A Lost Generation: How Government Policy Creates Systemic Barriers to Refugee Education in Turkey

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A Lost Generation: How Government Policy Creates Systemic Barriers to Refugee Education in Turkey

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Abstract

Education is one of the most important factors in aiding refugee integration with host communities. In Istanbul, education and language acquisition gate-keep further technical training and the Turkish job market. Despite the consensus on the importance of refugees’ education, NGOs in Istanbul continue to face policy barriers to educating Syrians. This paper addresses why these systemic barriers exist and how NGOs provide services even in this challenging political environment. To answer such questions, I analyze a series of seven interviews I conducted with NGO employees and volunteers in Istanbul. After analyzing their responses, I argue that policies inhibiting the education of Syrians in Turkey are a result of the political climate generated by the coup in 2016. I also find that NGOs attempt to continue providing educational services by deliberately renaming programs and implementing a public-private partnership model. Through such an analysis, this paper presents how national politics has affected refugees’ ability to access education, shifting the current conversation in refugee education literature from international, macro-level factors to the role of state and non-state actors.

Introduction

In October 2016, the Turkish government began a program funded by the European Union (EU) to integrate Syrians into Turkish public schools amid the backdrop of a failed coup attempt only months prior. The program, which is called the Project on Promoting Integration of Syrian Kids into the Turkish Education System (PIKTES), was established to integrate Syrian students into their Turkish host communities under temporary protection. The program provides funding for public schools, Arabic and Turkish language teachers, and school supplies for the roughly one million school-aged Syrian children living in Turkey. The aim of this program is a noble one: integration and education of students.

Yet, in a hardly publicized corollary to the PIKTES program, all education programming for Syrians not run by the Turkish government was outlawed after the program’s launch in 2016. This meant that Temporary Education Centers (TECs)—which were staffed primarily by Syrian educators that taught courses in Arabic—had to be phased out, leaving Syrian teachers without jobs and students to study in an unfamiliar environment. NGOs that previously provided language classes, makeup classes for students who
missed school, or homework assistance were no longer allowed to continue their programming. This change in services was particularly challenging for older students, who were already less likely to choose school over getting a job and now had to take all classes in Turkish. Syrians without temporary protection could not access public services before or after this policy. PIKTES therefore eliminated access to any educational programs for unregistered students since they could still not attend public schooling and they could no longer attend private schooling in the absence of official registration. Such state expansions were emblematic of the post-coup period, during which President Erdogan’s government expanded its reach in order to regain control after the bloodiest coup attempt in Turkey’s political history.

Because of these policy changes, education statistics for Syrians in Turkey remain bleak even after PIKTES’s implementation. Among the 92 percent of Syrians living outside of camps, UNICEF estimates that 74 percent have no access to schooling. In 2019, three years after the program began, the Turkish government estimated that only 50 percent of school-aged Syrians nationwide were enrolled in any school at all. For children aged thirteen and up, that percentage is even lower, with only 33 percent enrolled in school.

These difficulties in education in Turkey are not unique to the nation. As of 2018, over half of all refugees worldwide are children. Many spend years without proper schooling in their new host communities, even though education is a key factor in promoting integration and creating future educational and employment opportunities for refugees. Studies have shown that safe and effective integration into host country schools can be a stabilizing force for refugee children and build a broader sense of community between refugees and host country nationals. Despite this consensus on the importance of refugee education, refugee students face immense barriers to school integration and educational achievement across the globe.

In Turkey, the politicization of refugee education has substantial consequences for Syrian children. This trend’s significance is twofold. Firstly, it provides a broader lens to the existing literature on refugee education, which focuses primarily on barriers to migrant education at the micro-level for individual students, parents, and teachers. The challenges that arise from language barriers and discrimination are well-documented at this level. However, little conversation exists on meso-level challenges to educating migrant children, particularly outside of the refugee camp setting. To that end, this paper adds a new dimension to the conversation by examining how government policies and NGO actions affect migrant education outcomes. Secondly, the question of how government policies and NGO actions affect migrant educational outcomes is also significant as it requires the analysis of policy positions by host governments. Focusing research on individual teachers and students shifts the responsibility of improving the educational outcomes of educated migrant children away from governments during a time when national governments, particularly in Turkey and the U.S., are increasingly hostile towards migrant children. These two states make a fitting case for this study given that they both have a high level of state capacity—that is, they both have the resources and personnel necessary to implement national public education programs. Therefore, this paper will expose the ways in which government policies prevent migrant children from accessing a quality education even in the existence of adequate state capacity, shifting the focus of the literature to analysis on a national scale. As global migration increases, understanding the effects of migrant educational policy is imperative.

This paper investigates the reasons for the existence of the discrepancy between the consensus that education for refugees is key and the persisting reality of educational barriers. I argue that, in a state like Turkey with a high bureaucratic capacity, this contradiction is caused by government incentives for control over the education system. In situations where a state has the capacity to implement strong education policy, its failures come from the state’s concurrent desire for control over refugee education. Within my interviews with NGOs, I also examined a related, secondary question: What are the coping strategies that non-profit organizations use to circumvent such restrictions? I argue that while some organizations may use policy loopholes to continue providing educational services, many NGOs have found that partnering with local governments, which prioritize the need for community services over the broader motivations of the state, is the most effective strategy to continue educational programs.

I analyze the case of Syrian refugees in Istanbul to build this argument through the help of a series of interviews with refugee-serving NGOs in Istanbul, which were found via a snowballing method conducted in January 2020. Employees and volunteers highlighted the political and bureaucratic challenges they
faced when trying to institute educational programs despite the existence of a nationwide program, PIKTES, aimed at integration. Namely, despite PIKTES’s goal to educate and integrate Syrians, the Turkish government has intentionally and unintentionally limited opportunities for Syrian migrants in its attempt to exert control over the national education system. As one UNHCR report explained, “education for refugees is inherently political.” Because of the state’s desire to control which refugees access education services and the type of education they are receiving, even a program aimed at positive integration has faced limitations.

The rest of this paper will proceed first with an explanation of the Turkish political context surrounding Syrian refugees and Turkish education policy. Next, I examine previous explanations for limited policy efficacy and educational barriers in a refugee context through rumors and misinformation, limited bureaucratic capacity, and language acquisition challenges. However, I show that none of these explanations fully capture the restrictive policy environment described by interviewed NGOs. I will then proceed with an outline of my own argument on how the state’s desire for control over refugee education has led to restrictive aspects of education policy. After outlining this argument, I will describe the case selection and interview process. I will then detail my findings from the Istanbul case study, beginning with the political context in Istanbul and proceeded by a consideration of how nonprofits continue to provide education services in an increasingly restrictive policy setting.

Literature Review: Explaining Barriers to Refugee Services

Past explanations for why education services fail to achieve their desired result cover state capacity, poor information dissemination, and language barriers. The existing literature explaining gaps in refugee services and education suggests that these barriers arise from limited state capacity, whereby host communities are unable to support the needs of refugee groups. Others suggest that a lack of information leads to refugee’s inability to access services. Literature on educational services identifies language barriers, child labor, past trauma, and bullying in schools as the primary reasons for poor educational outcomes for refugees.

While these explanations certainly highlight problems with educational access for refugees, they overlook the unintended consequences of policies that are designed to increase educational access but fail to do so even in states with high bureaucratic capacity. However, by looking at the political and historical context of Turkey’s education policies, we can see that there are more motivations at play than those covered by the literature. In this literature review, I analyze the existing explanations on educational access for refugees to see how they apply to the situation in Turkey and show the areas where a consideration for state control would add to our understanding of educational access barriers among refugee populations in Turkey.

Background: Syrian Migrants and Education Policy in Post-Coup Turkey

Defining Migrant Groups in Turkey

This paper focuses specifically on Syrian refugee populations, though they are not the only refugee group present in Istanbul nor are they the only refugee population served by the NGOs interviewed in this article. However, Syrian refugees are the primary focus of this article because they are the largest refugee group in the city and have been most affected by the recent education policy changes. While migrant-serving NGOs in Istanbul frequently provide services to multiple groups, the special focus on Syrians is apparent through their programming and language offerings—few organizations provided a large range of languages in their programs, but Arabic was ubiquitous.

It is also worth mentioning that Syrians officially registered in Turkey are classified as asylum seekers under “temporary protection status” rather than refugees under Turkish law. This fact raises further issues in conjunction with the failures of PIKTES, since only Syrians who are officially registered can attend public school, leaving un-registered Syrian children without access to public education or to the previously existing private education services. However, for clarity in this article, I will refer to Syrians in Turkey as either refugees or simply as Syrians throughout this paper since Syrians in Turkey fall under the United Nations’ international refugee definition and not all Syrians in Turkey are registered for temporary protection.

Political Changes in Post-Coup Turkey

When NGO workers described the educational policy passed by the Turkish government in 2017, they linked
the failures of migrant integration efforts to the 2016 coup attempt. These were not just recent policies—they were specifically post-coup policies, linked to a series of crackdowns and changes in the Turkish government that led to an increasingly conservative state and precarious situation for refugees. What followed the aborted coup was an authoritarian consolidation of power that saw Turkish President Erdogan change Turkey’s entire political landscape from a parliamentary system to a presidential one. This consolidation of power was accompanied by policies affecting the government, civil society, and education.

There already exists a substantial literature on how governments build up authoritarian power and cut down military autonomy to prevent coups, a process known as “coup-proofing.” Less research has been done on the aftermath of failed coups. Nevertheless, based on a slowly growing literature tracing the effects of Turkey’s 2016 coup attempt, responses look similar across nations. This literature describes a state actively repressing minority groups, cutting military power, and increasing authoritarian control over the legislature. One political commentator characterized the political context in Turkey as one, “where Erdogan’s prior tilt toward authoritarian rule evolved into absolute power.” Civil society leaders have similarly complained that “the president is trying to benefit from this disaster” to enhance his own power. One study found that, profiting from the restrictions imposed by the declared state of emergency, the Turkish government fired and arrested thousands of public officials. These examples of tightening state control show a trend in post-coup Turkish politics which extends beyond just the legislature and the military. The Turkish government has been using the coup as an excuse to institute repressive policies across sectors related or unrelated to the implications of the coup attempt itself, among them the refugee sector.

Post-coup politics in Turkey not only included a tightening of state power, but it also created specific policies targeting refugees, with increased reports of state officials violating national and international asylum laws. Syrians who arrived in Turkey from late 2017 onward struggled to register for temporary protection status and to receive basic services offered under this status. This was followed in 2018 by a policy precluding any more Syrians from registering in the Istanbul province at all. Further research found that many leading scholars on refugee rights in Turkey have been fired from their posts at universities. Policies in this vein, which limit the services available to Syrians living in or entering Turkey, are a continuation of the trend towards greater state control. These documented aggressions against Syrians and other refugee groups paint the picture of a nation reaching for further control over minority groups.

These policies limiting refugees’ access to services in Turkey are accompanied by violations of asylum law, but they are not the only ways that the government has been tightening control over refugees. Hard power approaches to limiting refugee services are not the only available. One study specifically focusing on the Turkish state’s post-coup internet policy argued that the primary motivation in post-coup policies was based on “using hard and soft forms of control.” One such form of soft power was education policy. In the following section, I will trace the link between the Turkish government’s post-coup power consolidation and the education policies enacted as part of this same wave of political change. These education policies include the PIKTES project and conservative curriculum updates in public schools. These changes have ultimately led to an education system that is not geared to Syrians’ educational needs, but rather to controlling their education, integration, and freedom.

**Turkish Public Schools**

Outside the camp setting in Turkey, the Syrian Education Commission (SEC), a non-governmental organization, taught its curriculum in Arabic through accredited TECs separate from government institutions. Classes were based on a Syrian curriculum adapted by the SEC to remove any glorification of Bashar al-Assad and his regime. For years, this was the norm for registered Syrian children’s education. While the segregation of schools limited Syrian integration into Turkish society, it provided an education system in the children’s native language and focused on the topics that Syrian teachers taught prior to the war.

Turkish public schools provide a much different environment. Classes are taught in Turkish, and curriculum is determined nationally. In the same wave of post-coup changes during which the Turkish government introduced the PIKTES project, the government also amended the public-school curriculum. These policy changes reflected the post-coup government’s overall shift towards nationalism and its subsequent desire to control the country’s educational system. This shift is affirmed by political statements...
made at this time: in 2017, the Minister of Education himself stated that the altered curriculum taught Turkish history “from the perspective of a national and moral education.”21 The Undersecretary of Education added that the primary goal of these national curriculum changes was to “protect national values.”22 A teacher’s union, Egitim-Sen, even went on to criticize the changes for placing too much emphasis on “Turkishness” and “religious nationalism.”23

The literature also suggests that education can serve as an arena for national governments to exert state control and advance nationalist dialogue.24 In Israel, the education system was used as a tool of control over Arab minorities in the 1990s.25 In the United States, nationalistic curriculums have allowed the state to make its presence known within the public-school system.26 Indeed, the federal government has a long history of using education to control vulnerable groups, such as Native American populations.27 Even when the U.S. Congress passed the Indian Education Act in 1972 to provide more educational resources to Native American students, most public schools continued to “reject tribal input and insist on control over curriculum.”28 Thus, it is clear that states can use public education as a tool to control certain groups and promote nationalist dialogue.

In refugee camps across the world, schools are often run by multinational NGOs, such as the United Nations. These NGOs face the challenge of teaching a “national” curriculum based on the country in which they are operating, even though their schools are not run by the state.29 In their article on public schooling for refugees, Waters and Leblanc explain that in some situations where refugees are unlikely to return to their home country, following UNHCR protocol, “if return is further delayed or there is considerable local settlement, the host country curriculum may be adopted by [NGOs with] mutual consent.”30

However, in contradiction to this UNHCR protocol, the Turkish government implemented the PIKTES project to integrate refugees without this “mutual consent.”31 This lack of contribution by refugee groups became the norm. Because education in refugee camps was controlled mainly by multinational NGOs and local governments, “refugees themselves [were] not typically engaged in overall planning, even though there may be a number of original and creative initiatives.”32 While this traditional camp structure already led to a lack of input from refugee groups, this absence of influence for refugee populations was exacerbated by the nationalist policy changes implemented by Turkey, which allowed the Turkish government to control refugee education in camps. This shift from weak state control in camps to stronger host state control in schools within cities under the new program reflects other research findings that “education is a tool with which interested groups seek to exploit or extend power as well as to promote a particular form of economic and social development.”33 In Turkey, education is run by an increasingly nationalist state rather than a weak, multinational NGO, making state control over refugee education even stronger.

Theoretical Explanations

State Capacity

Throughout the literature, low bureaucratic capacity—or the inability of bureaucrats to produce intended outcomes using policy—is often suggested as the cause for the inefficiency of state policies in assisting refugees.34 Bureaucrats’ uneven application of policies can lead to government policies that fail to effectively help refugees. In Thailand, for example, “street-level bureaucrats” often apply government policy inconsistently, leading to ineffective services for refugees.35 A shortage of professional personnel has also led to ineffective services in countries such as the U.S. and Great Britain. For example, in both low and high-capacity states, a shortage of translators has delayed key refugee services like asylum applications, which can unintentionally lengthen the stay of refugees.36

As such, low state and bureaucratic capacity have frequently been reported as key reasons for the educational challenges facing Syrians in Turkey—only 33 percent of Syrians age thirteen and up are enrolled in school.37 The primary explanation in these reports for low levels of school enrollment and poor education outcomes for Syrians is a lack of qualified teachers and translators for students. According to one UNESCO report, 80,000 new teachers would be needed to educate all school-aged Syrian children in Turkey. However, from 2018 through this year, over half a million qualified teachers faced unemployment awaiting a teaching assignment from the Ministry of Education.38 Qualified personnel are clearly not a limiting factor here.

Additionally, even if there were not enough teachers in Turkish public schools to serve the influx of new students, this would not explain why the PIKTES
project closed private avenues to education. The shutdown of private avenues to education can instead be better explained by the aftermath of the 2016 coup attempt, where President Erdogan closed and appointed new staff to private schools associated with the Kurdish group FETO. Turkey was also granted additional 300 million euros in additional funding for education of refugees by the EU in conjunction with the PIKTES project. This funding was provided specifically to counter the problem of limited capacity in public schools. Capital was therefore not a limiting factor for Turkey either. Rather, the barriers to education caused by PIKTES—namely, the difficulty Syrians now face in can receiving educational resources directly from non-profits—are a consequence of the Turkish government’s desire to control refugees’ education.

**Information Dissemination**

Poor information dissemination emerges in the literature as another explanation for why policies which should benefit refugees either fail or have detrimental consequences. By allowing rumors about policy to spread, governments can unintentionally undermine compliance with their own policies. For example, in their article “Rumors and Refugees,” Melissa Carlson, Laura Jakli, and Katerina Linos describe how a lack of information on formal relocation procedures caused well-meaning and well-funded refugee policies to fail in Greece. In Greece, the government and the UNHCR together restricted information regarding how long asylum procedures would take due to their concern that this information would cause refugees to turn to smugglers to leave the country. However, this action instead caused refugees to lose trust in the government and NGOs’ ability to help them at all. Indeed, the authors note that government policy is frequently grouped together with actions of large NGOs, like the UNHCR, leading to the erosion of refugees’ trust in either type of institution.

By contrast, in the case study for this paper, I find that trust in small, community-based NGOs remains intact in Turkey. Additionally, the only aspect of national education policy which the government obscures is the closure of private education. Access to public schooling for registered Syrians is widely publicized. Therefore, an unintentional mismanagement of information about educational policy hardly explains why Syrian refugees face difficulty in accessing education.

Prior literature on rumors and poor information dissemination also analyzes contexts where governments are intentionally misleading about their policies in times of war. In the case of Turkey, the PIKTES policy is intentionally vague about its targeting of NGOs. Despite this, the NGOs we spoke to were well aware of the policy’s implications and restrictions on their programming. While the government has obscured PIKTES’s impact on NGOs, there is no gap in knowledge about the policy. Instead, the policy was achieving precisely its written purpose of funnelling all Syrian education into state-controlled schools.

**Language Barrier**

The most frequently cited barrier to refugee education is that posed by language differences. The language barrier between refugee children and teachers within their host country creates substantial problems for refugee students. Programs that do attempt to alleviate the language barrier can hinder students from accessing education and, in extreme cases, dissuade older students from attending school at all. Language is frequently cited as the primary challenge facing educators in Turkey, Jordan, and throughout Europe.

It is certainly true that many Syrian children struggle in Turkish schools because of their lack of local language knowledge. In one 2018 study, researchers found that public school teachers complained about a lack of Turkish language courses, materials, and out-of-classroom support for Syrian students. TECs, where Syrians were taught before PIKTES, were staffed mainly by Syrian teachers and therefore taught in Arabic, eliminating the language barrier issue. Unfortunately, Turkish public schools now have a much more limited Arabic speaking staff. PIKTES had publicized plans to address these complaints by increasing funding for stationery and education materials, the training of teachers, and Turkish and Arabic language courses. However, 2018 findings on the lack of language courses were made two years after the launch of the program, so the plan’s measures to address complaints were slow going at the least.

What is even more concerning is that any previous outside support that Syrian students received from NGOs is no longer available. In fact, NGOs which previously provided supplemental Turkish classes to students are no longer able to provide these classes. PIKTES limits NGO provision of even language classes. So, while the language barrier may help
to explain why Syrian students struggle in Turkish schools, they do not explain the motivation behind PIKTES, nor why the Turkish government has chosen to limit education options.

**State Control and Urban NGOs**

While the concepts of low bureaucratic capacity, poor information dissemination, and language barriers can be applied to partially explain why educational barriers exist for Syrian refugees, Turkey’s nationalist policy changes following the 2017 coup unveil an important factor overlooked in the existing literature. By eliminating the ability of NGOs to assist Syrian refugees, the Turkish government has limited refugee education services. Hence, to explain Syrian refugees’ educational barriers, we must instead analyze the intention underlying Turkey’s post-coup policy changes, NGOs’ responses to these policy changes, and the ways in which Turkey’s desire for greater state control has inhibited adequate education for Syrians.

I argue that past explanations overlook the barriers posed to refugee education services in situations where a high-capacity state is using education as a means of control. By ignoring these factors, the literature is missing challenges posed by the power dynamics of service-provision. The literature on public education as an arena of state control suggests that governments have historically used public schooling to advance nationalism and socialize children to accept particular goals of the state. Traditionally, this literature has focused on ways that a state may use public education to strip certain groups of their culture. While this motivation is more extreme than in the Turkish case, a connection between positive integration, the stated goal of the policy, and building a national allegiance is no far leap. It makes sense then that a situation like that which exists in Turkey, wherein the government is expanding its own control over minority groups in response to a coup, this desire for state control would spill over into education policy for refugees. This is especially true in Turkey because the state is competing with other, non-state actors like multinational and local NGOs for control over education of Syrians within their borders. In a traditional camp setting, education would be primarily organized by non-state actors. However, for the increasing number of urban displaced people, NGOs must deal directly with state actors in providing their services. This analysis more adequately explains many of the short-comings of PIKTES.

