is strong. In his meeting with the Political Bureau, Hu Jintao stressed the importance of the rule of law by concluding that “The Party should consistently reform and improve its governance and serve the people, while demonstrating, developing and maintaining its vanguard character” (“President Hu Jintao Stresses Rule of Law in Government,” 2006). He went on to state that the Party came to realize the importance of the rule of law by deepening its knowledge of its own administration and summarizing its long-term practice and experience.

Adding to the economic pressure on the CCP to reform the rule of law, there is also acute pressure from international governments to reform the law in light of the 2008 Beijing Olympics. Organizations such as Human Rights Watch and Freedom House actively monitor Beijing’s stance on the rule of law by tracking the numbers of human rights violations. Persuasion from foreign governments as well as a strong desire for China to increase its international leverage are other reasons why China’s rule of law will continue down the road of development.

In conclusion, I agree with Randall Peerenboom’s concluding argument in *China’s Long March Toward Rule of Law*. He states that

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“China’s rule of law is likely to proceed. Despite occasional setbacks, China’s legal system will continue to converge toward rule of law. The regime will rely on incremental changes, and reformers will be driven primarily for domestic factors and considerations in determining the pace and content of reforms” (Peerenboom, 2002, p. 258). In retrospect, China’s legal system as it exists today has come a long way since Mao and the early post-Mao eras. The government in Beijing is now more flexible, especially in regard to market politics and economics, than it has ever been. It has proved it has the ability to adapt without losing control or detracting from its legitimacy. Although human rights abuses and corruption are still prevalent in Chinese society, the numbers for each are lower than in past years, especially with a recent addition by the CCP to the Constitution that “the state respects and safeguards human rights” (“Chinese expert hails inclusion of human rights in constitution”, 2004). While this is essentially meaningless without the backbone of the judiciary and legal system to enforce the amendment, it proves that China is on the right track and will continue to be for years to come.

In my opinion, the major obstacle to such reforms is not financial or even technical, but is related to the Chinese mindset. Rule of law reform will not “easily take root in systems rife with corruption

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and cynicism” (Carothers, 1998), p. 19. It will only succeed if Chinese citizens have faith in the system. While it is the government’s job to build the skeleton of a more thorough rule of law system, it is the people’s responsibility to give it flesh, to swing the system into motion. Lawyers, judges, everyday citizens, and even children can all serve as the force of social change, from the bottom up. The Chinese people equal the change that must happen in China’s rule of law future.

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