This is not to say that the Turkish government and its EU partners intended to create a policy with such glaring issues. In fact, since the EU funded PIKTES and the UNHCR cooperated in the program’s implementation, the Turkish government had good reason to create a policy aimed at educating as many Syrian students as possible. If nothing else, the success of this type of policy would mean that the state could continue to educate Syrian students without competition or complaints from external or non-state actors. However, the Turkish state in recent years has become increasingly strict on registration of Syrians within its borders. In 2019, thousands of Syrians registered in cities outside of Istanbul were deported either back to these cities, where they may have limited job prospects, or back to Syria entirely. We see that the Turkish government has been balancing a genuine desire for improved educational attainment and integration with its desire to expand control over the education sector and limit the opportunities of unregistered Syrians. Within PIKTES, we see the state extending control over which refugees have access to education based on legal status and what curriculum these refugees receive. Ultimately, governments that are trying to expand control can do so through education policy, meaning that even when everyone agrees on education’s importance and education policy is aimed at integration, these same policies may still limit educational access through other avenues.

**Case Selection and Methodology**

What accounts for the systemic barriers to refugee education, despite widespread consensus about its importance? To answer this question in this paper, I use Syrians living in Istanbul as a case study for urban refugee populations. As the largest host city of refugees in the world, Istanbul provides a fitting case study for examining the education outcomes of urban refugees. Currently, Turkey hosts over 3.5 million Syrians on temporary protection status, while many more reside in the country undocumented. Syrians in Turkey are overwhelmingly urban, with only 2.4 percent still living in camps. Istanbul itself has almost 600,000 registered Syrians. When it comes to education, the Turkish government was slow to act on integrating Syrian students. It was not until 2016 that most Syrian children in Turkey were attending school at all. With this population of refugees and the state’s capacity to
enforce new policies, Istanbul makes an apt stand-in for the urban migrant context. However, as I will outline within the findings sections, the policy environment played a key role in shaping education policy. Therefore, further research would be needed to assess how trends from Istanbul carry over into other urban refugee hotspots.

I examine refugee education policy through qualitative interviews and contextual research on the policy environment. The findings for this research include both an analysis of recent Turkish education policy and major themes from interviews conducted in Istanbul. We interviewed employees and volunteers of NGOs working in Istanbul using snowball sampling. We began with a limited number of interviewees pre-selected before our trip to Turkey and found other organizations to interview through referrals and the networks of our original organizations. Over the course of a week from January 13 to 18, 2020, we completed seven interviews with organizations ranging in size and serving an array of neighborhoods. The organizations ranged from small, community organizations to larger, government and UNHCR funded ones. Five of these organizations, which included Refugee Solidarity Network, Migrant Solidarity Association, Qunushyo, Yuva Dernegi, and an anonymous Syrian organization, worked on a community level to provide specific services for refugees. Many of these types of organizations also partnered with or were listed by the UNHCR. We also spoke to representatives of two organizations that work in Syria to get the perspective directly from Syrians living in Istanbul. Finally, we interviewed Multeciler Dernegi, an NGO working in partnership with the Sultanbeyli municipal government and the largest service provider of the seven. These interviews served as a launchpad for questions and further research.

The case selection and interview process for this paper took part in connection with a larger project by Urban Refuge, a refugee aid mapping app. Therefore, the interviews’ structure and questions focused on the app itself. However, while we began with basic, object-oriented interview style, with questions focusing specifically on the usefulness of the app’s functions, we allowed the conversation to move toward topics that the interviewees wanted to discuss. This allowed our interview focus to align with the topics of highest concern for our interviewees. While these interviews were not only focused on education, most veered in this direction guided by the priorities of the interviewees themselves. By interviewing the NGOs working with Syrians rather than the beneficiaries of these non-profits, we were able to avoid both issues of interview fatigue which may be felt by Syrians, and potential risks to the safety of Syrians.

Given the limited scope of interviews conducted for this paper, more detailed accounts of the barriers to education for Syrians could certainly be drawn with more interviews and a more longitudinal approach to interviewing which could provide data on the ongoing changes to education. Many organizations cited education as one of the key services they offered, while also citing the barriers which kept them from providing other more optimal services. This focus on education made these interviews the perfect medium for framing my findings on education policy for Syrians.

Case Study: Istanbul

“I worry about the ones who were thirteen to fourteen when the war broke out,” a Director at one refugee serving NGO lamented. “We call them a ‘lost generation.’” He used this term to describe a generation of refugees without access to education. This theme emerged as a guiding motivation for interviewees as they managed the challenging policy environment in Istanbul. In this section, I will explain how NGOs responded to restrictive education policy and address my secondary question of how NGOs can work around state limitations by speaking to the way in which interviewees continued to provide education services around PIKTES’s implementation.

Another interviewee told us why they were unable to provide the education services that their communities relied on previously: “In 2016, we had to close the Syrian schools and send everyone to the Turkish schools.” Details on the PIKTES policy were rarely discussed by our interviewees, but its effects were ever-present. Since 2016, the community organizations that previously provided a range of educational services, from day schools to tutoring and language classes, had shifted their programming to avoid explicit education programs altogether. In the political context of an expanding state post-coup attempt, it only makes sense that the Turkish government would require that Syrians integrate into the public-school system at the same time as it created a wave of nationalist curriculum. Not only does this reinforce further control over Syrians’ socialization, but it also shields the government from long standing critique about their refusal.
to provide education in Kurdish, the language for a persecuted minority group.53

This policy also allows the Turkish government to control which Syrians have access to education. By mandating public schooling for registered Syrians and banning private education programs, the state ensures that unregistered Syrians have nowhere to turn for education. In combination with its control over public school curricula, the state's control over access to the benefits of legal status reveals that PIKTES's goal of integration is coupled with the state's goal of controlling minority and refugee groups and promoting a nationalist agenda.

Of course, there are still some positive aspects to educating Syrians in the national Turkish curriculum. Primarily, this offers an opportunity for integration, the stated goal of the project. However, while we do see positive effects of integration of Syrian children, particularly amongst the youngest who are able to quickly learn Turkish, the interviewees also noted that a new problem has arisen: Young Syrian children cannot speak Arabic. This opens an entirely new educational problem that NGOs may be unable to address. Without the ability to privately provide language classes, they cannot provide the Arabic lessons that younger children need to maintain a connection to their own culture. Here we see that even when integration is achieved, the restrictions on access to education create an unnecessary tradeoff between integration and culture. This restrictive policy environment leaves NGOs in a challenging predicament. The following sections will chart two ways in which NGOs in Istanbul deal with growing government control and continue to provide education services despite the restrictive environment.

How NGOs Use Policy Loopholes to Provide Educational Services

“We tried to look for an exception,” said a volunteer from the non-profit Qunushyo, “but there is none.”54 She was describing the 2017 policies rendering her organization unable to provide educational support for Syrian children. For years, her organization provided educational services to refugee children and families in the Fatih neighborhood, the district most densely populated with refugees in Istanbul. Since 2017, these programs have had to change. Since the coup attempt, her organization has instead focused mainly on community building and women's empowerment programs like skill development for adults, employment assistance, and community gatherings to promote integration. But this shift in services did not mean that refugees stopped coming to her organization for programs. She told us her organization was not worried about outreach because, already, “people find us,” suggesting that demand for services outpaced supply.55

This abundance of refugees approaching her organization runs counter to the literature on NGOs in an urban setting. In general, the literature suggests that refugees in urban settings, far more than those in camp settings, struggle to find the services they need.56 However, refugees in Istanbul continue to seek out services from non-profits, even in the face of growing restrictions. Such services, as one might expect, are incredibly important for improving integration and social cohesion within the host community. A study based on UNHCR reports found that refugee settings with greater access to and funding for NGOs had better outcomes on childhood education, women's empowerment, and language acquisition.57 Given the importance of providing services and the unexpectedly high demand in the Fatih neighborhood, it is unsurprising that organizations we interviewed were looking for “exceptions” to limiting policies, or ways to continue offering education services despite the political context.

The organizations we interviewed found this exception in the form of altering the names of their educational programs. To get around Ministry of Education guidelines from the PIKTES project, organizations like Yuva Dernegi and Qunushyo described renaming their classes as “workshops” and their education programming as “training” programs. Another called their preschool a “kid friendly space.” This loophole in the form of naming conventions allowed some organizations to continue providing much needed education services. However, the success of this workaround was not ubiquitous among NGOs: many still struggled to provide services. One organization described closing their Turkish language school and ending homework assistance programs that refugee community members continue to request. So, while this loophole proves a helpful workaround for organizations trying to continue their education programs, it also highlights the lengths that organizations must go to provide basic services that refugees require and the need for a more sustainable model.

In fact, finding loopholes for serving refugees is not uncommon for NGOs in Istanbul. One study
found that refugee-serving organizations trying to provide support would “skirt legal and administrative restrictions” by calling their programs for refugees instead, “assistance to the poor/destitute.” This allowed organizations to continue running anti-poverty programs specifically for refugees using broader funds. In this case, not only were organizations renaming their spending, but they were also working with municipal governments to fund these programs.

Public-Private Partnership Model

In some cases, non-profit groups were hesitant to work around government policy due to the risks posed by such an action. As such, many resorted to a public-private partnership with government-run centers to provide services to refugees. The key example of this within our interview sample was a partnership between the Sultanbeyli Municipality and Multeciler, a refugee-serving non-profit. Founded in 2014, the non-profit branch of the partnership was created to help refugees with legal issues. Two years later, the organization had grown to incorporate a six-story community center and was expanding into a second building at the time of the interview. “First, the municipality started a small non-profit association to help with legal issues. Before we knew it, we started a whole community center,” a representative from Multeciler explained to us about the founding of their non-profit arm. Education is among the primary services the center offers.

In this way, the organization both used the same loopholes as other NGOs to provide educational services and had the added benefit of legal, government-sponsored education programs. For example, in the non-profit section of the organization, programming was labeled similarly to other non-profits: “workshops” instead of “education” and “child-friendly spaces” instead of “preschools.” However, in the government-run portion of the partnership center, education services were called by name. The number of students served reflected the success of this partnership strategy: the organization oversaw education for over 4,000 Syrian children, including providing catch-up classes.

Not only did this partnership allow for expansion and accurate advertisement of education services, but it also provided spillover benefits for the greater community. Because services were provided in part by the local government and not only by the refugee-serving non-profit, classes and other services were open to the greater Turkish community as well. In fact, a stated goal of the organization was to include social integration components into all of their programming. This allowed for greater integration of Turks and Syrians (among other refugee groups) within classes, and it improved Syrian-Turkish relations within the community according to organization employees. Through the clear benefits of promoting educational services and providing spillover benefits of community integration, the public-private partnership model in Sultanbeyli has made great strides in overcoming barriers to refugee education.

Similar partnerships between immigrant-serving and refugee-serving organizations and local government have also been in use in the U.S. and Europe. As seen in Istanbul, these partnerships allow both non-profits and governments to expand services in novel ways. Similarly, a UNHCR report on refugee education in Mali found that education programs were most effective when the NGO partnered with local governments for community driven decision-making. In San Francisco, these partnerships have also shown promise by heightening the ability of government and non-profit coalitions to enact dramatic policy changes affecting language access for Central-American immigrants. This example shows that “immigrant-serving non-profits can be strategic political actors,” debunking the myth that government and non-profits must work against each other to enact beneficial policy.

Of course, these partnerships are not without their limitations. De Graauw notes that “non-profit government relations are complex in large part because non-profit organizations rely heavily on government funding and are legally restricted in the amount and types of advocacy they can undertake.” These issues undoubtedly put pressure on Turkish non-profits as well, which, if working with local government, must have more stringent policies on the documentation of beneficiaries than other unpartnered organizations. This is poses challenges to reaching refugees in Istanbul, where so many Syrians are living in fear of deportation due to their registration status. Yet, even with this limitation, “nonprofits—including those that receive government funding—can use their community and issue expertise as an independent source of power in local policymaking.” In San Francisco, for example, while these restrictions limited which clients some organizations could work with, their partnerships and government connections also allowed
“immigrant-serving non-profits to overcome some of the constraints on them.” In Istanbul, the story is much the same. They use public-private partnerships to “overcome constraints” of current education policy to better serve their community.

However, De Graauw also points out that these partnerships are only effective in cases where the government is responsive to non-profit cooperation and expertise. In Istanbul, this distinction can be seen clearly when comparing Sultanbeyli with other refugee-dense municipalities like Fatih. Despite having the highest number of refugees of any district in Istanbul and numerous NGOs, no comprehensive refugee center or program has arisen in Fatih. This discrepancy shows the importance not only of refugee-serving NGOs and a large refugee population, but also a local government agenda that makes refugee services a priority. This analysis of both Sultanbeyli’s project in non-profit-government partnership and its connection to a U.S. model in San Francisco unveils how public-private partnerships have emerged as a way to bypass restrictions imposed by strong states.

Additional, Unintended Failures of Integration Programming

In addition to difficulties in providing educational services, refugee children also struggle to receive the psychosocial services they need to fully integrate into the host country’s system. During the interviews for this project, one interviewee claimed, "psychosocial support is our open wound." It is the one area where many NGOs struggled to provide adequate services. The PIKTES program aims to provide psychosocial support for Syrian students within public schools, but research since the program’s implementation continues to find that this type of support is lacking.

Interviewees noted also unintended barriers to integration even when students were able to attend Turkish public schools. Our interviewee at Sultanbeyli explained that newborns and toddlers now “cannot speak Arabic because they aren’t taught in school.” Again, while PIKTES claims to include some instruction in Arabic, NGOs’ inability to provide language education courses prevents them from teaching Arabic courses as well.

Another interviewee mentioned that Syrian parents expressed concerns about a lack of religious curriculum in Turkish schools. By moving refugee education to schools not run by Syrians, the government revokes Syrians’ ability to choose the type of religious curriculum their child receives. While there are religious Turkish schools, these schools did not seem to provide the familiarity that Syrian families were looking for. One interviewee told us, “When the information is in Turkish, [Syrian] parents don’t know whether the school they send their children will be religious.”

Even in the situations where education policy achieved positive integration, there were additional services needed from the private sector that were limited by state control over the education system. This cultural disconnect proves a challenge for Syrians attempting to retain their culture. The imposed loss of cultural identity through the removal of choice in language or religion aligns with the broader literature on state control of education, which describes government use of nationalist education to strip groups of aspects of their specific cultural identity. With the addition of education services outside of the state, the tradeoff between cultural preservation and integration wouldn’t be as needed.

Conclusion

This article has focused on Syrians, and primarily Syrians who have temporary protection status registered in the area in which they attend school. However, there are many refugees living in Istanbul who do not fit these conditions, either because they are Syrians and unregistered or because they belong to another refugee group with less protection from the Turkish government. Syrians without temporary protection and other refugee groups are even further affected by the restrictive PIKTES policy. Since only registered Syrians are eligible for the program and all private refugee educational programs are now banned, other populations are left without any options for education. A UNHCR report quoted one Afghan student saying, “I don’t know how it will ever be possible for them to go to school.”

With this in mind, it becomes even more clear that the PIKTES policy can be used as a tool to limit not only how refugees access education but also which refugees are able to. The policy subtly reinforces the increasing-ly strict Turkish asylum policies that contributed to the deportation of 6,000 unregistered Syrians from Istanbul less than a year ago. Further research could be used to analyze the effects of similar education policies on undocumented migrants or those who do not qualify for refugee status.

NGOs also play an equally vital role in provid-
ing education to other vulnerable groups as they do for Syrians. A representative of Sultanbeyli explained that their constituents, while primarily Syrian, also included refugees from Sudan, Mauritania, Pakistan, Afghanistan, and Azerbaijan. He also explained that donations from international organizations were often earmarked for Syrians, making the flexibility of community NGOs and local governments even more critical to providing services for these groups.

Even within the more focused analysis of Syrians with temporary protection outlined in this article, political motivations are revealed to be a factor that is critical yet under-analyzed in the literature shaping policies that limit education access for many refugee populations. This case study demonstrates how restrictive policy around refugee education stems from a government desire for control over refugee groups. It also shows how NGOs are limited by this restrictive policy and the ways in which they attempt to circumvent these limitations. We see that a political environment in which the government pursues increasingly authoritarian policies leads to bids for control over vulnerable or legally precarious groups such as refugees. We also see that education is a key arena for this restrictive policy to take hold since it allows governments to control information and craft a national identity. In these situations, private actors like NGOs lose their ability to provide support services to refugees, which limits education outcomes despite the importance of education on refugee integration and quality of life.

NGOs in this type of political environment take up novel approaches to circumventing limitations. These approaches vary in their scale and efficacy. While changing the name of programming allowed some organizations to continue limited education support, a public-private partnership model between NGOs and local government was also utilized to effectively continue providing services to vulnerable groups. The latter strategy indirectly improved integration by allowing organizations the resources to serve both refugees and host country nationals jointly.

Ultimately, this case study and theory reveals that education is a key arena for increasingly authoritarian governments to project control over vulnerable groups. This prompts wariness of education policy that limits the avenues through which refugees can access education, even when these same policies are framed positively. Additionally, the failure of PIKTES is just one example of the consequences of the Turkish government’s control over education. Recent events show that this control has expanded to the university system in the country: on January 1 of this year, President Erdogan appointed Melih Balu, an unsuccessful candidate within the president’s political party, as the Rector of Bogazici, one of Turkey’s most prestigious universities, despite his lack of credentials. These events suggest a need for additional research describing the factors leading to expanded state control over universities and on the broader connection between control over citizen education and refugee education. By ignoring the implications of policy targeting education for the most vulnerable, we fail to acknowledge harm to nations’ most vulnerable populations and prevent the exploration of policy solutions to such crises.

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Barriers to the Ballot: A Survey Experiment Estimating the Effect of Legal Challenges to Photo Voter ID Laws on Support for These Laws

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Abstract

Following the 2008 Supreme Court decision in Crawford v. Marion County Election Board, at least fourteen states have enacted photo voter ID laws—laws that request or require citizens to show some form of photo-identification when attempting to vote in an election. These laws have been the subject of numerous state and federal court battles over the last decade. There are two legal arguments that opponents commonly make against photo-ID requirements: (1) these laws violate a citizen’s right to vote, which is explicitly protected in many state constitutions, or (2) these laws are designed to prevent certain racial groups from voting, which is a violation of the Voting Rights Act of 1965. Using an original survey launched on Amazon Mechanical Turks, this paper measures whether these arguments affect support for photo voter ID laws. The results show that the former legal argument alleging a right to vote violation does not significantly affect support for these laws, but the latter argument alleging race-based disenfranchisement does significantly decrease support for these laws. Moreover, the latter argument decreased support for photo voter ID laws more among self-identified Democrats than it decreased support among self-identified Republicans. Thus, the legal argument concerning race-based disenfranchisement is widely compelling outside the courtroom and could significantly affect public opinion on this heavily litigated, controversial topic.

Introduction

In the 2008 Supreme Court case Crawford v. Marion County Election Board, the Court upheld an electoral law passed by the Indiana State Legislature that required citizens in the state to present a government-issued photo ID when attempting to vote in an election. Since this ruling, numerous other states have adopted their own versions of photo voter ID laws. The strictness of these laws varies by state, and in 2020, at least fourteen states had a photo voter ID law in effect.1

Photo voter ID laws represent one of a few different types of voter ID laws, and the issue of voter ID laws—encompassing strict and non-strict, photo and non-photo provisions—is highly controversial. Arguments in favor of these laws tend to come from conservatives, self-identified Republicans, and right-leaning interest groups. Their arguments typically rely on claims that these laws protect electoral integrity, help prevent voter fraud, and increase the public’s confidence in election results. Across the aisle, liberals, self-identified Democrats, left-leaning interest groups, and legal advocacy organizations often argue against voter ID laws. They normally oppose these laws based on the lack of evidence of any widespread voter fraud, and on allegations that these laws disproportionately
prevent Black and Brown communities, the elderly, and low-income individuals from voting. Some organizations, such as the American Civil Liberties Union (ACLU) or the National Association for the Advancement of Colored People Legal Defense Fund (NAACP LDF), have also challenged these requirements in federal and state courts. The claims made in these challenges often mirror the arguments commonly made in non-legal contexts, but they rest on the basis of specific state and federal electoral laws like the Voting Rights Act of 1965 (VRA).

Over the last two decades, researchers have conducted surveys and studies on public opinion concerning various types of voter ID laws, but none have explored the relationship between legal challenges and public opinion. Moreover, there have not been any studies assessing whether the legal arguments made in these challenges can impact public opinion of voter ID laws. This paper begins to correct this absence of knowledge by answering the question: how do legal arguments challenging photo voter ID laws, one form of voter ID laws, affect support for these laws? First, I review extant surveys and literature on the topic to describe contemporary public opinion on voter ID laws. Second, I broadly describe John R. Zaller’s theory of opinion, as well as the theory behind the two legal arguments that were used in this paper’s survey experiment. Third, I outline the survey’s design, including each persuasive statement that respondents were exposed to. A discussion regarding how data were gathered and the balance of the survey’s sample follows. Fourth, I present three pre-specified hypotheses for the survey experiment, how these hypotheses were tested, and the overall results of the survey. The paper concludes with two additional sections: a discussion of the survey results and a discussion of the implications the results have for future public opinion research concerning voter ID laws.

Section 1. Review of Extant Surveys and Literature

Existing public opinion data on voter ID laws indicate that there is large support for policies that require voters to present either a government-issued photo ID or another form of photo ID at the time of voting. Regardless of party-identification, public support for voter ID laws is above 50 percent. Support for these policies is also purportedly higher among Republicans, white people, and people living in southern and mid-western states. However, despite considerable support for these policies, there is still stable disagreement on the issue—about one-fifth of respondents typically oppose requirements for identification when attempting to vote. Evidence of polarization effects along the lines of partisanship and knowledge levels also exists. Some studies have also asked questions that relate to or reference voter ID laws but do not directly measure public opinion about them. In two studies, researchers asked respondents’ views on how easy it should be to vote, as well as how familiar they feel with the issue of voter ID laws. The majority of respondents indicated that they agreed with the statement that it should be easy for eligible citizens to vote and that they felt “somewhat familiar” with the issue, respectively. Another survey asked respondents if, according to their own knowledge, their state required voters to show photo-ID in order to vote on Election Day—60 percent responded that their state did require identification.

Although most scholarship concerning photo-ID requirements and voter ID laws find that the majority of the public, regardless of demographics or ideology, supports photo-ID requirements, support is not uniform along partisan lines. Along the political spectrum, conservatives and Republicans tend to be most strongly and consistently supportive of voter ID laws; the highest levels of support are found among conservatives who consider themselves to be familiar with the laws. Support for these laws is also greater among people who regularly consume media from Fox News. On the other side, Democrats tend to vary more in their opinions about voter ID laws depending on individual information levels and contexts. Democrats are generally supportive of these laws, but those with higher levels of information, who digest more news media, and who are more familiar with the laws tend to oppose these laws more so than their low-information-level counterparts. One study also found that less-informed Democrats who live in congressional districts with high immigrant populations showed “overwhelming” support for these laws.

Information levels tend to impact opinion variation in both parties, as highly informed Democrats and Republicans more strongly support and oppose these laws, respectively. This suggests that messaging from partisan elites about these laws does impact public opinion. Variations in support due to perceptions of voter fraud align with this suggestion—those who believe voter fraud is a common occurrence, as is often alleged by Republican elites, are more likely to support photo-ID requirements than those who believe fraud
does not occur often.\textsuperscript{15} Similarly, the effects of partisanship and elite messaging have also been shown to interact with other socioeconomic factors such as race and age to produce disparities in support for beliefs regarding voter ID laws' impacts.\textsuperscript{16}

Across the available surveys and academic studies, none present legal challenges to voter ID laws in context with questions asking individuals' opinions of these laws. Given that the legality of photo ID requirements, and, consequently, whether these requirements are enforced, is determined by the outcome of these challenges, it is worth considering whether legal challenges impact public support for these laws. Voter ID laws vary based on their strictness and the specific forms of identification they require, so each kind of voter ID law should be explored individually in order to build concrete knowledge on the effect of legal arguments concerning them. Uncovering which legal arguments affect public opinion could offer insight on whether voter ID laws influence the electoral process, attitudes toward civic engagement, and messaging strategies for elected officials.

\textbf{Section 2. Theory and Literature Review}

\textbf{Section 2.1. Zaller's Theory of Opinion}

Scholarship from political scientist John Zaller provides a framework for understanding how individuals develop opinions on issues based on exposure to a range of persuasive arguments. His theory of opinion posits that after individuals are exposed to a persuasive argument, they either accept or reject that argument.\textsuperscript{17} If they accept the argument, the material of that argument then becomes a consideration that informs their response to questions about their opinion on the issue. Whether that individual accepts the argument as a consideration is partially dependent on their political predisposition—a person's stable characteristics that make them more or less inclined to accept or reject certain political messages. If they have a political predisposition that makes them less likely to accept an argument, they will resist that argument. Resistance to an argument means it will not become a consideration.

Zaller also uses an accessibility axiom to describe individuals’ responses to opinion questions.\textsuperscript{18} He contends that recent considerations, i.e. those at the top of one's mind when asked about their opinion, will be readily sampled to inform their response to the question because they are most accessible at the time of questioning.\textsuperscript{19} An individual's response is also influenced by the salience, or the importance, of the issue; issue salience for an individual depends on the time in which the issue is presented. Understanding this is important for interpreting responses to public opinion surveys since individuals can absorb multiple persuasive arguments as considerations even if those arguments conflict with one another. Hence, it is understandable why individuals’ responses to survey questions may be marked by instability, meaning that they answer the same survey question in different ways at different times. Given that individuals respond to opinion surveys depending on what considerations are readily available to them at the time of the survey, surveys can be used to gauge how individuals respond to different arguments. Public opinion is complex and individualized, but it is precisely this complexity that enables researchers to measure what arguments are compelling enough to impact individual opinions.

\textbf{Section 2.2. Legal Arguments and Their Potential Impact}

This paper will focus on two particular legal arguments in opposition to photo voter ID laws. The first argument concerns citizen suffrage; citizen suffrage is protected in nearly all state constitutions by clauses stipulating “free and equal” elections or outlining voting eligibility.\textsuperscript{20} Opponents of photo voter ID laws have argued in court that these laws infringe on one's right to vote. Because people generally believe their rights as citizens are important, when a government violates a right enshrined in law, it is widely seen as morally wrong and undemocratic. As such, hearing that a law violates a specific right should cause the average person to not support that law. Moreover, the likelihood that this kind of argument impacts support should increase if it is provided in a strictly legal context. The legal context will likely impact an individual's perception of this argument because it presents the argument in direct relation to the supposedly objective “black letter” of the law, rather than in relation to a perceivably subjective, partisan-based context. The legal context also means that the argument references important, superseding laws, i.e. state constitutions, which should also lend validity to the argument.

The second argument this paper will engage is that photo voter ID laws restrict access to the ballot for certain racial and ethnic populations. Opponents of photo voter ID laws regularly cite evidence that
some minority groups, particularly Black and Latinx communities, are less likely to have a photo ID, or that they are more likely to face barriers to obtaining a valid photo ID due to their income level, access to transportation, access to identifying documents, and other related socioeconomic circumstances. This legal argument places these laws in the context of racial discrimination and inequality in the U.S., and given that racial discrimination is normatively condemned in today’s society, respondents should generally feel compelled to view these laws less favorably. Similar to the first argument, the legal context that this argument appears in should also make the argument more compelling for respondents—the perception of impartiality and objectivity regarding the law, as well as the reference to a historically important, superseding laws (i.e. the VRA), should make respondents view this argument as valid and objective.

Democrats should theoretically be particularly compelled by the second argument given its explicit mentions of restricted access to the ballot and racial discrimination. Public opinion data have shown that arguments concerning voter ID laws that reference access to the ballot or disenfranchisement produce more anger for Democrats than Republicans in general. This argument pushes individuals to consider voter ID laws in reference to access to the ballot and disenfranchisement issues, and given that Democrats demonstrate a more emotional reaction to these issues than Republicans, the argument should be more compelling to Democrats and thus they should exhibit lower support for these laws. The Democratic Party is also more racially and ethnically diverse than the Republican Party, which could suggest that the argument’s reference to racial discrimination may be more salient for self-identified Democrats than self-identified Republicans. Additionally, confirmation bias will likely produce lower levels of support for Democrats. Public opinion data also show that Democrats generally tend to support photo voter ID laws less than Republicans; moreover, Democrats vary more on their views of photo voter ID laws than Republicans. This indicates that they may more readily consider this argument as valid because it confirms beliefs that some already may have about these laws.

Section 3. Experimental Design

A survey experiment launched on Amazon Mechanical Turks measured public opinion on photo voter ID laws. All individuals who participated in the survey came from the same population of Mechanical Turk workers and were randomly assigned to either one control group or one of two treatment groups.

Random assignment allows for the effects of the persuasive arguments to be measured and compared across the entire experiment. Assigning individuals to each respective group in the experiment should, in theory, create groups that are highly similar to one another. If the random assignment is done accurately, each group should have the same properties and demographic breakdowns, thus making the groups more or less identical. Identical groups would logically respond the same way to a persuasive argument; it is reasonable to assume that any perceived differences between identical groups are due to whatever argument a group was or was not exposed to. Researchers can thus make a causal inference about the effects of an argument by comparing the responses of those exposed to the argument with a group that has not been provided with an additional argument at all, i.e. the control group.

All groups in a survey experiment are exposed to the same defining statement that explains the issue in question and question that measures opinions. Respondents in the control group are only exposed to the defining statement and question, and respondents in either treatment group were exposed to one persuasive statement placed in between the defining statement and question; the number of possible persuasive statements available varies by experiment. Each treatment group can be compared to the control group to determine the effects the persuasive argument had on individuals’ responses because all other properties for each group are the same. If there are differences in responses between the control group and each individual treatment group, then researchers can infer that any differences are caused by exposure to the arguments presented in the persuasive statement.

The complete text of this study’s survey included a defining statement that explained what photo voter ID laws are, a question that measured individual support on a scale from 0 to 10, and two persuasive statements concerning these laws. The design of each element will be described below and is presented in Table 1.

As was previously stated, the defining statement was given to all survey respondents and represents one of two parts of the full control condition. The full text of the statement is as follows: “Photo voter
ID laws are state laws that require people to show a photo identification document in order to vote in an election.” It was important to state what photo voter ID laws are plainly and without bias terminology in order to ensure all respondents were thinking of the same type of law when answering the question. Given the controversy surrounding voter ID laws in general, as well as the varying types of voter ID laws, failure to explicitly state which type of law respondents should report their support for would yield ambiguous results. It would not be possible to express with certainty that the survey is measuring support for photo voter ID laws without this statement since the phrase “photo voter ID law” likely means different things to different people.

The question measuring individuals’ support for photo voter ID laws is the second part of the control condition. It consists of one sentence: “On a scale from 0 to 10, how strongly do you support or oppose photo voter ID laws?” A response of 0 indicates strong opposition to these laws, 5 indicates neither support nor opposition, and 10 indicates strong support. This sentence is designed to measure support for photo voter ID laws without this statement since the phrase “photo voter ID law” likely means different things to different people.

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The second persuasive statement that some respondents were exposed to was the Group Disenfranchisement Frame. It corresponds with the second persuasive argument regarding racial discrimination and disenfranchisement: “Some people challenge the legality of photo voter ID laws. They argue that photo voter ID laws are intended to prevent certain racial groups from voting, which would violate the Voting Rights Act of 1965.” It should make respondents consider whether these laws are meant to disenfranchise certain minority groups, which is illegal under Section 2 of the VRA. One of the most common legal arguments against these laws is that they have a disproportionate, negative impact on minorities and other marginalized communities, and many cases that challenge these laws vis-à-vis Section 2 of the VRA are still ongoing. The disenfranchisement argument may speak to respondents’ sense of fairness and equality under the law, in turn prompting unfavorable views toward these laws. Additionally, the legal weight of the VRA, combined with the potential illegality of photo voter ID laws under the VRA, may also be persuasive to some respondents regardless of if they are extensively familiar with the law. This statement only conveys that challenges based on this statute exist without suggesting they have been successful.
Table 1. Full Experimental Design

| Photo voter ID laws are state laws that require people to show a photo identification document in order to vote in an election. |
| (INSERT FRAME HERE) |

On a scale from 0 to 10, how strongly do you support or oppose photo voter ID laws?

0 = Strongly Oppose / 1 / 2 / 3 / 4 / 5 = Neither Support nor Oppose / 6 / 7 / 8 / 9 / 10 = Strongly Support

<table>
<thead>
<tr>
<th>Control Condition</th>
<th>Right to Vote Frame</th>
<th>Group Disenfranchisement Frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO FRAME</td>
<td>Some people challenge the legality of photo voter ID laws. They argue that photo voter ID laws violate the right to vote, which is protected by many state constitutions.</td>
<td>Some people challenge the legality of photo voter ID laws. They argue that photo voter ID laws are intended to prevent certain racial groups from voting, which would violate the Voting Rights Act of 1965.</td>
</tr>
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</table>

Section 4. Generating the Survey Sample

The survey was conducted on October 22, 2020. Subjects were recruited using the Amazon service Mechanical Turk and were paid $0.07 for completing all 9 questions. The survey was exempt from requiring approval from the HRPO because it is a class project. An attention check was included for filtering purposes and approximately 56 respondents were filtered out from completing the survey for failing the check.

In total, 507 respondents were recruited to complete the survey. The overall average age of respondents in the sample was 42 years old. 45.2 percent of respondents identify as male, 54.2 percent identify as female, and 0.4 percent identified as “other.” Regarding levels of education in the sample, the majority of respondents earned a post-secondary degree: 29.2 percent earned an associate’s degree, 43.2 percent earned a college degree, and 16.6 percent earned an advanced degree. 10.3 percent of respondents graduated high school but have not earned a post-secondary degree, and 0.8 percent did not graduate high school. 389 of the 507 respondents were White/Caucasian, while 51, 42, and 31 respondents were Black/African American, Asian, and Latino/Hispanic, respectively. 9 respondents are Native American, 7 are mixed race, and 2 responded as “other.” The majority of respondents in the sample—45.2 percent—identified as Democrats, and 26.2 percent identified as Republicans. Of the 28.5 percent of respondents who identified as Independents, 52.6 percent regarded themselves as not leaning more toward either party, while 27.4 percent and 20.0 percent said that they lean toward Democrats and Republicans, respectively.

Section 5. Assessing Balance After Random Assignment

Prior to presenting the results of this experiment, it is first necessary to assess whether the random assignment established treatment and control groups that were balanced across all the relevant demographics.

Of the 507 respondents who completed the survey, 166 respondents were assigned to the control group, 171 respondents were in the Right to Vote treatment group, and 170 were in the Group Disenfranchisement treatment group. The balance table detailing the demographic makeup of each of the three groups is provided in Table 2. The significance of variation between groups and across demographics corresponds with a 95 percent confidence interval.

The randomization generated mostly balanced treatment groups. The average age of each group ranged from 40.9 to 42.5, with no group having a significantly higher or lower average age than the others. The same is true for level of education. The percentages of individuals at all levels of education do not vary significantly between groups. Turning to race, the control group had a significantly higher percentage of Latino/Hispanic individuals than the Group Disenfranchisement treatment group—10.2 percent of the control group are Latino/Hispanic compared to only 2.9 percent of this treatment group. No other experimental group had significant differences between one another for any other racial demographic.

The control and treatment groups varied slightly in terms of partisanship. The Right to Vote treatment group had a significantly lower percentage of Republicans compared to the Group Disenfranchisement treatment group (22.8 percent compared to 32.4 percent, respectively). All control and treatment groups did not vary significantly on partisan identity in any other ways. Additionally, those who identify as independents—including those who lean toward Democrats, toward Republicans, and who identify as total independents—were evenly spread across all control and treatment groups. The groups varied by gender, as well. The Group Disenfranchisement treatment group had a significantly higher percentage of men.
### Table 2: Balance Table

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compared to the control group (49.4 percent compared to 38.6 percent), and the control group had a significantly higher percentage of women than the Group Disenfranchisement treatment group (61.4 percent vs. 49.4 percent). No other imbalances occurred between groups based on gender. All the variations expressed were generated by chance due to randomization.

Section 6. Hypotheses Testing and Results

This section will provide three hypotheses regarding the impact of the Right to Vote Frame and the Group Disenfranchisement Frame on support for photo ID laws. Results from the survey experiment will follow each hypothesis. The significance of the following results is based on a 95 percent confidence interval.

One hypothesis was formulated for the Right to Vote Frame:

Hypothesis 1 (H1): The Right to Vote Frame will decrease support for photo voter ID laws.

This hypothesis was pre-specified before the data were generated. The Right to Vote Frame should decrease average support for photo voter ID laws because respondents will likely consider that these laws violate state constitutions. This frame should make respondents view these laws with respect to their legality, and even if they have limited knowledge about state constitutions, hearing that some of these laws may violate state constitutions will likely reduce support. The legal context will likely impact the perception of this argument because it moves beyond the ideological, opinion-based context the argument is usually offered in, presenting it instead in terms of the supposedly objective “black letter” of the law. Additionally, as was mentioned in reference to the first persuasive argument, the legal context of this argument should also likely contribute to the hypothesized treatment effect since the argument is linked to specific laws, i.e. state constitutions.

To test this hypothesis, I compared the average support for photo voter ID laws among respondents in the control group with the average support for photo voter ID laws among respondents exposed to the Right to Vote Frame. If support for photo voter ID laws was significantly lower among respondents in the treatment group compared to support among respondents in the control group, my hypothesis would be confirmed. All analyses were conducted in accordance with a detailed pre-analysis plan that was documented before the data were generated.

Figure 1 presents the impact of the Right to Vote Frame on respondents’ support for photo voter ID laws compared to the baseline support for these laws among the control group. The average support for photo voter ID laws among respondents in the control group was 7.4, while the average support among respondents in the Right to Vote treatment group was 6.9; both averages indicate a moderate level of support for photo voter ID laws. Respondents who received the Right to Vote Frame reported lower support for photo voter ID laws than those in the control group, but the Right to Voter frame did not significantly affect support for these laws. Therefore, Hypothesis 1 is not supported.

Two hypotheses were developed for the Group Disenfranchisement Frame, both of which were pre-specified before the data were generated. Much like Hypothesis 1, Hypothesis 2 estimates homogenous effects across the sample:

Hypothesis 2 (H2): The Group Disenfranchisement Frame will decrease support for photo voter ID laws.

The Group Disenfranchisement Frame should decrease support for photo voter ID laws because respondents will consider that these laws potentially violate the VRA. This frame places the commonly used argument that voter ID laws are created with discriminatory intent in a legal context, which will likely contribute to the hypothesized treatment effect since this argument is linked to a specific law, i.e. the VRA. Again, the legal
context should impact the perception of this argument because it moves past the ideological, opinion-based context this argument is typically offered in. Respondents will instead view photo voter IDs laws vis-à-vis the “black letter” of the law.

To test Hypothesis 2, I compared the average support for photo voter ID laws among respondents in the control group with the average support among respondents who received the Group Disenfranchisement Frame. If support for voter ID laws is significantly lower among respondents in the treatment group than support among respondents in the control group, Hypothesis 2 will be confirmed. All analyses were conducted in accordance with a detailed pre-analysis plan that was documented before the data were generated.

Figure 2 presents the impact of the Group Disenfranchisement Frame on respondents’ support for photo voter ID laws compared to the baseline support for these laws among the control group. The average support for photo voter ID laws among respondents in the control group was 7.4, while the average support among respondents in the Group Disenfranchisement treatment group was 6.3; both averages indicate a moderate to low level of support for photo voter ID laws, respectively. As predicted, respondents who received the Group Disenfranchisement Frame reported significantly lower support for photo voter ID laws than those in the control group, indicating that the Group Disenfranchisement Frame did significantly decrease support for photo voter ID laws. Hypothesis 2 was therefore confirmed by these findings.

Hypothesis 3 estimates heterogeneous effects across the sample:

Hypothesis 3 (H3): The Group Disenfranchisement Frame will have heterogeneous effects by partisanship. The frame will decrease average support for photo voter ID laws more among Democratic respondents than it will decrease support among Republican respondents.

The Group Disenfranchisement Frame should decrease support for photo voter ID laws more among Democrat respondents than Republican respondents because existing public opinion data suggest that Democrats are demonstrably more concerned with disenfranchisement and access to the ballot than Republicans. This frame explicitly cues respondents to consider disenfranchisement and access to the ballot, and given this increased concern among Democrats, their support should likely decrease more than that of Republicans. Additionally, confirmation bias should likely produce lower levels of support for Democrats. Democrats generally tend to support photo voter ID laws less than Republicans; moreover, Democrats vary more on their views of photo voter ID laws than Republicans. This variation indicates that they may more readily consider this argument against these laws as valid. The frame confirms what many likely already believe, thus generating lower levels of support.

I tested Hypothesis 3 by first estimating the effect of the Group Disenfranchisement Frame on Democrats by comparing average support for photo voter ID laws among Democrats in the control group with the average support for photo voter ID laws among Democrats exposed to the Group Disenfranchisement Frame. Likewise, I estimated the effect of this frame on Republicans by comparing average support for photo voter ID laws among Republicans in the control group with average support among Republicans in the Group Disenfranchisement treatment group. I then compared the effects of the Group Disenfranchisement Frame on Democrats and Republicans, respectively.

Figures 3 and 4 present the impact of the Group Disenfranchisement Frame on Democrat respondents’ support for photo voter ID laws compared to Republicans’ support for these laws. Average support for photo voter ID laws was 6.2 among Democrats in the control group and 4.5 among Democrats in the Group Disenfranchisement treatment group, indicating a significant decrease in support due to the Group Disenfranchisement Frame as was predicted. Average support for photo voter ID laws among Republicans
in the control group was 9.2, while average support among Republicans in the Group Disenfranchisement treatment group was 8.5. This decrease in support was not significant at a 95 percent confidence interval but was significant at a 90 percent confidence interval. In total, the Group Disenfranchisement Frame lowered average support among Democrats by 1.7, and the frame lowered average support among Republicans by 0.7. Thus, my findings confirm Hypothesis 3 as well.

**Figure 3**

![Bar chart showing the effect of the Group Disenfranchisement Frame on support for photo voter ID laws among Democrats]

**Figure 4**

![Bar chart showing the effect of the Group Disenfranchisement Frame on support for photo voter ID laws among Republicans]

**Section 7. Discussion of Results**

The results of the survey experiment are mostly consistent with the theories that justified each frame. As predicted, the Group Disenfranchisement Frame did indeed significantly decrease support for photo voter ID laws. This indicates that cueing respondents with the suggestion that photo voter ID laws violate the VRA will lower respondents’ support for these laws. It is equally likely that the suggestion that these laws are intended to prevent certain racial groups from voting, which is a violation of the VRA, will lower respondents’ support for these laws. However, it is not possible in the current frame to fully isolate which aspect of the frame’s mention of the VRA – the explanation of why the laws may violate the VRA or the mention of the VRA itself – has this impact on respondents. Regardless, the results indicate that respondents do lower their support for photo voter ID laws when the legality of these laws is questioned in reference to the VRA. Respondents react this way because the argument used in the frame may speak to their sense of fairness, their disfavor toward racial discrimination, or their perception that the law, as written, is objective and uncontroversial.

Connectedly, the heterogeneous effects between Democrats and Republicans caused by the Group Disenfranchisement Frame align with the theory behind Hypothesis 3. Public opinion data show that Democrats are more concerned about enfranchisement and access to the ballot than Republicans. Democrats have also been shown to both support photo voter ID laws less than Republicans and vary more on their views of these laws compared to Republicans. This suggests that the frame likely provided an argument that would readily become a consideration for Democrat respondents because it was already a preexisting concern. In other words, confirmation bias could have produced lower support among Democrats than Republicans because the frame confirmed an opinion that many Democrats may have already had. Democrats may also generally be more sensitive to the topic of racial discrimination that was cued in the frame, although more evidence is needed to confirm this theory.

The Right to Vote Frame’s insignificant effect on support for photo voter ID laws may also reveal more about how support shifts based on the legal arguments against these laws. On one hand, it could be that the theory behind why the argument should be effective is inaccurate or incomplete. The argument that these laws violate the right to vote protected in many state constitutions may not be compelling enough to respondents to lower support or prompt opposition toward these laws. On the other hand, it could also be that the argument is only compelling when the reason for this violation is explicitly stated; the frame merely stated that some believe photo ID laws violate the
right to vote. The frame may produce lower support if it says why these laws may violate state constitutions, i.e. they may place unnecessary burdens on voters and create barriers to accessing the ballot. It could also be possible that the relatively small sample size may have lowered the precision of the experiment given that the argument was significant at an 85 percent confidence interval, but not a 90 percent nor 95 percent interval. Likewise, the results may be different if respondents are recruited from a population other than Mechanical Turk workers.

Section 8. Implications and Further Research

Based on the results of the survey, it is clear that the argument contending that photo voter ID laws aim to prevent certain racial groups from voting, thus violating the VRA, causes individuals to lower their support for these laws. It is also clear that this effect is more pronounced among Democrats than Republicans.

These results speak directly to the broader topic of enfranchisement. Voting is one of the central foundations of any democracy, and as such, generating knowledge on topics related to voting – attitudes toward voting, electoral laws, public opinion on electoral laws, etc. – works to inform, strengthen, and promote democracy. Given the intense, highly partisan controversy surrounding photo voter ID laws, as well as other voter ID laws, it is important to study how opinions are shaped and affected by arguments related to these laws. Scholars have already begun to research how common, ideologically-based arguments for or against these laws impact public opinion, but little has been done to determine if arguments in a legal context, or, equally, arguments that reference specific or well-known laws impact public opinion. Legal arguments aimed at invalidating or upholding these laws have prompted judges to rule on their legality, but the question remains as to whether these same arguments affect everyday individuals. This survey attempted to answer that question and has provided some evidence that at least one legal argument does indeed impact public opinion. More research should be done to unpack what other, if any, legal arguments impact public opinion on photo voter ID laws, as well as other kinds of voter ID laws. Researchers should also attempt to further parse out which aspects of legal arguments – the language and topics of arguments or the specific laws referenced in them – affect public opinion. Relatedly, it may be of interest to research the potential effect that rulings on the legality of various voter ID laws have on public opinions toward these laws.

Appendix

Codebook

Consent
Do you consent to participate in this study? If so, select “Yes” below to indicate your consent. If you select “No” you will be withdrawn from the study.
Yes; No

Eligibility
Are you an American citizen?
Yes; No

What is your age? (please enter a whole number)
Whole number response

Control
Photo voter ID laws are state laws that require people to show a photo identification document in order to vote in an election.
On a scale from 0 to 10, how strongly do you support or oppose photo voter ID laws?
0 = Strongly Oppose; 1; 2; 3; 4; 5 = Neither Support nor Oppose; 6; 7; 8; 9; 10 = Strongly Support

Right to Vote Frame
Photo voter ID laws are state laws that require people to show a photo identification document in order to vote in an election.
Some people challenge the legality of photo voter ID laws. They argue that photo voter ID laws violate the right to vote, which is protected by many state constitutions.
On a scale from 0 to 10, how strongly do you support or oppose photo voter ID laws?
0 = Strongly Oppose; 1; 2; 3; 4; 5 = Neither Support nor Oppose; 6; 7; 8; 9; 10 = Strongly Support

Group Disenfranchisement Frame
Photo ID laws are state laws that require people to show a photo identification document in order to vote in an election.
Some people challenge the legality of photo voter ID laws. They argue that photo voter ID laws are intended to prevent certain racial groups from voting, which would violate the Voting Rights Act of 1965.
On a scale from 0 to 10, how strongly do you support or oppose photo ID laws?
0 = Strongly Oppose; 1; 2; 3; 4; 5 = Neither Support nor Oppose; 6; 7; 8; 9; 10 = Strongly Support
Demographics
What is the highest level of education you have completed?
0 = Did not graduate high school; 1 = High school graduate; 2 = Some college; 2 = Associates degree; 3 = College degree; 4 = Advanced degree
What is your race or ethnicity? Please select all that apply:
1 = White / Caucasian; 2 = Black / African American; 3 = Latino / Hispanic; 4 = Asian; 5 = Native American; 6 = Mixed Race; 7 = Other
Which party do you identify with?
1 = Democrat; 2 = Republican; 3 = Independent
Which party do you lean toward most?
4 = Lean Democrat; 5 = Lean Republican; 3 = Independent
What is your gender?
0 = Male; 1 = Female, 2 = Other

Attention Check
Elementary school includes first grade through fifth grade.
Some people think that all children between age four and age ten should attend elementary school. This is a question is used to determine if you are paying attention and reading the survey questions. Please select the value zero as your response. Do not choose any answer other than zero.
Do you agree or disagree that all children between age four and age ten should attend elementary school?
0 = Strongly disagree; 1; 2; 3; 4; 5 = Neither agree nor disagree; 6; 7; 8; 9; 10 = Strongly agree

Endnotes
3. Ibid.
10. Ibid.
18. Ibid.
19. Ibid.


Bibliography


Do Constitutions Matter? The Effect of a National Constitutional Right to a Healthy Environment on Environmental Policy Stringency and Emissions Outcomes in OECD countries

Jaskiran Gakhal, The University of British Columbia

Abstract

Given the environmental and health challenges of climate change and air pollution, there is a growing need to explore effective means for states to address environmental issues, including the possibility of constitutional environmental rights. This study empirically tests the impact of a constitutional right to a healthy environment (CRHE) on environmental policy stringency and air pollutant emissions outcomes in OECD countries using novel panel data from 1990 to 2018 within a fixed effects framework. It uses SOx and NOx emissions as well as environmental policy stringency scores to measure environmental outcomes, differing from the existing analyses of water quality and sanitation outcomes to measure the impact of CERs. Dividing the CRHE into absent, aspirational, or justiciable, findings from the time-series regressions include 1) a statistically significant positive relationship between the aspirational CRHE and environmental policy stringency among OECD countries, 2) a statistically significant negative correlation between the aspirational CRHE and SOx emissions among OECD countries, 3) null effects for the justiciable CRHE on environmental policy stringency and SOx emissions, 4) a statistically significant moderating effect of rule of law, yielding a strong negative effect of CRHE on NOx emissions, and 5) inconclusive evidence on the relative effects of classifying the CRHE as either aspirational or justiciable.

I. Introduction

With the world facing deepening ecological crises from the effects of anthropogenic climate change, there is a growing need to explore effective means for states to make gains in addressing environmental issues. Reducing air pollution can help mitigate the effects of climate change as it is expected to worsen air quality through more ozone at ground level, more devastating wildfires, and pollen outbreaks, according to a UN climate report. Clean air, safe drinking water, and healthy ecosystems are essential to public health. Air pollution’s negative impacts on human health and ecosystems have been documented even at low exposure levels, and globally, climate change is expected to increase exposure to pollutants. Furthermore, many air pollutants that cause premature deaths arise from the same fossil fuel combustion driving greenhouse gas emissions. Thus, initiating actions to reduce pollution can both improve air quality and address climate change.

One way to address these environmental concerns that has prompted scholarly attention is the potential derived from incorporating a constitutional environmental right (CER). Many countries have already incorporated a national constitutional right to a
healthy environment, a substantive type of CER; some academic research has focused on exploring the conditions under which this change occurred. In response to this development, legal scholars have produced theoretical and normative arguments on the merits of adopting such a constitutional right in relation to other means of addressing environmental issues, particularly in countries which have yet to do so. However, in order to determine whether a constitutional environmental right should be pursued in the countries without it, an empirical examination of its effects where it has been incorporated should first be made a priority. As such, this study considers the question of whether a constitutional right to a healthy environment (CRHE) affects environmental policy stringency and environmental outcomes, as measured by air pollutant emissions.

As supported by the theoretical literature on CERs, this thesis suggests that incorporating the right to a healthy environment positively impacts environmental policy stringency and environmental outcomes in terms of reducing air emissions. The CRHE should provide rational incentives to pursue environmental policy by bolstering legal claims for rights-holders, assuming that the rule of law is strong. Electoral rewards and the threat of litigation could stimulate stronger legislation and proactive policy to protect environmental rights. Empirical literature on this topic, although limited, also supports this notion. For example, environmental scholar David Richard Boyd finds a correlation between strong environmental legislation and CERs.

This study proceeds with a review of the literature on environmental constitutionalism, including discussion of the relative merits of pursuing national constitutional environmental rights in relation to international environmental rights. Scholarly contributions on the impacts of constitutional rights on policy and outcomes are then detailed, including the right to a healthy environment. What follows is the empirical research strategy and description of the relevant explanatory and dependent variables, before leading into presentation of the results. The key findings from the empirical tests are 1) a statistically significant positive relationship between the aspirational constitutional right to a healthy environment (CRHE) and environmental policy stringency among OECD countries, 2) a statistically significant negative correlation between the aspirational CRHE and SOx emissions among OECD countries, 3) a statistically significant interaction effect between CRHE and rule of law, yielding a strong negative effect on NOx emissions, and 4) little conclusive evidence on the relative effects of classifying the CRHE as either aspirational or justiciable.

2. On Environmental Constitutionalism: Literature Review

Political institutions set the rules of what constitutes appropriate behavior for actors, and over time, increase “returns for compliance.” Constitutions thus constrain the range of policy options, asserting an ongoing influence on the scope and exercise of government powers. Constitutional provisions can restrain government actions or take the form of a duty for positive action to ensure rights are fulfilled. A constitutional environmental right, Bryner writes, would theoretically create a “minimum enforceable guarantee of environmental quality or outcome.” Even those whose policy preferences diverge are beholden to these rules, facing the costs of inaction or non-compliance. In the case of CERs, this accountability measure may induce environmental legislation and/or allow rights-holders to file lawsuits. For instance, if politicians “attempt to circumvent the constraints, rights-holders can press their claims” through courts which can impose fines, award damages, or require action.

Empirical research supports the notion that constitutions and court decisions can impact policymakers. For example, Boyd finds that “constitutional provisions requiring environmental protection appear to provide a range of benefits, including stronger laws” and enhanced public participation. Additionally, a 2008 Colombian Constitutional Court decision mandated that the government restructure the country’s health care system to improve medical access by drawing on the right to health. Yamin and Vera note that budgeting and the enforcement of existing health laws were undoubtedly impacted by Court decisions, not only in the Colombian case but elsewhere in Latin America as well.

As it relates to climate change, the recent “greening” of constitutions with environmental provisions has provided a basis for the recent development of climate litigation, where some cases have been successful in promoting action on climate change. Notably, in the case of the Urgenda Foundation v the Netherlands, the Supreme Court decided that the Dutch government had violated its duty to protect rights by not limiting its greenhouse gas emissions.
Constitutional protection is particularly relevant for marginalized people because of their increased susceptibility to “the adverse effects of environmental degradation.” Environmental claims are beginning to be made on behalf of interests unable to protect themselves, such as children, future generations, and the natural environment.

Another benefit that constitutional environmental rights offer is an elevated status over other considerations such as economic prosperity, especially if the environmental rights are considered human rights. As opposed to statutory laws, entrenched rights are more durable and difficult to erode once enacted, thereby insulating long-term environmental goals from the whims of daily politics. May and Daly note that CERs offer an overarching legal-normative framework for directing environmental policy, impacting a range of local concerns including food, water, air, and biodiversity. They argue that environmental rights are ideal candidates for constitutionalization because they are “inherently and instrumentally valuable…[and] have been seen to be at risk by political communities around the world” in part because of risks associated with climate change.

Through this normative role, CERs also influence public discourse and behavior. For example, in Ecuador, since the constitution recognized rights of nature, the idea has taken root in society, gaining salience within the culture. This, in turn, can increase compliance among both public and private actors, even without actual litigation. Literature on how court rulings impact public opinion, however, tends to be U.S.-centric. To some extent, these studies can still be generally revealing. For instance, Ura (2014) found that despite initial pushback, “over the long run, the authoritative voice of the Supreme Court has the capacity to pull at least some of the disagreeing public toward its decisions.” Thus, it is evident that the Supreme Court can affect public opinion. To the extent that policymakers are influenced by public opinion, these court rulings could have implications for public policy as well. And to the extent that constitutional and supreme courts elsewhere share a similar level of authority as the U.S. Supreme Court, this research could be more generally applicable. Ura also notes that when the Supreme Court acts to legitimize government policies, their ability to do so is related to their “association with the U.S. Constitution.” As such, this could be applicable to constitutional courts more broadly.

May and Daly suggest that the public is more apt to respond to environmental constitutionalism than statutory regulations precisely because it represents shared national values. As such, the likelihood of compliance with constitutional directives should likewise increase, given the additional public scrutiny. Policymakers who refuse to act to protect the environment when it is a constitutional guarantee risk weakening their popularity and electoral chances. Polluters who refuse to act risk the threat of litigation in constitutional courts. In his empirical research on the right to health, Kavanagh echoes the notion that constitutionalism actively shapes social values. This national value argument offers an effective response to criticism that CERs are useless and would be underenforced, by hinting at potential dormant utility. For instance, May and Daly suggest that they may gain the attention of litigants and judges to become robustly protected rights in the future, and that some enforcement is “likely to be better than none at all.”

However, environmental constitutionalism is not without its challenges, one being the interpretation of CERs. For example, the substantive right to a healthy environment inevitably invites questions of what “healthy” entails and whether it is in reference to human health or ecosystem health. It seems, though, that “healthy” would be anthropocentric at a minimum, ensuring the integrity of an environment’s ability to support human health. In this way, it should ensure clean air, as will be measured with air pollutant indicators in this study.

To address concerns regarding environmental constitutionalism, some scholars have argued that environmental rights are better protected at the international level under existing human rights regimes. Given the inalienable character of existing international human rights, this connection is appealing in its potential to create an imperative for rights to be addressed. Furthermore, focusing on inalienable rights at the international level helps address the issue of assigning responsibility that is often associated with inaction on environmental issues. For instance, Wewerinke-Singh writes that the concept of state responsibility outlines states’ obligations to prevent human rights violations as well as their obligation to ensure that human rights are realized both domestically and abroad. As such, this link could theoretically assign responsibility for climate change and cross-border air quality, as well as environmental outcomes more broadly, to all states who have made commitments to human rights. Some scholars have pointed to the need
to reconceptualize human rights in order to address the impact that climate change is expected to have, as it has implications for existing human rights to food, health, water, and security.  

However, international human rights regimes are “not designed to address environmental rights.” Drafted at a time when environmental issues were not a concern, they lack explicit environmental protection. For instance, the United Nations Human Rights Council only recognized in 2008 that climate change has implications for the full enjoyment of human rights. Then, the Paris Agreement of 2015 was the first multilateral climate agreement to explicitly connect obligations to protect human rights to climate change.

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”

Furthermore, the international human rights scheme is deficient in enforcement and monitoring mechanisms. May and Daly write that many states ratify agreements “for opportunistic reasons, in order to gain standing in the international community and obtain material benefits, without a real intention to implement them domestically.”

The second argument is that environmental rights are adequately protected under the framework of existing international treaties, legal principles, and customs which define the norms and responses to meet global ecological challenges. For example, in 1972, the Declaration of the United Nations Conference on the Human Environment — the Stockholm Declaration — articulated a “fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”

However, there is no independent international or multilateral treaty that guarantees the right to a healthy environment or to environmental protection. Existing multilateral agreements lack “enforcement mechanisms and rely on signatory states to enact their own internal legislation, which has only occurred in some countries.” The regional 1979 Convention on Long-Range Transboundary Air Pollution (CLRTAP) developed eight protocols to contribute to efforts to “reduce acidification, photochemical smog, ground-level ozone, eutrophication, and toxic pollution.” However, “significant challenges remain,” including the geographic coverage of the legal mechanisms contained in the protocols; notably, the industrial, coal-dependent, and oil-producing former Soviet Union states have chosen to opt out of ratifying. Similarly, Wettestad (1999) argues that the CLRTAP regime “was only moderately effective” in promoting the reduction of air pollution. He suggests that such a decrease would have taken place anyway, as it is more attributable to “economic and political processes and domestic political pressure motivated by environmental damage.”

Enforcement mechanisms of international environmental law in general are lacking. With limited jurisdictional authority, noncompliance is rarely punished by the international community at large. The preference by developed countries such as the U.S. has been for implementation to be solely the responsibility of sovereign national governments. As a result, many of these so-called “breakthroughs” have “yet to be reflected into domestic climate policies.” Furthermore, the major transgressors often do not sign on to these treaties and agreements, as exemplified by the Paris Agreement. Because of its modest expectations and the lack of enforcement mechanisms resulting from its nonbinding status, Bang, Hovi, and Skodvin (2016) argue that the Paris Agreement’s effectiveness is limited in the short term and uncertain in the long-term. Reputational costs have not been enough to ensure compliance in the past with the Kyoto Protocol, for example, and the same could prove true with the Paris Agreement. The Agreement’s long-term effectiveness depends in part on whether major emitters “prove able and willing to take the lead,” relying on a snowball effect. However, the U.S., one such potential leader, has since formally withdrawn from the agreement, which does not bode well for its future effectiveness.

Given these concerns, some scholars suggest that existing international human rights laws and mechanisms are inadequate to address the challenges of environmental problems. For instance, Cepparulo, Eusepi, and Giuriato (2019) argue that the implementation of international environmental treaties “is hard to sustain, when confronted with domestic institutional obstacles and interest group pressures.” Similarly, Savaresi (2018) writes that the “conventional interpretation of the jurisdictional limitations of these [human rights] obligations presently undermines arguments concerning the protection of human rights” as it relates
National courts and regulatory systems may seem better suited to ensure that environmental rights are legally binding, as opposed to merely aspirational. May and Daly argue that national courts are better able to translate international values “into the local vernaculars...with authority and impact.” Furthermore, national courts are more accessible to the local population and better able to enforce their orders upon government officials. Finally, environmental harm is usually consequential on the local level, with impacts on the ecosystems and air quality of a particular region. Enshrining national constitutional rights also diverts the accusations of cultural imperialism and neocolonialism that often accompany international law.

Scholarly work on environmental constitutionalism which takes less of a normative stance has tended to focus on the emergence and spread of both substantive and implicit environmental provisions. For example, Joshua Gellers (2015) conducts a statistical analysis of the potential contributing factors, finding that an increased presence of international civil society organizations and level of democracy are positively related to the adoption of provisions. Not only that, but he finds little support for hypotheses that natural resource dependency, regional location, and monetary incentives (reliance on foreign financial investment) are factors influencing the adoption of CERs. As a result, Gellers concludes that a norm socialization theory of constitutional environmental rights has greater explanatory power than rationalist-materialist considerations of why countries include these rights in their constitutions. The spread of subnational developments has also merited exploration, including the possibility of state or provincial governments incorporating environmental provisions in their constitutions in countries such as Brazil and the United States. May and Daly argue that these developments can have particular salience in countries that have not adopted national environmental constitutional provisions, like the U.S.

Some theorists provide descriptive analysis of the language contained in environmental provisions. For example, Lewis notes that existing environmental constitutional provisions encompass a wide range, including substantive rights, procedural rights, explicit or implicit rights, and individual collective rights supported by clear duties. Substantive rights tend to imply that a healthy environment is instrumental to well-being and human development, while procedural rights involve access to information and participation in decision-making. Procedural rights were the focus of the 1998 Aarhus Convention, the first multilateral environmental agreement to be widely credited for recognizing environmental rights. However, the agreement has been criticized on the grounds that it only safeguards procedural rights, as opposed to the others that Lewis outlines.


Given the recent emergence of literature on the impacts of CERs, where empirical studies on the effects of constitutional environmental rights are lacking, analysis of other constitutional rights can provide insight into how a CER may be effectively implemented. McDermott, for instance, uses case studies from India, Brazil, and South Africa to suggest that a “justiciable national right to food can provide a basis for legal redress, national food policies, and state aid programs.” The author notes that international rights to food arising from multilateral agreements have not been implemented, and enforcement mechanisms are often weak. In comparison, national legal systems seem to provide a more effective legal foundation. Constitutional rights, constitutionalizing environmental rights appears to be a desirable avenue to pursue.

Other scholars have explored constitutional provisions relating to the right to health and how they promote health policies and outcomes. Findings from these studies suggest that enforceable constitutional provisions are positively correlated with health outcomes. Using the Social Rights and Economic Fulfillment Index, Kaletski et al. (2016) write that constitutionalization can “force policymakers to enact laws and regulations specifically aimed at improving the quality of ESR fulfillment,” including budget restructuring and improving access. This incentive successfully constrains policymakers precisely because rights are constitutionally enshrined and can thus be used to hold them accountable.

Similarly, Matthew Kavanagh’s 2016 study finds “empirical evidence of a positive role of the right to health in the production of population health” as measured by mortality outcomes. Using data for 144 countries between 1970 and 2010, Kavanagh notes that the right to health changes “actors, discourse, and actions of health policymaking.” In Colombia, the...
courts widely accepted the accion de tutela – which provides for immediate protection of fundamental constitutional rights via judicial order – when claimants were denied medical access. These examples highlight how courts have the potential to influence policy, which could be used to support environmental constitutional rights as well.

Examinations of the impact of the constitutional right to a healthy environment tend to focus on case studies that are qualitative in nature. For instance, Maria Onestini (2017) analyzes three cases invoking Argentina’s right to a healthy environment, finding that “court rulings have sustained the right to water within the right to environment at national, provincial and municipal scale.” Court decisions used the right to require that steps be taken by government agencies to prevent water contamination and determine health impacts related to heavy metals in drinking water. Thus, the right has been interpreted expansively by the courts, revealing the potential of a constitutional environmental right. Not only that, but policy-making institutions follow these legal conceptualizations, such as with a national law regulating “the right to request and obtain public environmentally-related information.”

Some scholars pose theoretical arguments regarding the potential impact. For instance, Bruch, Coker, and VanArsdale examine the CER in Africa, arguing in favor of environmental constitutionalism, despite the underutilization of the regional right in the context they studied. The authors write that environmental concerns could be elevated via constitutionalizing the right to a healthy environment, whereas now they are often viewed as secondary to other priorities, notably economic development. Similarly, Ceparulo, Eusepi, and Giuriato (2019) analyze whether decarbonization policies could be promoted via environmental constitutionalism, which would “contrast political inertia…[and] increase the salience of the decarbonization issue.” They write that provisions would “reframe incentives to mitigation policies” due to increased political costs of non-compliance with constitutional commitments. As a result, the authors argue that “constitutionalizing decarbonization could generate demand for political action, overcome the policy deadlock, impose more ambitious emissions reduction targets and enable the judiciary to enforce them.” Anaebdo and Ekhator also argue that “constitutionalising (rather than regionalising before a human rights commission or treaty) environmental rights domestically would improve environmental outcomes in Nigeria.” However, few of these scholars have conducted empirical tests of their theories, which this thesis will do.

A few quantitative analyses have emerged regarding the impact of CERs. For example, Gellers and Jeffords find that states with procedural environmental rights are more likely than states without to facilitate environmental justice, especially access to information. Jeffords (2016) finds that the presence of CER provisions interacts with its age within a fixed effects framework, yielding a statistically significant positive association with access to improved water resources, but not access to improved sanitation facilities. However, few scholars have quantitatively focused specifically on the right to a healthy environment, a substantive form of the CER, as well as its implications for environmental policy stringency and air quality outcomes. As such, this thesis aims to contribute such an analysis.

Environmental lawyer David Richard Boyd is one of the few scholars to have conducted a quantitative analysis of countries that have incorporated a substantive environmental right, but he admits that his study is “a basic attempt to determine whether there is a correlation between constitutional environmental protection and national environmental performance.” Boyd finds this correlation in his work, noting that nations with environmental provisions have smaller ecological footprints and made faster progress in reducing greenhouse gas emissions than those without. Furthermore, Boyd posits that a constitutional right to a healthy environment promotes the advancement of environmental legislation. However, his correlations warrant further exploration in the context of a panel data analysis, such as that undertaken in this thesis, in order to contribute to determining whether there is a causal relationship.

4. Research Design

This article uses unbalanced panel data from 1990 to 2018 to empirically test whether the presence of a constitutional right to a healthy environment impacts environmental policy and emissions outcomes. The time range was selected on the basis of available independent and dependent variable data. Based on available data, I narrowed the selection of units to the thirty-five Organization for Economic Co-operation and Development (OECD) countries for two of the
three dependent variables, namely environmental policy stringency and sulfur oxide emissions. Nitrogen oxide emissions are analyzed once in terms of OECD countries only and once globally. Table 1 presents descriptive statistics for all relevant variables for OECD countries while Appendix A presents descriptive statistics of variables for the globally inclusive group.

**Independent Variables**

**Constitutional Right to a Healthy Environment**

I created a variable to represent the presence of a constitutional right to a healthy environment (CRHE) from the lists compiled by Boyd (2010) and the Toronto Initiative for Economic and Social Rights (TIESR) (2019).\(^76\) Boyd’s list contains the year of incorporation for substantive rights up to 2008 while the TIESR’s time series data span from 1999 to 2016.\(^77\) Where there is disagreement, I defer to Boyd’s assessment since his study examines the constitutional environmental right in particular whereas the TIESR more broadly explores economic and social rights. The categories that Boyd identifies include countries with governmental duties to protect the environment, procedural environmental rights, or substantive environmental rights—which is to say, the right to a healthy environment. However, Boyd does not note the year of incorporation for the procedural or governmental duties, and determining those myself is beyond the scope of this study. One possibility for future research is examining how the type of constitutional environmental right impacts environmental performance outcomes.

TIESR’s time series data characterize the right to a healthy environment as either absent, aspirational, or justiciable for each country in the dataset. Indicate the strength of the right to a healthy environment in a given country as absent, aspirational, or justiciable. To be classified as justiciable, a “constitution must include a mechanism of judicial review.”\(^78\) In contrast, aspirational provisions ideally guide policy, but are not binding. Positive evidence was required for justiciable, and in cases where the status was unclear, the default coding was aspirational.\(^79\) Of the 195 countries, 98 include a CRHE provision, of which 30 are aspirational and 68 are justiciable. I expect that rights which are merely aspirational will offer a weaker mechanism for redress, both in courts and in terms of government justifications for policy. For example, a government could potentially deprioritize a right to environmental protection or environmental health in relation to other concerns more easily if the language is aspirational rather than a justiciable. In contrast, as McDermott writes regarding the right to food, it is “most effective when national constitutions provide justiciable means for legal redress and enforcement of that right.”\(^80\)

**Interaction with Rule of Law**

Rule of law is indicative of the enforceability of constitutional rights; it is therefore understood as an interaction variable, moderating the effect of the CRHE. Where it is stronger, I expect that the CRHE will be positively related to the dependent variable. Unfortunately, the available data for the strength of rule of law do not date back as far as desired. According to Boyd’s list, Portugal was the earliest to incorporate the right to a healthy environment in 1976. Using the World Bank Worldwide Governance Indicators (WGI), which has the largest available archive, the earliest data are from 1996, with missing data for a number of countries, most of which are non-OECD countries.\(^81\) The World Bank WGI rule of law estimate ranges from approximately -2.5 (weak) to 2.5 (strong). This measure reflects the extent to which agents have confidence in and abide by the rules of society, and includes the quality of courts and likelihood of violence. In this sense, the variable itself is perhaps broader than desired in that it reflects crime levels which may not necessarily impact the enforceability of constitutional rights.

**Dependent Variables**

Boyd divides indicators which are used to measure environmental performance outcomes into three categories: pressure, state, and response indicators. Pressure indicators include greenhouse gas emissions and water consumption while pollution abatement expenditures, tax revenues from emissions taxes, and multilateral agreement ratification are considered response indicators.\(^82\) State indicators include ambient levels of air pollutants, which are especially pertinent given their central health component and the locality of air pollutants.

States are well-suited to affect localized air pollutants via environmental policies and legislation. These pollutants include nitrogen oxides, sulfur oxide emissions (given largely as quantities of sulfur dioxide), and fine particulate matter. Nitrogen oxides (NOx) are produced by burning fuels, particularly
petroleum products; they contribute to particulate matter, smog, and acid rain. Exposure to elevated levels “can contribute to eye, nose and throat irritation… respiratory illness, aggravation of asthmas, decreased lung function…and decreased lung growth in children.”83 The World Bank Worldwide Governance Indicators have compiled a NOx measure, in thousand metric tons, from 1990 to 2018, which I use in this study.84 These data are sourced from the Emission Database for Global Atmospheric Research, a joint project between the European Commission and the Netherlands Environmental Assessment Agency. Sulfur oxide (SOx) emissions are likewise produced by fossil fuel combustion along with metal refining, contributing to particulate matter and acidification, which damages ecosystems. Exposure is “linked to increased risks of lung cancer and chronic bronchitis.”85 Comprehensive SOx data from 1990 to 2014 for OECD countries are used in the empirical tests, measured in kilograms per capita. For both local air pollutants, I expect to see a negative relationship between their emission levels following the enshrinement of a constitutional right to a healthy environment.

Environmental policy stringency (EPS), in Boyd’s conception, falls under the response indicators.86 For the empirical tests to follow, the OECD’s Environmental Policy Stringency Index is used, which ranges from 0 (not stringent) to 6 (highest stringency). An advantage of using this index to measure the stringency of environmental policy is that it is a country-specific and internationally-comparable measure. The index covers twenty-eight OECD countries for the period of 1990-2012. Stringency is “defined as the degree to which environmental policies put an explicit or implicit price on polluting or environmentally harmful behavior.”87 As such, it includes fourteen instruments by which the emissions outcomes would be affected. Therefore, if the enshrinement of a constitutional right to a healthy environment has some measurable impact, it would be evident here. Going into the empirical tests, I expect to see a positive relationship between EPS and the incorporation of the constitutional right to a healthy environment.

Control Variables

Temporal precedence is insufficient for establishing a cause and effect relationship. For example, if spurious variables are excluded in a model, causality is not supported by the findings. For this reason, I controlled for the effects of additional variables which were likely to introduce time-variant noise in the dependent variables. One variable I controlled for is the country’s wealth. Early studies have indicated the presence of an Environmental Kuznets Curve whereby there is a relationship in the shape of an inverse u between wealth and pollution. The hypothesis suggests that environmental performance outcomes deteriorate during early industrialization but improve once a certain wealth threshold has been reached. However, some environmental indicators have fit the hypothesis while others have not.88 As such, it is worth considering the effects of income. To do so, I use gross domestic product (GDP) per capita data from 1990 to 2018, sourced from the World Bank Worldwide Governance Indicators.

Greater population levels could also negatively affect environmental outcome indicators since they result in greater negative externalities and emissions from motor vehicles or electricity generation, for example. Thus, I again use the World Bank Worldwide Governance Indicators time-series data to control for this possibility. Relatedly, an additional factor I have included in my dataset are two variables for reliance on oil and coal for electricity production. The variables indicate the share of electricity production from either coal or oil sources, as sourced from the International Energy Agency. Coal refers to “all coal and brown coal, both primary (including hard coal and lignite-brown coal) and derived fuels (including patent fuel, coke oven coke, gas coke, coke oven gas, and blast furnace gas).”89 As major contributors to nitrogen oxides and sulfur oxides, natural reliance on coal and/or oil could impact pollution levels independent of a constitutional right to a healthy environment.
Table 1: Descriptive Statistics for Variables (OECD)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Obs.</th>
<th>Mean</th>
<th>SD</th>
<th>Min.</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to a Healthy Environment</td>
<td>910</td>
<td>0.56</td>
<td>0.76</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Rule of Law</td>
<td>688</td>
<td>0.78</td>
<td>1.06</td>
<td>-1.96</td>
<td>2.1</td>
</tr>
<tr>
<td>NOx Emissions*</td>
<td>759</td>
<td>8.30</td>
<td>6.91</td>
<td>1.28</td>
<td>41.99</td>
</tr>
<tr>
<td>Sulphur Oxide (SOx) Emissions**</td>
<td>499</td>
<td>35.89</td>
<td>44.14</td>
<td>1.68</td>
<td>265.532</td>
</tr>
<tr>
<td>Environmental Policy Stringency (EPS)</td>
<td>475</td>
<td>1.94</td>
<td>1.02</td>
<td>0.156</td>
<td>4.675</td>
</tr>
<tr>
<td>GDP per capita</td>
<td>940</td>
<td>2.21</td>
<td>3.66</td>
<td>-47.59</td>
<td>23.99</td>
</tr>
<tr>
<td>Population</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coal as % of total electricity</td>
<td>1015</td>
<td>2.22e+07</td>
<td>3.10e+07</td>
<td>28789</td>
<td>1.96e+08</td>
</tr>
<tr>
<td>production</td>
<td>810</td>
<td>22.91</td>
<td>26.35</td>
<td>0</td>
<td>97.49</td>
</tr>
<tr>
<td>Oil as % of total electricity</td>
<td>810</td>
<td>11.74</td>
<td>22.55</td>
<td>0</td>
<td>99.59</td>
</tr>
</tbody>
</table>

*measured in thousand metric tons of CO2 equivalent per 10,000 people
**measured in kilograms per capita

Time-Series

The existing quantitative evidence of the effects of constitutional environmental provisions on environmental performance outcomes has primarily consisted of snapshots at a point in time. Choosing a particular year can “penalize so-called early movers” depending on the base year of comparison, which is one advantage of examining across time. For countries who acted earlier, a smaller percentage change may be seen if they record a low level of emissions in that base year. Further, as Boyd notes, examining a country in a single year may not be reflective of their general environmental performance because they “may demonstrate a seemingly large increase in emissions” from particular economic or political circumstances in that given year.

Therefore, it is useful to examine patterns across time in order to extrapolate a potential causal story given the fact that causes must precede their effects. After all, it could be the case that countries with strong environmental records are more likely to amend their constitutions to consider the environment. But if incorporating constitutional environmental rights precedes changes in air pollution levels, it could imply that constitutional environmental rights enshrine has a causal effect on air pollution. A time-series cross-sectional analysis provides greater information on trends across time, enabling analysis of whether environmental performance effects are first present and then whether they hold throughout time and across countries.

Following Christopher Jeffords (2016), the general linear model used is as follows:

$$Y_{it} = X_{it} + W_i + u_{it} \text{ for } i = 1, \ldots, N \text{ and } t = 1, \ldots, T$$

where $Y$ represents the dependent variables and $X$ the presence of an aspirational or justiciable constitutional right to a healthy environment. Finally, $u_{it}$ represents the normal disturbance term. The fixed effects model is estimated by allowing a country-specific intercept, represented by $W_i$, which captures most forms of unobserved heterogeneity across $i$. This is pertinent because endogeneity bias often arises in cross-sectional studies, particularly as it relates to constitutions, which can be affected by geography, colonial legacies, and legal tradition. Therefore, fixed effects models allow one to focus on over-time change within a country.

V. Results and Discussion

The time-series regressions were initially estimated with a simple test of the relationship between the constitutional right to a healthy environment and the three dependent variables. The full results of this regression are available in Appendix B. This test finds the expected positive relationship with environmental policy stringency, as is represented in Figure 1. More precisely, the change from no right to a healthy environment to an aspirational CRHE produces a statistically significant associated increase of 1.459 for an OECD country’s predicted EPS score on average. This represents a near doubling of the average expected score where there is no constitutional provision, lending strength to the notion that constitutionalizing the right to a healthy environment positively impacts environmental policy.

The change to a justiciable right, while positive,
does not yield a statistically significant result, which I attribute to the fact that few OECD countries have a justiciable CRHE. In contrast, more OECD countries have an aspirational CRHE, which could help to explain why the point estimate is lower for the justiciable right than the aspirational one. It could also be the case that the invocation of a justiciable right in a legal setting is underutilized in OECD countries, such that it has less of an immediate impact on environmental policy stringency than the right which is meant to guide policy.

For the estimation of sulphur oxide emissions among OECD countries, seen in Figure 2, moving from the absent to the aspirational level dramatically reduces emissions, on average. Specifically, this one-unit increase in the independent variable is correlated with an average decrease of 30.315 kilograms of SOx emissions per capita. This cuts the constant of 42.816 by more than half, and what is more, is statistically significant. Somewhat surprising, however, is that the additional effect of moving to a justiciable right, while similarly negative and statistically significant, has a lesser impact on average (only a 17.56-point decrease). Again, this could be a result of the smaller sample of OECD countries with a justiciable right to a healthy environment, but it could also reflect the significant effect that aspirational policy can have, despite not being self-executing—that is, not requiring further legal action. This could hint that these relatively softer constraints nonetheless have considerable weight, and if so, perhaps they should be the avenue to pursue, as more aspirational legal language of a right may garner less political opposition.

Finally, the impact on NOx emissions for OECD countries is quite similar to EPS, in that there is a statistically significant average decrease in emissions when moving to the aspirational right, but the change to the justiciable right, while yielding a negative correlation, is not significant at the 0.05-level. However, when the sample is expanded to NOx emissions for all countries, moving to a justiciable CRHE results in a statistically significant reversal of this correlational pattern. With a coefficient of 2.04, moving to a justiciable CRHE seems to actually be associated with an average increase in NOx emissions. One possibility to explain this puzzling turn is that rule of law plays a greater role in the global sample of countries than it does in OECD countries, which tend to have higher average scores on this variable, as seen in a comparison of Table 1 and Appendix A (0.78 and -0.07, respectively).

To test this possibility, I ran a time-series regression interacting rule of law and the constitutional right to a healthy environment for each of the dependent variables. The results of this regression are presented in Table 2. The results of this estimate support the notion that rule of law distinguishes the predicted per capita NOx emissions between the OECD and global samples. After factoring in the joint effect of the CRHE and rule of law, the move from no CRHE to justiciable yields a statistically significant negative correlation for the global sample. Furthermore, this reduction is not trivial—it decreases the level of predicted NOx emissions by 9.415, on average. This would completely eliminate the average level of NOx emissions that is expected in the absence of the right, which is evident in earlier estimates (i.e. in Appendix B). As such, it strongly suggests that the constitutional right
to a healthy environment can reduce local air pollutant emission outcomes in countries with stronger rule of law. This effect could reflect how rule of law enables the theoretical benefits of environmental constitutionalism described in the literature to materialize. It is especially pertinent that the rule of law interaction so strongly affects the move to a justiciable right, which is characterized by some form of legal redress through judicial review. Where rule of law is lacking, it would be difficult for rights-holders to seek recourse regarding their constitutional environmental right, and this notion plays out here. Moving to the aspirational level has the expected negative sign, but this is not a statistically significant result. Using the earlier logic, this could be due to the fact that the global sample of countries has a greater number of justiciable rights as compared to aspirational ones.

Table 2: Estimates of the Interacting Effects of CRHE and Rule of Law

<table>
<thead>
<tr>
<th></th>
<th>EPS</th>
<th>SOx Emissions</th>
<th>NOx Emissions</th>
<th>NOx Emissions (All)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHRE</td>
<td>3.6***</td>
<td>-13.862</td>
<td>4.198</td>
<td>0.553</td>
</tr>
<tr>
<td>1 - Aspirational</td>
<td>Omitted1</td>
<td>(26.193)</td>
<td>(3.017)</td>
<td>(1.393)</td>
</tr>
<tr>
<td>2 - Justicable</td>
<td></td>
<td>(20.12)</td>
<td>(0.818)</td>
<td>2.934**</td>
</tr>
<tr>
<td>Rule of Law (ROL)</td>
<td>-0.53</td>
<td>-31.837**</td>
<td>1.937*</td>
<td>2.12**</td>
</tr>
<tr>
<td></td>
<td>(0.517)</td>
<td>(9.666)</td>
<td>(1.141)</td>
<td>(1.04)</td>
</tr>
<tr>
<td>CHRExROL</td>
<td>-1.61**</td>
<td>6.741</td>
<td>-4.692**</td>
<td>-1.657</td>
</tr>
<tr>
<td>1. Asp.</td>
<td>(0.762)</td>
<td>(24.227)</td>
<td>(1.899)</td>
<td>(1.139)</td>
</tr>
<tr>
<td></td>
<td>(1.314)</td>
<td>(24.3)</td>
<td>(0.977)</td>
<td>(1.197)</td>
</tr>
<tr>
<td>Constant</td>
<td>1.984***</td>
<td>74.823***</td>
<td>5.280***</td>
<td>5.073***</td>
</tr>
<tr>
<td></td>
<td>(0.603)</td>
<td>(13.365)</td>
<td>(1.276)</td>
<td>(0.413)</td>
</tr>
<tr>
<td>Obs.</td>
<td>296</td>
<td>328</td>
<td>462</td>
<td>2568</td>
</tr>
<tr>
<td></td>
<td>24 groups</td>
<td>21 groups</td>
<td>33 groups</td>
<td>186 groups</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.091</td>
<td>0.043</td>
<td>0.039</td>
<td>0.042</td>
</tr>
<tr>
<td>Within</td>
<td>0.199</td>
<td>0.03</td>
<td>0.005</td>
<td>0.023</td>
</tr>
<tr>
<td>Overall</td>
<td>0.061</td>
<td>0.02</td>
<td>0.002</td>
<td>0.026</td>
</tr>
</tbody>
</table>

1 because of collinearity
***p<0.01, **p<0.05, *p<0.1
Standard errors are in parenthesis

Interestingly, the interaction effect on environmental policy stringency results in a negative sign for moving to the aspirational level and justiciable levels, although only the former achieves statistical significance at the 0.05-level. This result is perplexing, as it is the opposite of what is expected. One possible explanation is that the aspirational CRHE does not require an interaction effect with rule of law in the way that the justiciable CRHE might since it is more of a guiding force than one that is legally binding and can be invoked in courts. Thus, rule of law may not be needed so the results do not reflect its presence. Another possibility is that the OECD countries included in the sample require time for implementation of the aspirational CRHE, which is not captured in this estimate of its immediate impact. Yet, this possibility may not suffice as it does not explain why this is not the case for all of the findings.

Finally, Table 3 presents the findings of a time-series regression that includes the control variables. For all three dependent variables, the signs of the correlations are as expected, supporting the notion that some form of the constitutional right to a healthy environment impacts environmental policy and outcomes.
Beginning with environmental policy stringency, the regression finds the expected strongly positive relationship, but only for moving to the aspirational level. It is correlated with an average increase of 1.06 in the predicted policy stringency for OECD countries, holding the other predictors constant. Once again, the subsequent move to the justiciable right is also positive, but with such a large standard error, it can be considered an inconclusive result. Similarly, the predicted SOx emissions among OECD countries are negatively correlated with a one-unit change from no CRHE to an aspirational right. This average decrease of 13.285 is a statistically significant finding, implying confidence that the relationship is not due to chance.

Interestingly, when other predictors are held constant, the correlations for NOx emissions among OECD countries reverse course, in that there is a statistically significant negative association with the justiciable right (-1.41), but the negative correlation with the aspirational right is not significant at the 0.05 level. As such, one can be confident that going from no CRHE to a justiciable CRHE (while controlling for GDP, population, and reliance on coal or oil for electricity) produces a reduction in emissions that is unlikely to be random. This finding is unlikely to be the result of sample size, so perhaps the inclusion of the control variables reduces noise to reveal a true relationship between the emissions and the justiciable right, as well as eliminating possible earlier bias that suggested a negative relationship for the aspirational right. However, this possibility is not supported by the results of predicted NOx emissions for the larger sample of countries. In that estimate, there is a statistically significant correlation between the predicted emissions and both forms of the CRHE while holding the other predictors constant. Specifically, moving from no CRHE to a CRHE reduces emissions by 0.796 and 1.473, on average, for the aspirational and justiciable CRHEs, respectively. This correlation provides the strongest support in this study for the relative strength of a justiciable right in comparison to the aspirational one. However, given inconsistency across the tests, it is difficult to conclusively determine the role that the strength of constitutional language plays in affecting environmental policy stringency and outcomes. In any case, the relationship seems to be generally negative between some form of a CRHE and predicted NOx emissions, just as expected.

Turning to the control variables, the results of the relationship between GDP per capita and emissions outcomes does not tend to support the EKC hypothesis. Among OECD countries, which tend to have higher levels of GDP per capita and less deviation (see Table 1 and Appendix A), there is a statistically significant positive correlation between predicted NOx emissions and GDP. For every one-unit increase in GDP, predicted emissions increase by 0.133, which is contrary to what the hypothesis implies. The global sample’s negative sign indicates an average reduction in NOx emissions (albeit with a rather small coefficient) but again, this result seems contrary to the notion that emissions decline once a wealth threshold is reached since more of the countries in that sample are in earlier stages of industrialization or have lower levels of GDP per capita. However, there are many factors that could influence GDP per capita which are time-variant and not controlled for here, so this finding should be interpreted cautiously. For the purposes of this study, the relationship seems to be small, but non-trivial, validating GDP per capita as a choice for a control variable.

The correlations between the other controls
and the dependent variables are generally as expected, also affirming these choices. For example, population is positively correlated with SOx emissions, and significant at the 0.05-level. While not statistically significant for NOx emissions, population is also positively associated with environmental policy stringency, and the implication that greater population levels reduce EPS is not likely to be random, given the low p-value. However, the cautious interpretation of GDP per capita also applies here, because factors such as civil society, which could contribute to this correlation, are not controlled for here. Both oil and coal as a percentage of electricity production are negatively correlated with EPS and positively correlated with the local air pollutant emissions in all estimates. SOx emissions are particularly affected, with each one-percent increase in coal and oil as a share of electricity production correlating with an average emissions increase of 1.088 and 0.621, respectively. As such, in studies which use the same, or similar, dependent variables, it will be important to control for the strong effects of the reliance on coal and oil for electricity production seen here as well as similar variables, such as vehicle emissions.

One limitation of this study’s findings is that not all such variables could be included; however, the fixed effects estimation helps address this issue to the extent that these factors are relatively consistent across time.

4. Conclusion

Ultimately, by using novel panel data in a quantitative time-series analysis, this study contributes to the literature on the impact of constitutional environmental rights, which has had a largely theoretical and qualitative focus. An empirical quantitative test of the relationship offers greater generalizability and external validity to the theory than qualitative research focusing on one or two cases. As such, it offers a useful starting point for future research to examine in-depth the mechanisms behind the relationships found in this study. Furthermore, few researchers have focused specifically on the right to a healthy environment within a panel data fixed-effects framework, so they potentially homogenize the impact of CERs, which this study avoids. This study is also the first to use environmental policy stringency to measure such an impact, highlighting its usefulness. Findings from the time-series regressions support the notion that the constitutional right to a healthy environment has an observable impact on environmental policy stringency as well as environmental outcomes, at least in OECD countries.

Every estimation finds a positive relationship between the predicted EPS Index score and an aspirational CRHE. Although there was no evidence of a statistically significant relationship between the justiciable CRHE and the stringency of environmental policy, this does not imply the lack of such a relationship in practice. After all, as I noted earlier, there are few OECD countries which have the justiciable right, limiting the amount of observations and therefore, increasing the standard error. Furthermore, it is possible that there could simply be a greater lag in implementation. Constitutional provisions related to the environment may see their effects play out in part over time. For instance, it takes time for violations to be identified and adjudicated. The “process of judicial hearings and appeals may mean that years pass before a court order is obtained, and the enforcement of court orders can add additional years of delay”.

SOx emissions in particular seem affected by the issue of a large standard error due to few observations, especially in the interaction between the CRHE and rule of law. However, estimations using this variable also indicate the presence of a negative correlation between an aspirational CRHE and the level of emissions, offering support for its effect on environmental outcomes despite being considered a guiding policy rather than a guarantee. Future qualitative research could examine the form of a constitutional right to a healthy environment and how it is taken up by policymakers or engaged with by judiciaries, particularly to investigate the unexpected null effects of justiciable rights. Little can be conclusively determined from this study regarding the effect of the form of the CRHE, but this work 1) is the first to empirically test the impact of different types of a CRHE and 2) reveals the potential of an aspirational right by highlighting the presence of a relationship with air pollutant emissions outcomes and environmental policy stringency in a fixed-effects estimation while also controlling for relevant variables. Nitrogen oxide emissions tend to show the strongest impact on environmental outcomes, at least in OECD countries as well. In those estimations, there were statistically significant negative correlations between the CRHE and predicted NOx emissions, potentially due to the greater number of observations for justiciable rights in those countries.

One limitation in time-series models, as Boyd
notes, is that more problems related to data consistency and availability for ecological indicators emerge the further back in time one looks. This issue has been especially relevant for non-OECD countries, where the majority of CERs are located, and has limited the scope of this thesis since it has depended on available data. As such, missing longitudinal data on air pollutant emissions and policy stringency, particularly for non-OECD countries, limit the generalizability of this study’s findings while highlighting a need for ongoing and consistent data, for future research.

Appendix

Appendix A: Descriptive Statistics for Variables (All)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Obs.</th>
<th>Mean</th>
<th>SD</th>
<th>Min.</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to a Healthy Environment</td>
<td>5025</td>
<td>0.61</td>
<td>0.85</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Rule of Law</td>
<td>3822</td>
<td>-0.07</td>
<td>0.99</td>
<td>-2.5</td>
<td>2.1</td>
</tr>
<tr>
<td>NOx Emissions*</td>
<td>4257</td>
<td>6.63</td>
<td>13.98</td>
<td>0</td>
<td>411.44</td>
</tr>
<tr>
<td>GDP per capita</td>
<td>5225</td>
<td>2.11</td>
<td>6.28</td>
<td>-64.99</td>
<td>140.37</td>
</tr>
<tr>
<td>Population</td>
<td>5529</td>
<td>3.36e+07</td>
<td>1.28e+08</td>
<td>8913</td>
<td>1.39e+09</td>
</tr>
<tr>
<td>Coal as % of total electricity produc</td>
<td>3471</td>
<td>16.81</td>
<td>25.88</td>
<td>0</td>
<td>100</td>
</tr>
<tr>
<td>Oil as % of total electricity produc</td>
<td>3471</td>
<td>19.11</td>
<td>27.99</td>
<td>0</td>
<td>100</td>
</tr>
</tbody>
</table>

* in thousand metric tons of CO2 equivalent per 10,000 people

Appendix B: Estimate of Effects of Constitutional Right to a Health Environment

<table>
<thead>
<tr>
<th>CHRE</th>
<th>EPS</th>
<th>SOx Emissions</th>
<th>NOx Emissions</th>
<th>NOx Emissions (All)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - Aspiratio</td>
<td>1.459***</td>
<td>-30.315***</td>
<td>-1.552**</td>
<td>-1.115</td>
</tr>
<tr>
<td></td>
<td>(0.248)</td>
<td>(6.329)</td>
<td>(0.652)</td>
<td>(0.712)</td>
</tr>
<tr>
<td>2 - Justiciab</td>
<td>0.698</td>
<td>-17.558**</td>
<td>-0.211</td>
<td>2.04***</td>
</tr>
<tr>
<td></td>
<td>(0.308)</td>
<td>(7.633)</td>
<td>(0.478)</td>
<td>(0.522)</td>
</tr>
<tr>
<td>Constant</td>
<td>1.494***</td>
<td>42.816***</td>
<td>8.657***</td>
<td>6.325***</td>
</tr>
<tr>
<td></td>
<td>(0.09)</td>
<td>(1.714)</td>
<td>(0.182)</td>
<td>(0.184)</td>
</tr>
<tr>
<td>Obs.</td>
<td>475</td>
<td>499</td>
<td>759</td>
<td>4195</td>
</tr>
<tr>
<td>Within</td>
<td>24 groups</td>
<td>21 groups</td>
<td>33 groups</td>
<td>186 groups</td>
</tr>
<tr>
<td>Between</td>
<td>0.075</td>
<td>0.056</td>
<td>0.008</td>
<td>0.005</td>
</tr>
<tr>
<td>Overall</td>
<td>0.15</td>
<td>0.026</td>
<td>0.061</td>
<td>0.007</td>
</tr>
</tbody>
</table>

Standard errors are in parenthesis
***p<0.01, **p<0.05, *p<0.1

Endnotes

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Inequitable by Design: Economic Explanations behind Resistance from Southeast Asian Nations towards China’s Belt and Road Initiative

Renee H. Ong, University

Abstract

In spite of the infrastructure financing needs of many Southeast Asian countries and China’s positioning as an established investor in the region, particularly within the infrastructure sector, the publics and government officials of various Southeast Asian nations have pushed back against China’s ambitious Belt and Road Initiative since its establishment in 2013. This shared resistance is especially intriguing given the numerous preexisting differences between these nations. Employing the “most different systems design” methodology, I discuss case studies from Vietnam, Myanmar, and Malaysia to analyze potential explanatory factors behind this shared phenomenon, focusing solely on economic narratives. I argue this resistance can be attributed to the economically inequitable nature of BRI packages, which often disproportionately employ Chinese firms and workers at the expense of their domestic equivalents, enrich host country elites through corrupt activity, and entail financially inequitable terms that benefit Chinese investors to the detriment of host country governments.

1. Introduction

On April 26th, 2019, Chinese President Xi Jinping took the stage at the Second Belt and Road Forum for International Cooperation to deliver a decidedly different keynote speech than the one he had given at the first forum just two years before. Xi’s preceding speech had painted a grand vision of the multibillion-dollar Belt and Road Initiative (BRI) and its ability to enhance global infrastructure connectivity. In comparison, his notably shorter 2019 speech was primarily focused on “answering criticism about corruption and the dominance of Chinese companies in BRI projects,” as well as promising extensive reform to mitigate such concerns.¹ In 2017, Xi had concluded his address with the ancient Chinese saying “a long journey can be covered only by taking one step at a time”; in 2019, his saying of choice was “honoring a promise carries the weight of gold.”² Though Xi gave his speech to an audience of political luminaries from around the world, these assurances of reform were particularly directed towards Southeast Asian nations and their wary attitudes towards the BRI.

Indeed, the publics and government officials of various Southeast Asian nations have pushed back against the BRI in spite of these countries’ infrastructure financing needs and China’s positioning as an established investor in the region, particularly within the infrastructure sector. This shared resistance is especially intriguing given the numerous preexisting
differences between these nations. What is it about the nature of the BRI that causes this behavior? Using the “most different systems design” (MDSD) methodology, I explore case studies from Vietnam, Myanmar, and Malaysia to answer this question. For the sake of specificity, I focus solely on the economic explanations behind this resistance. Ultimately, I argue this resistance can be attributed to the economically inequitable nature of BRI packages. More specifically, these packages disproportionately employ Chinese firms and workers at the expense of their domestic equivalents, enrich host country elites through corrupt activity, and include financially inequitable terms that benefit Chinese investors to the detriment of host country governments.

The structure of this paper is as follows. Section 2 introduces China’s growing economic influence in Southeast Asia, as is evident in multiple economic domains. Section 3 reviews the BRI and its economic appeal to BRI corridor countries, with particular attention paid to Southeast Asian nations. Section 4 discusses the methodology and scope of this paper. Section 5 reviews key differences between Vietnam, Myanmar, and Malaysia in their bilateral relations with China, economic development levels, and types of political systems. Sections 6, 7, and 8 examine the economically inequitable nature of BRI packages and the negative reaction thereof in Vietnam, Myanmar, and Malaysia, respectively. Finally, Section 9 proposes policy recommendations, considers areas of future research, and concludes.

2. China’s Growing Economic Influence in Southeast Asia

Though China’s economic foothold in Southeast Asia was relatively weak prior to 2010, China has since become incredibly proactive and successful in strengthening its economic dominance among countries in the Association of Southeast Asian Nations (ASEAN). Southeast Asia’s shifting economic dynamics in China’s favor is clearly demonstrated in a number of economic domains, including trade volumes, foreign direct investment (FDI), free trade agreements (FTAs), and foreign aid.

2.1. Trade Volumes

China’s rise to become Southeast Asia’s top extra-ASEAN trading partner occurred with unprecedented magnitude and pace. In relative terms, China’s percent share of total ASEAN trade more than tripled from 4.3 percent in 2000 to 15.2 percent in 2015. However, the absolute numbers reveal an even more impressive story. Back in 2000, total trade value between China and ASEAN nations equalled only US$32.3 billion in 2010 dollars, lagging far behind the United States (US$122.2 billion), Japan (US$116.2 billion), and the European Union (US$102.8 billion). However, China claimed the top spot a mere nine years later, with total China-ASEAN trade value reaching US$178.2 billion in 2010 dollars. China has only continued to aggressively build on its trade dominance in Southeast Asia in the years since. In 2015, trade between China and ASEAN reached a staggering US$345.8 billion; in comparison, no other country surpassed US$240 million in total trade value that year.

2.2. Foreign Direct Investment

Though China is not the largest net investor in the Southeast Asia region, Chinese FDI flow is growing at such an accelerated pace that it will likely overtake its competitors in the near future. Between 2013 and 2016, China increased its percent share of total foreign investment received by ASEAN nations from 5.7 to 9.2 percent. In 2017, China overtook the United States to become the second largest foreign investor in Southeast Asia in both absolute value and percent share, outranked only by Japan. Moreover, it is important to note that these figures likely underestimate the total amount of Chinese FDI for two key reasons. Firstly, a fair amount of Chinese FDI is “linked to commercial services provided by offshore financial companies in Singapore” and therefore may be attributed to Singapore rather than Beijing. Secondly, these figures do not take into account “investments not notified to the Chinese authorities in order to avoid administrative red tape,” “investments that originate in Hong Kong,” “reinvestments by [Chinese] companies already based overseas,” and “technical issues regarding investment reporting.” Considering this, Chinese outbound FDI towards Southeast Asian nations is on track to outpace other sources of foreign investment, if it has not done so already.

2.3. Free Trade Agreements

China has placed increasing emphasis on entering multilateral and bilateral FTAs with Southeast Asian
countries in order to ensure the continued strengthening of its economic presence. The ASEAN-China Free Trade Area was, at the time of its establishment in 2010, the world’s largest free trade area in terms of population and third largest in terms of trade volume.\textsuperscript{11} Its massive scale was later outdone a decade later by the Regional Comprehensive Economic Partnership (RCEP), another multilateral agreement that China ensured it was party to. In November 2020, China, Japan, South Korea, Australia, and New Zealand joined all ten ASEAN nations in establishing the RCEP, which has been called the largest free trade agreement in history and encompasses nearly a third of both global economic output and population.\textsuperscript{12} As for bilateral agreements, China has FTAs with all ASEAN nations and a separate FTA with Singapore; in comparison, the United States only has the latter.\textsuperscript{13}

2.4. Foreign Aid

China’s foreign aid to Southeast Asian nations may not be unique in size, but is unusual for its lack of concessionary pricing relative to other givers of aid. Interestingly, Chinese aid has largely been in the form of loans with interest agreements; in other words, China expects economic returns on its aid finance. The “traditional definition” of aid, as conceptualized by many Western developed nations, is that which is officially given “with the main goal of developing the economic development and welfare of recipient countries.”\textsuperscript{14} However, only 21 percent of Chinese outbound foreign aid from 2000 to 2014 fell under the definition of “traditional aid,” while “the lion’s share of that money [was] given in commercial loans that have to be repaid to Beijing with interest.”\textsuperscript{15} This differs greatly with Western aid, which usually has fewer strings attached—indeed, “the vast majority (93%) of U.S. financial aid fits under the traditional definition of aid.”\textsuperscript{16} Much of said aid takes the form of “heavily discounted loans to governments and businesses that are at below-market interest rates and/or include long grace periods for repayment,” and “at least a quarter of that money represents a direct grant” that does not need to be repaid at all.\textsuperscript{17} While China’s growing economic presence in the region may not be expressed by the volumes of its foreign aid, the nature of its aid entails increased economic leverage over these countries in the form of interest and repayment.

3. Appeal of China’s Economic Statecraft: The Belt and Road Initiative

The economic allure of China’s Belt and Road Initiative to host countries, including those located within Southeast Asia, primarily lies in its potential to mitigate these nations’ infrastructure financing deficiencies that have a deleterious effect on their overall economic growths.

3.1. Introduction to the Belt and Road Initiative and its Economic Appeal

In discussing resistance to China’s economic statecraft, the Belt and Road Initiative is an ideal topic of interest due to its vast scale, high profile, and relative recency. The BRI, also known as One Belt One Road, is undoubtedly one of the most ambitious infrastructure projects conceived in modern world history. Launched in 2013 by President Xi Jinping, the BRI adopts a two-pronged approach consisting of the Overland Silk Road Economic Belt and its marine complement, the Maritime Silk Road, in order to create a “vast network of railways, energy pipelines, highways … streamlined border crossings,” and ports.\textsuperscript{18} The sheer breadth of the BRI cannot be understated. As of January 2020, “more than sixty countries … [had] signed on to projects or indicated an interest in doing so.”\textsuperscript{19} In total, these nations account for over 4.4 billion people and constitute more than a third of global gross domestic product (GDP).\textsuperscript{20} The scale of investment, too, is astonishing—not only has China “already spent an estimated [US$]200 billion on such efforts,” but some estimates project China’s overall BRI expenditures will reach US$1.3 trillion by 2027.\textsuperscript{21}

Given the serious commitment required of this undertaking, it is no surprise that China stands to strategically benefit from the BRI’s establishment and expansion in a multitude of ways. Economically speaking, forging this extensive infrastructure network would allow China to “develop new investment opportunities, cultivate export markets, and boost Chinese incomes and domestic consumption” while “boost[ing] global economic links” to its historically neglected western regions.\textsuperscript{22} To give one example, the BRI employs many of China’s state-owned enterprises (SOEs), particularly those in the construction sector, that currently struggle to find enough work to fulfill their extensive capacities in the face of a slowing domestic economy. That being said, the BRI is geopolitically attractive as well. According to Elizabeth C. Econo-
my, a senior fellow for China Studies at the Council of Foreign Relations, Xi’s China “actively seeks to shape international norms and institutions and forcefully [assert] its presence on the global stage”; as such, the BRI is an ideal means of reinforcing its international prominence.23

From the perspective of potential host countries, the BRI would at least partially alleviate sizable infrastructure needs that hinder corridor nations from reaching their full economic potentials. Existing scholarship suggests that infrastructure development positively impacts growth in economic output, both “in the short term by stimulating demand and in the long term by increasing overall productivity.”24 Unfortunately, due to the shortcomings of their existing infrastructure, nations that “lie along the Belt and Road corridors … undertrade by 30 percent and fall short of their potential FDI by 70 percent.”25 BRI transport corridors would address these deficiencies by slashing travel times and increasing economic activity, with positive spillover effects on poverty alleviation:

“If fully implemented, BRI transport infrastructure can reduce travel times for economies along transport corridors by up to 12 percent, reducing trade costs. They are estimated to increase trade by between 2.8 and 9.7 percent for corridor economies and between 1.7 and 6.2 percent for the world. Increased trade is expected to increase global real income by 0.7 to 2.9 percent, lifting 7.6 million people from extreme poverty (less than PPP [Purchasing Power Parity] $1.90 a day) and 32 million people from moderate poverty (less than PPP$3.20 a day).”26

Though the potential benefits of the BRI are undoubtedly attractive to host countries, it is also important to consider to what extent the BRI and its objectives are truly revolutionary. In many ways, the BRI simply expands upon past initiatives like the “Going Out Strategy” by “[addressing] the same underlying crises emerging from China’s capitalist development model.”27 Moreover, many pre-existing infrastructure projects have been repackaged, rebranded, and/or revived under the BRI such that “the Chinese Government appears to be leading the activities included under the initiative.”28 Revolutionary or not, China’s BRI packages remain incredibly enticing to corridor countries in need of infrastructure financing, and Southeast Asian nations are no exception.

3.2. Economic Appeal of BRI to Southeast Asian Countries

As is the case with most other countries along BRI corridors, many Southeast Asian nations are badly in need of further infrastructure investment. Though “the Asian Development Bank projects Southeast Asia will need some US$2.8 trillion in infrastructure investment” from 2015 to 2030, the region currently receives only US$55 billion a year in investment.29 This issue has been compounded by two trends: firstly, overall Western infrastructure aid to ASEAN has lagged behind the amounts the region needs, and secondly, the relative allocation of Western aid to infrastructure needs has steadily decreased.30 For the former, the amount of infrastructure aid given to ASEAN from 2015 to 2017 from Australia, Japan, the United States, South Korea, the Asian Development Bank, and the World Bank together only met 2 percent of Southeast Asia’s infrastructure financing needs in those years.31 As for the latter, when first established, 70 percent of World Bank financial support for ASEAN was directed towards infrastructure; now, this figure has dropped to 29 percent because of a shift towards supporting “social services, administration, [and] democracy-promotion” instead.32 Traditional reliance on Western support for infrastructure financing in Southeast Asia has all but vanished.

Considering the need for infrastructure financing and the general importance of infrastructure for economic growth, one would think Southeast Asian nations would gladly welcome the BRI as a potential mitigator of this exigency. The BRI and its abundant expenditures would clearly “provide an avenue for ASEAN … to overcome the problem of inadequate infrastructure, which is a major obstacle for both short-term and long-term ASEAN economic growth.”33 Infrastructure development would additionally “increase trade and investment in the region through improved logistics,” further “[contributing] towards spillover effects in the economy through other investments.”34 Therefore, why do Southeast Asian nations repeatedly express reluctance towards the Initiative?

4. Methodology and Scope

In this paper, I employ “most different systems design,” in which very different cases share the same explanatory variable and outcomes. Here, I discuss the cases of Vietnam, Myanmar, and Malaysia, which are diplom-
ically (vis-à-vis China), economically, and politically dissimilar in ways that capture much of the variation among ASEAN nations. I use MDSD to illustrate how these three nations have all exhibited resistance towards the BRI, despite China’s economic influence and the BRI’s economically appealing premise, because of various inequitable aspects of their respective BRI packages. Though there are a multitude of potential motivations behind resistance towards the BRI, this paper solely focuses on economic explanations.

4.1. MDSD: Strengths and Limitations

MDSD is the most fitting methodology to explore this subject for a variety of reasons. Firstly, MDSD is a well-known and often-used methodology employed in a number of fields, particularly in comparative political analysis. Secondly, with only ten ASEAN nations and therefore ten cases available to test, a low-n methodology is both necessitated and appropriate. Thirdly, MDSD theoretically controls for alternative explanations based on the logic of falsification, in which potential causes for the observed outcome are eliminated. Lastly, the qualitative approach of the MDSD allows for in-depth analysis of the case studies. This approach is thus particularly useful in the Southeast Asian context, as it allows for both the exploration of each case’s nuances and the clear identification of certain trends in spite of the incredible diversity among these nations.

Of course, MDSD is not without its weaknesses. As MDSD entails low-n analysis, the external validity (in this case, the extent to which one can extrapolate the case study findings to other Southeast Asian nations) comes into question. Additionally, this methodology attributes outcomes to a single causal factor when multiple may be at play. MDSD also does not necessarily rule out other possible explanations given the lack of rigorous quantitative analysis. As it relates to these three points, I acknowledge these shortcomings, recognize that the conclusions of this paper are not entirely inclusive, and encourage further analysis on the subject.

4.2. A Note about the BRI Projects Highlighted in Case Studies

Each case study will highlight a major BRI project. The three BRI projects discussed in this paper were chosen for two reasons; firstly, they are all considered flagship projects in size and profile, and secondly, they represent some of the earliest BRI projects in their respective countries. Vietnam’s Cát Linh – Hà Đông railway began construction in 2011, prior to the BRI’s introduction on the world stage in 2013 and the signing of a China-Vietnam memorandum of understanding in 2017; it was brought under the umbrella of BRI early on. Myanmar’s New Yangon City Project began initial work in 2014, two years before the BRI was launched in Myanmar with the signing of the Chinese-Myanmar Economic Corridor (CMEC) in 2018. It, too, has been reclassified as a BRI project. Lastly, the East Coast Rail Link was one of the first major BRI projects in Malaysia, having been approved just one year after China and Malaysia signed a memorandum of understanding in 2015. Though I only discuss one project per country, it is important to note that these projects illustrate the economic inequity inherent in the terms of many typical BRI projects. As such, and in part due to their early timing and large scale, they likely contributed to a souring of enthusiasm for subsequent BRI projects in their respective nations. Thus, discussing these three BRI projects is helpful in understanding how economically inequitable terms contribute to continued aversion towards the BRI.

5. Brief Exploration of Differences

In accordance with MDSD, I will briefly explore a few of the many extensive areas of difference between Vietnam, Myanmar, and Malaysia prior to delving into the three case studies. In particular, these three nations exhibit notable variation in terms of “closeness” of bilateral relations with China, levels of economic development, and political structures.

5.1. Diplomatic Bilateral Relations with China

Historically and currently speaking, Vietnam’s relationship with China has been uneasily cordial at best and violently fraught at worst. The 1970s and 80s were turbulent for Sino-Vietnamese diplomatic relations, as evidenced by the 1988 Johnson South Reef Skirmish and, more importantly, the tens of thousands of casualties incurred on both sides during the 1979 Sino-Vietnamese War. By 1991, Hanoi and Beijing had once again normalized diplomatic ties, though this did not alleviate all their disputes. Today, “China’s relations with Vietnam are more fraught than with any other Southeast Asian nation,” with much of the recent tension stemming from overlapping claims in the South
China Sea.\textsuperscript{36} Although the two nations’ long-standing disputes “have not thoroughly consumed and soured their relationship” and “Vietnam has garnered praise for its ability to successfully ‘compartmentalize’ the maritime disputes with China and cooperate on other fronts,” this balancing act is increasingly in danger of collapsing.\textsuperscript{37} The 2014 Hai Yang Shi You 981 Standoff near the South China Sea was the closest China and Vietnam have come to open confrontation since 1988, and their diplomatic relationship has only deteriorated further since that incident.\textsuperscript{38}

Sino-Burmese bilateral relations have also waxed and waned in strength, but rarely to either extreme. Myanmar’s control under a military dictatorship from 1962 to 2010, particularly following the dictatorship’s “brutal military crackdown against democracy protesters in 1988,” brought Myanmar closer to its northern neighbor; China likewise faced international condemnation for its response to pro-democracy Tiananmen Square protests, was also a socialist state, and “served as a critical lifeline” in the face of Western economic sanctions against the Burmese ruling junta.\textsuperscript{39} The two remained rather friendly until the 2010 elections, when Myanmar’s subsequent gradual liberalisation weakened Sino-Myanmar diplomatic relations. Since 2011, Myanmar’s bilateral relationship with China has been heavily influenced by “growing anti-China sentiment,” “growing concern over China’s interference in Myanmar affairs” in the face of fierce nationalism, and “rapprochement with the United States.”\textsuperscript{40} Recently, the 2019 Rohingya Crisis and the West’s strong reaction against the Burmese government’s poor handling of the crisis have created a strategic opportunity for Beijing to once again position itself as a loyal friend and regain its previous influence.\textsuperscript{41} Though “diplomatic relations between Myanmar and China have once again become highly cordial,” Myanmar government elites lack consensus as to whether to fully embrace China.\textsuperscript{42}

Finally, China and Malaysia have shared the most amiable diplomatic relationship of the three Southeast Asian nations. In the post-Cold War era, Malaysia became the first ASEAN nation to establish diplomatic relations with China in 1974, and the two nations have sustained a “close and cordial partnership” since.\textsuperscript{43} Of course, this relationship has not been without its issues. Malaysia “has taken umbrage at China’s interference from time to time in the country’s domestic political affairs,” suspended several BRI projects (elaborated upon later), and is dissatisfied with China’s infringement on its claims in the South China Sea.\textsuperscript{44} Nevertheless, these concerns have not stopped Malaysia from developing strong diplomatic ties with China. For instance, despite their competing claims in the South China Sea, Kuala Lumpur has and will likely continue to take a “quiet diplomacy” approach that preserves its friendly ties with China.\textsuperscript{45} This approach has proved effective; the West Capella oil exploration vessel stand-off with Chinese coastguard vessels in spring 2020 was successfully resolved via a peaceful arrangement that called for mutual deescalation.\textsuperscript{46} Given Malaysia’s desire to benefit from China’s increasing presence in Southeast Asia, Malaysian leaders have frequently affirmed that Malaysia “does not see Beijing as a threat, but as an opportunity” and an important political ally.\textsuperscript{47}

5.2. Degree of Economic Development

These three nations are also representative of the wide spectrum of development levels among Southeast Asian countries. Malaysia is at “the higher end of upper-middle-income countries,” thanks to its strong trading relations with a variety of nations and its more developed economy.\textsuperscript{48} On the other hand, the U.S.-China Economic and Security Review Commission classifies Vietnam as a lower-income country, albeit one that is “poised to break into the middle-income group” and transform from an agricultural- to manufacturing-based economy.\textsuperscript{49} Lastly, Myanmar is classified as a low income country that is heavily reliant on its agricultural products, lacks industrial development, and lags far behind its ASEAN counterparts in trade relations.\textsuperscript{50} These different stages of economic development can also be discerned via economic and non-economic metrics on relative quality of life. Malaysia ranked third among ASEAN nations in 2018 GDP per capita measured in current U.S. dollars (US$10,041 GDP per capita), while Vietnam claimed the eighth spot (US$2,390) and Myanmar came in dead last (US$1,249).\textsuperscript{51} Similarly, Malaysia had a Human Development Index score of 0.802 in 2017, the third-highest among ASEAN members, while Vietnam tied for sixth place with a score of 0.694 and Myanmar again ranked last with a score of 0.578.\textsuperscript{52}

5.3. Political Systems

Vietnam’s autocratic one-party state has been con-
trolled for decades by the Communist Party of Vietnam. The Party tightly controls the electoral process for all electoral bodies and vets all candidates; for example, all top positions are essentially predetermined by the Politburo and Central Committee. Vietnamese citizens have little voice in or insight into the political system itself. Communist Party leadership are not freely elected or accountable to the public, government processes are highly opaque, and no other parties are allowed to legally exist, excluding the public from “genuine and autonomous political participation.” The Economist’s Democracy Index 2019 classified Vietnam’s regime type as authoritarian and gave Vietnam the second-lowest overall democracy score of the ASEAN countries.

Myanmar operates as a multiparty democratic republic in theory, but not so much in practice. In 2015, the first free general elections in decades resulted in a victory for Aung San Suu Kyi’s party, the National League for Democracy. Despite this major step towards democratization and the party’s successive victory in 2020, the military still holds considerable political power, with guaranteed control over multiple ministries and 25 percent of seats in both federal legislative chambers, veto power on amendments to the constitution, and the right to dissolve the government if a state of emergency is declared. On the local level, the federal government’s authority is contested by ethnic armed organizations, some of which claim “de facto territorial control” and display “a state-like character” over their territories. Myanmar claimed the sixth-highest overall democracy score out of ten ASEAN nations, but was still classified as an authoritarian regime by the Democracy Index 2019.

Lastly, Malaysia operates as a federated constitutional monarchy. The Barisan National coalition ruled Malaysia from its independence until 2018, when Pakatan Harapan claimed victory and marked the first democratic transfer of power in decades. During its rule, Barisan National was suspected of crafting and using unfair electoral frameworks and its connections to business elites to influence electoral outcomes in its favor. Pakatan Harapan has pledged to operate with greater openness and has made strides in addressing such concerns, but much work remains to be done. The Malaysian monarch’s role is largely ceremonial and the military holds little political influence, leaving the real political power with the civilian government. According to the Democracy Index 2019, Malaysia had the highest democracy score out of all ten ASEAN nations, though its political system was classified as a “flawed democracy.”

6. Case Study: Vietnam

6.1. Resistance towards the BRI...

As illustrated by survey data and Hanoi’s reluctant participation in BRI projects, Vietnamese citizens and officials alike harbor a general distrust towards China’s economic influence and the BRI in particular. On a slightly tangential note, as I will be referencing the results of the 2020 ISEAS - Yushof Ishak Institute survey on Southeast Asian attitudes towards regional issues in all three case studies, it is worth briefly introducing the survey’s background and scope here. The ISEAS - Yushof Ishak Institute, formerly known as the Institute of Southeast Asian Studies, is an autonomous organization established by the Singapore government in 1968. The 1,308 respondents of the 2020 survey are citizens from all ten ASEAN nations and professionally represent five sectors—academic research, the public sector, business and finance, civil society, and media (though many respondents are concentrated in the first two industries).

Answers from Vietnamese professionals in the 2020 survey demonstrate both acknowledgement of and distrust towards China’s growing power in the region. 76.3 percent of Vietnamese respondents agreed that China was the most influential economic country or regional organization in Southeast Asia; of these respondents, 80.2 percent expressed worry about its growing regional influence. When asked whether they were convinced that China’s proposed “open, green, and clean” approach to the BRI (first introduced at the Second BRI Forum) would “lead to a fairer deal for your country as a recipient of BRI loans,” 86.8 percent of Vietnamese respondents reported little or no confidence.

Distrust of the BRI is also evident in the Vietnamese government’s hesitancy to sign formal agreements in the scheme and, for the few agreements that were made, limited implementation. Vietnam may be an official participant in the BRI, but is certainly not the most enthusiastic one. Only two of the 270 projects signed with foreign delegations at Xi’s BRI Summit in May 2017 were between China and Vietnam. Additionally, it took two years of negotiations before the two nations signed a memorandum of understanding in November 2017.
an economist from the Vietnam Economic and Policy Research Institute at Vietnam National University, even these few agreements were likely made with great reluctance: “Vietnam lacks trust ... we know China will not be very good to us and, yet at the same time, we face pressure from the Chinese [Communist] Party. We can’t say no every time.” Moreover, the Vietnamese government has further expressed its doubts regarding the BRI by often avoiding full implementation of BRI projects. Almost a year after the 2017 BRI Summit, there had been no new infrastructure projects in Vietnam officially labelled as BRI-funded, save for a loan made for the Cát Linh - Hà Đông railway. Hanoi has not only “been super cautious about taking loans to build infrastructure under the scheme,” but, in the words of Thanh, “sometimes we say yes but do nothing.”

6.2. ...Despite Economic Logic

This resistance is quite puzzling, considering Vietnam’s infrastructure financing issues and China’s positioning as an ideal benefactor of infrastructure projects.

For the former, Global Infrastructure Hub, the G20’s dedicated infrastructure entity, estimates that under current investment trends, Vietnam will only receive US$79 trillion of the US$94 trillion in infrastructure financing it needs between 2016 to 2040 to match its “best performing peers.” Historically, Vietnam has also struggled to find adequate local funding for its infrastructure projects given local banks’ “distaste for ... infrastructure projects, mainly due to the poor reputation and performance of projects that have been put into operation.”

Taking this into account, China’s ever-growing outbound investment and aid, especially in the infrastructure space, should logically be a tempting solution to Vietnam’s woes. FDI flows from China to Vietnam have increased at rapid rates. According to figures from the General Statistics Office of Vietnam, capital from China tripled from US$700 million in 2011 to US$2.4 billion seven years later. By 2018, China was the fifth largest investor in Vietnam; just one year later, it had become the second largest. Today, China ranks third in terms of cumulative historical FDI in Vietnam. Moreover, this FDI is directed “strongly towards construction, manufacturing, processing and large construction projects and projects in the energy sector,” positioning China as a reliable supporter of infrastructure projects. Chinese outbound foreign aid has been similarly generous and infrastructure-specific. China gave US$670 million in official development assistance to Vietnam from 1993 to 2013, much of which was targeted towards Vietnam’s infrastructure needs. At first glance, Vietnam’s distrust of the BRI seems antithetical to its infrastructure needs and the nature of China’s economic presence in the Vietnamese infrastructure sector. What might account for this inconsistency?

6.3. Explaining Resistance: The Inequitable Nature of BRI Packages

Ultimately, Vietnam’s resistance can be attributed to the inequitable nature of BRI packages, which frequently entail preferential employment of Chinese workers and firms, corrupt activity that benefits government elites, and unfair financial terms.

To briefly introduce the BRI project of focus for this case study, Cát Linh - Hà Đông railway is an elevated mass transit railway line that is currently being built as part of the Hanoi Metro railway network. As Vietnam’s first metro line, the railway represents an important step towards the nation’s goal of improving its infrastructure. The project is contracted to China Railway Sixth Group and is principally financed by the Export-Import Bank of China (EXIM Bank), with the Vietnamese government agreeing to cover the remaining costs. Though it began construction in 2011 and was scheduled for completion by 2013, Cát Linh - Hà Đông remains unready for operation as of November 2020. It is scheduled to commence a safety evaluation prior to year end and hopefully enter commercial operation in 2021.

6.3.1. Concerns Regarding Preferential Employment of Chinese Firms and Workers

Firstly, BRI projects disproportionately employ Chinese firms and workers at the expense of their Vietnamese counterparts. Chinese preferential loans for BRI projects are often accompanied by conditions that require the use of Chinese contractors, inputs, and workers. As such, the engineering, procurement, and construction contracts associated with BRI projects are usually “subcontracted to state-owned Chinese corporate consortiums, which divvy up as much as 95 percent of the project value to companies from China.” Since Chinese companies bidding on BRI project contracts face little to no competition amongst themselves, they encounter “minimal pressure to ensure...
quality and to meet their deadlines.” In fact, Vietnamese critics of the BRI often claim “Chinese contractors routinely use out-of-date technology” in completing projects. As for the workers involved in BRI projects, Chinese companies have repeatedly imported large numbers of workers from the mainland while failing to mitigate Vietnamese workers’ concerns: “sometimes Vietnamese villagers complain about not benefiting from construction projects, prompting Chinese firms to hire a few of them. But Chinese construction companies say that they prefer Chinese nationals because they are more willing to work long hours.”

Due to this preference for workers from the mainland, tens of thousands of Chinese workers have been brought over to Vietnam; however, these workers have not always been welcomed by the local population. Public hostility usually derives from questions of the legality of their presence, as up to a third of Chinese workers arrive without work permits, and concerns of labor market oversaturation, since Chinese workers “often stay around after the projects are complete.”

Cát Linh - Hà Đông sky train project in Hanoi is an excellent example of how BRI packages primarily contract Chinese workers and firms over domestic ones. Hanoi’s acceptance of a Chinese corporation as the project’s principal investor ensured that the contractor and at least one of the primary suppliers would also be Chinese. In fact, Vietnam’s transport minister, Dinh La Thang, publicly lamented that “the terms of the Chinese loan forced him to buy Chinese trains” and that “Chinese contractors are very bad ... I wanted to replace them many times, but I could not because of the loan agreement’s obligations.” Apparently, Vietnam had little choice but to sacrifice the quality of Cát Linh - Hà Đông and the chance to award such important contracts to domestic firms in exchange for Chinese infrastructure financing. Although statistics on the share of Chinese workers involved in the railway are not readily available, figures from China’s official state-run news agency and local media outlets suggest that 200 of the 500 workers deployed on site in 2018 were Chinese. Since then, it seems as though even more Chinese workers have been brought over to work on Cát Linh - Hà Đông. Local outlets noted that China Railway Sixth Group imported an additional 100 “Chinese technical experts” to Vietnam in 2020. Despite Cát Linh - Hà Đông railway’s Vietnamese location, the project evidently favors hiring Chinese firms and employees more than local ones.

6.3.2. Corruption Concerns

Secondly, Vietnamese BRI projects are frequently plagued with corruption concerns from their inception onward, including fears that such projects are being exploited in favor of government elites. Multiple Vietnamese government elites have claimed that Chinese efforts to win infrastructure projects are frequently “conducted through bribes and offers of women,” with one official even stating he was “offered a suite in a hotel complete with a stunning female ‘roommate’ when he visited [Beijing].” In addition, BRI projects in Vietnam are conducted in a way that implies collusion between corrupt Vietnamese officials and Chinese firms. According to a declaration signed by more than 100 prominent Vietnamese individuals and seven global human rights groups expressing concern about Chinese-backed Vietnamese infrastructure projects, Chinese firms regularly “bid with low prices but then delay in building, before cooperating with corrupt officials to increase the costs.”

Returning to Cát Linh - Hà Đông railway, a fairly recent state audit of the project revealed multiple accounting discrepancies, suggesting the potential presence of corruption. Though total capital invested in the railway was officially reported to be VND11.3 billion as of June 2018, the audit only recorded VND8.7 billion invested in the project. Furthermore, the Vietnamese Ministry of Transport approved US$178.7 million in funds for an equipment contract associated with the project, which was US$8.3 million greater than the price originally stipulated in the contract. Overall, the audit concluded that “the estimates of many items of construction and installation, procurement of materials and equipment” were in violation of Vietnamese laws on the management of unit price norms and the management of infrastructure contracts, indicating potential illegal activity. Adding to suspicion of collusion, state auditors also found that the Ministry of Transport “permitted contractors to make technical designs ... as the line was being constructed” and that “investors had not factored in operating costs, which would account for a large proportion of costs once the metro service began.
operation, in its financial evaluations,” resulting in underestimated financial appraisal of Cát Linh - Hà Đông’s costs.94 Though corrupt activity within the Cát Linh - Hà Đông project has not been undeniably proven, these various inconsistencies imply its presence.

6.3.3. Financial Equitability Concerns

Thirdly, high initial interest rates on Chinese loans and increasing costs during the projects’ duration raise questions about the financial equitability of Vietnamese BRI packages. Per Vietnamese officials’ criticisms, the interest rates on Chinese loans for BRI endeavors are neither cheap nor concessionary.95 While median interest rates on Chinese loans to other emerging market nations hover around 2.5 percent, interest rates offered on loans for Vietnamese infrastructure projects “almost never fall below 3 percent” and often reach 3.5 percent.96 Recalling the previous sections on reduced incentives for quality work and increasing project expenditures linked to possible corruption, BRI projects in Vietnam often deepen the indebtedness of the Vietnamese government without corresponding improvements in time or quality.

The Cát Linh - Hà Đông railway illustrates how ever-increasing cost burdens on the state without improvements in the quality of the project have led to official and public pushback. Initiated in 2011 with a total investment of US$552 million, of which US$419 million came from Chinese loans, Cát Linh - Hà Đông’s costs ballooned to US$891 million by 2017.97 Owing to the original loan’s inability to cover rapidly inflating project expenditures, the Vietnamese government signed off on another US$250 million of loans from EXIM Bank.98 Unfortunately, the additional loans did little to solve the project’s ever-lengthening timeline and cost woes. In September 2019, the Vietnamese Ministry of Transport reported that “there was a high risk of [another] lengthy delay since the Chinese contractor ... had yet to follow the instructions of the ministry.”99 Further problems abounded in May 2020 when China Railway Sixth Group “demanded [US]$50 million for the trial operation of the railway before handing over the project to Vietnamese authorities,” a request that was heavily criticized by the Ministry on the grounds that it violated project agreement provisions.100 Meanwhile, rising costs have not been met with assurances about the quality and safety of the project, further denting the project’s public image.101 Cát Linh - Hà Đông has become known for its construction accidents, some of which were deadly:

“In November 2014, some rolls of steel fell from the overhead construction, killing a motorcycle driver and injuring two other passersby. A month later a 30-foot section of scaffolding fell onto a taxi, trapping three people. In May 2017, an inspection team found rust developing on sections of the track which had not been covered with protective paint, further spoiling the project’s reputation.”102

Clearly, the combination of rising costs and major construction accidents have contributed to doubts regarding the Cát Linh - Hà Đông’s seemingly inequitable terms, as well as the project’s damaged perception in the eyes of the public and political officials alike.

7. Case Study: Myanmar

7.1. Resistance towards the BRI...

Burmese officials and the public maintain cautious stances towards China’s expanding economic presence and, by extension, BRI projects in Myanmar, as illustrated by survey data from the ISEAS - Yushof Ishak Institute and the government’s actions.

When the 2020 survey asked which country or regional organization was the most influential economic power in the region, a whopping 84.9 percent of Burmese respondents answered China.103 Of those respondents, 73.9 percent said they were worried about China’s growing regional economic influence on their country. Lastly, 61.9 percent of respondents from Myanmar reported little or no confidence in whether China’s proposed “open, green, and clean” approach to the BRI would “lead to a fairer deal” for Myanmar as a BRI loan recipient.104

Myanmar’s resistance towards Chinese infrastructure projects predates the BRI and has continued since its arrival in the country. The country has “long been suspicious about Beijing’s intentions, creating less than full-throated enthusiasm for Chinese infrastructure and investment projects.”105 In fact, “less than full-throated enthusiasm” perhaps does not adequately capture Myanmar’s antagonistic attitude towards Chinese investment: back in 2011, the Burmese government halted construction of the Myitsone dam, “one of China’s largest investment projects in the country,” partially due to concerns over China’s growing influence.106 This attitude has now manifested itself in the
government’s reluctance to and difficulty in implementing BRI projects, despite formally agreeing to the scheme. While China and Myanmar signed the framework for the CMEC (which includes a network of BRI projects) back in 2018, “none of the prioritised projects [had] materialised” by June 2020 with the exception of preexisting projects that were later reclassified under BRI.  

7.2. ...Despite Economic Logic

Overall, public and political opposition towards the BRI is inconsistent with Myanmar’s urgent infrastructure funding needs and China’s status as an essential source of general and infrastructure-specific investment.

The paradox of Myanmar’s resistance was best summarized by Murray Hiebert, senior associate of the Southeast Asia Program at the Center for Strategic and International Studies: “it seems counterintuitive that China’s infrastructure projects in Myanmar under the BRI have been so slow to get off the ground ... Myanmar desperately needs all types of infrastructure ... and Beijing is ready with bucketloads of cash to launch an infrastructure-spending spree on its neighbor.” Quantitative estimates by Global Infrastructure Hub, reveal that Myanmar needs US$224 billion in infrastructure investment from 2016 to 2040 but is only slated to receive half that amount, assuming current investment trends continue. Underscoring the severity of the situation, the Asian Development Bank concluded that only 40 percent of Myanmar’s roads were paved, “meaning that 20 million people—half the rural population—did not have access to all-weather roads.” In addition, only 35 percent of citizens had access to electricity, and many of these lucky few only received a few hours of power a day.

China is well-positioned to address these dire infrastructure needs, given the nation is one of Myanmar’s top economic partners and arguably its most active, ambitious investor in the infrastructure space even prior to the BRI. Chinese FDI stock in Myanmar almost quadrupled in as many years from US$900 million in 2009 to US$3.5 billion in 2013. Much of this investment was specifically directed towards infrastructure projects; between 1988 and 2013, US$19 billion of US$44 billion of total inbound FDI to Myanmar (of which Chinese FDI accounted for a third) was allocated to electricity infrastructure investment.

Chinese companies have heavily invested in a wide array of large-scale Burmese infrastructure projects, ranging from hydroelectric dams to railways, copper mines, and multiple pipeline projects, no small feat given Myanmar’s risky investment environment. Clearly, Myanmar’s hostile stance towards the BRI prompts deeper investigation into the source of this seemingly perplexing phenomenon.

7.3. Explaining Resistance: The Inequitable Nature of BRI Packages

Burmese distrust of the BRI stems from the fact that Myanmar’s BRI packages tend to favor hiring Chinese corporations and imported labor, are plagued with corruption accusations, and include financially inequitable terms.

The main BRI project highlighted in the Burmese case study is the New Yangon City Project (NYCP), an ambitious urban development venture and essential pillar of the CMEC. The 20,000 acre project marks a significant step in building up the infrastructure in Myanmar’s underdeveloped and largely agricultural territories. In fact, Yangon was chosen because of its outdated and insufficient infrastructure, which increasingly threatens to impair its status as an “economic powerhouse that contributes 26 percent of Myanmar’s GDP.” Initial work on the project began in 2014, was promptly stalled a year later due to government turnover, and was only restarted in 2018 when the new Yangon regional government created the New Yangon Development Company (NYDC) to spearhead the NYCP. Financing, at least for the first two stages of the project, is in the form of “private equity raised by [the NYDC] that will include the winning bidder [of the project’s contract] and the Yangon regional government.”

7.3.1. Concerns Regarding Preferential Employment of Chinese Firms and Workers

Firstly, Burmese BRI projects inordinately contract Chinese corporations and mainland employees vis-à-vis local firms and workers. Owing to Myanmar’s “weak legal system, inefficient policing system, and poorly trained civil service,” the Burmese investment environment is perceived as far too risky for many foreign corporations “other than a deep-pocketed firm with Beijing’s backing.” Myanmar BRI projects are regularly cornered into employing Chinese corporations (and, as is often a condition of these agreements,
Chinese workers) by virtue of there being few viable alternatives. Additionally, one unnamed former BRI project manager from Myanmar stated that “BRI projects are most likely to benefit major economic actors who are ethnically Chinese or have Chinese partners” because businesses that “know how to do business with China” were more likely to be chosen for BRI projects. Chinese corporations have been known to utilize this economic leverage to lock in preferential terms. In the words of one Vietnamese economist, “we’ll have to buy Chinese products and [pay for Chinese] labor. The agreement is that we’ll have to spend 50 percent of the loan or more in China.” With respect to BRI project workers, anecdotal evidence from various projects suggests that local workers are regularly displaced by the importation of Chinese labor. For instance, journalists reporting on the Kyaukphyu oil and gas pipeline projects noted that most construction workers on the project had been brought over from China.

NYCP is no stranger to accusations of employment favoritism towards Chinese corporations and workers. In 2014, local media outlets revealed that Myint Swe, then-Chief Minister of Yangon, had awarded the NYCP contract to a company called Myanmar Say Ta Nar Myothit without putting it to tender. To the alarm of the public and many officials, Myanmar Say Ta Nar Myothit was controlled by Chinese businessmen with strong ties to Myint Swe. NYCP’s new and ongoing open tendering process is instead in the form of a “Swiss Challenge,” where one firm—in this case, the Beijing-owned Chinese Communications Construction Company (CCCC)—creates the initial project proposal and other bidders must match or outdo the original bid to win the contract. However, the original proponent also has “the right to match or improve on the proposal of the winning challenger for up to 45 working days from the announcement of the superior challenger bid,” lending a distinct advantage to the CCCC over its competitors. Should the CCCC end up as the winning bidder as predicted, the firm would also enjoy the lion’s share of the project’s profits for decades:

> The NYDC will initially receive only 5% of the profits, while the winning bidder will get 95%. Once the winning bidder has earned back their investment and an additional 13% ‘internal rate of return,’ the share of profits will be changed to 25% for NYDC and 75% for the winning bidder. But that might not happen for another 30 years.”

Concerning workers, it is difficult to speculate on the degree to which Chinese workers may be involved in the NYCP and whether or not this will be to the detriment of Burmese ones when the contractor has yet to be chosen and construction has not commenced. With that said, fears that “a chunk of the project will be turned over to foreign investors who will gain the largest benefit and provide few jobs for locals” already abound. Anxieties have also been aggravated by the fact that “a stipulation in Myanmar’s economic law that at least 75 percent of workers must be Burmese has recently been scrapped.” Overall, the NYCP’s bias towards Chinese corporations and potential preferential treatment towards Chinese workers in the future are illustrative of the inequitable nature of many Burmese BRI packages.

### 7.3.2. Corruption Concerns

Secondly, BRI projects in Myanmar are often conducted with little transparency, increasing the already-high risk of corrupt activity that benefit government officials within these projects. Generally speaking, corruption in Myanmar remains a persistent and serious issue. Transparency International’s 2019 Corruption Perceptions Index ranked Myanmar’s public sector corruption as the 130th most severe out of 180 countries, the second-lowest rank among ASEAN nations. This corruption appears to extend to Burmese BRI projects, which are conducted with little public involvement or awareness, but ascertaining the extent of illicit activity is understandably difficult. However, studies conducted on BRI projects in Myanmar have concluded that “BRI projects are most likely to benefit major economic actors who... have networks with political and business elites in China, and are favoured by the Myanmar government.” Government elites have consciously awarded various contracts and deals to favored conglomerates since the era of Myanmar’s state-mediated capitalism; in turn, wealthy individuals have freely donated to various elites, such as to prominent politician Aung San Suu Kyi’s election campaign. Unfortunately, “there is strong indication that this way of doing business is alive and well in the current phase of economic development under the BRI umbrella.”

The NYCP itself has been afflicted by plentiful corruption allegations, raising suspicion that Bur-
Chinese government elites are illegally profiting off the project. Yangon’s initial decision to award the NYCP contract to Myanmar Say Ta Nar Myothit and its politically-connected owners without an open tender was soundly criticized by the public and officials for its unscrupulousness. Although the Swiss Challenge format was adopted thereafter, critics suggest the Swiss Challenge’s supposedly fairer format may just be a cover for questionable activity. For instance, one former BRI project manager from Myanmar complained that “from the Myanmar side, they want to make it look competitive ... People know.” Additionally, Yangon’s chosen original proponent happened to be a company dogged by widespread accusations of corruption. The CCCC itself has been accused of corrupt activity within infrastructure development deals, including multiple instances of bribing government officials, in at least ten countries across Africa and Asia. As a matter of fact, the CCCC was sanctioned by the World Bank from 2009 to 2017 due to allegations of fraud and corruption. Lastly, the Yangon regional government was also recently “accused of abusing its power by investing 10 billion kyats (US$7.2 million) in the project without prior approval from the regional parliament,” eliciting questions of whether all of this money was actually intended for or used in the NYCP itself. Therefore, it is not a stretch to suggest that suspicions of corrupt activity within the NYCP have hurt the BRI’s image in the eyes of the Burmese.

7.3.3. Financial Equitability Concerns

In light of fears of unsustainable debt burdens on the state, Burmese economists and officials alike have repeatedly warned against China’s perceived predatory lending for BRI projects. According to Burmese lawmakers, China’s interest rates on its loans to Myanmar (not all of which were infrastructure-specific) frequently reach 4.5 percent, which is especially high seeing Chinese loans to other low-income developing countries have median interest rates of just 2 percent. Additionally, an official debt report released in 2019 divulged that 40 percent of the Burmese government’s debt to international lenders was owed to China. Hence, Myanmar has actively attempted to renegotiate the terms of multiple BRI projects to reduce its exposure to potential debt liability. The Kyaukphyu Port project in Rakhine State was originally estimated to cost US$7 billion; after Myanmar officials “pushed to scale back the project to avoid saddling the government with unsustainable debt,” that figure was reduced to US$1.3 billion. The Myanmar government still holds a 15 percent share in the project (domestic companies hold another 15 percent and a Chinese consortium owns the rest), but the Chinese-backed loan will not have a Myanmar government guarantee and does not include asset seizure in the case of failure. With the CMEC, officials responded to “warnings by economists that the economic corridor project could burden Myanmar with unsustainable levels of debt” by proposing features that would reduce its debt trap vulnerability be incorporated into a memorandum of understanding, including the ability to seek financing from other international institutions and invite international tenders. Despite Myanmar’s best efforts, cost concerns in Burmese BRI projects still abound and justifiably so.

Though the financing terms of NYCP seemingly protect the state from debt liability, the omission of flood mitigation financing and the state’s potential responsibility thereof have led to officials’ worries about financial equitability. From the projects’ outset, various reports by the American consulting firm McKinsey raised concerns about the economic feasibility of the endeavor. One unpublished report estimated that the infrastructure cost alone would be between US$5 billion and US$11 billion, no small amount for the low-income nation. Another report noted “fully 50 percent of these new [greenfield] city projects underperform[ed] their original economic expectations,” 86 percent faced sizable cost overruns, and “30 to 40 percent underutilization of the built infrastructure” was not uncommon in these projects. Furthermore, this report pointed out multiple risks threatening the project, including potentially insufficient funding and the flood-prone nature of the NYCP site. At first glance, NYCP’s financing terms appear to more or less insulate Yangon from potential financial exposure to these risks. Theim Wai, the Chief Executive Officer of NYDC, claimed that “Myanmar’s contribution to the project would be land valued at US$144 million” and “CCCC had proposed an investment of US$1.68 billion,” resulting in financial stakes of 8 percent and 92 percent in the project, respectively. Additionally, Myanmar did not guarantee any of the loans, supposedly freeing the state from debt liability. However, closer examination of financing terms reveal that the state may very well be on the hook for expensive flood prevention costs, which political officials have expressed alarm about. According to a study con-
ducted by Dutch engineering consultancy firm Royal HaskoningDHV for the NYDC, NYCP faces an annual economic risk of US$1.2 billion to US$2.1 billion from flooding if preventionary measures are not implemented. For this reason, Royal HaskoningDHV recommends NYDC build a US$100 million (152.66-billion-kyat) ‘primary ring-dyke system’ around the waterfront areas of the site” to mitigate NYCP’s vulnerability to flooding from tidal and storm surges, river discharge, and heavy rainfall. It is unclear whether this US$100 million also includes the cost of drainage infrastructure, another necessary component of flood prevention efforts. Yangon Parliamentary members Daw Sandar Min and U Kyaw Zay Ya have raised concerns that “neither the ‘primary ring dyke’ suggested by the Dutch company, nor any other flood-mitigation infrastructure is anywhere to be seen among the projects announced as part of the agreement” between NYDC and the CCCC, as well as the fact that NYDC has not released any details of how the project's flood-control system would be funded. NYDC’s head of city planning and development responded that the funding would come from investment partnerships, but did not elaborate on the nature of this investment partnership, whether the state would be at all responsible for the initial or future costs of the flood-mitigation measures, and if so, to what extent. Clearly, NYCP’s ostensibly debt-trap-immune financing terms failed to address other key sources of debt liability, garnering criticism from local politicians.

8. Case Study: Malaysia

8.1. Newfound Resistance towards the BRI...

Results of the 2020 ISEAS - Yusof Ishak survey and Kuala Lumpur’s drastic pullback from the BRI demonstrate that both the public and elites remain wary of Chinese economic power and its economic statecraft efforts.

According to survey data, 78.5 percent of Malaysian respondents agreed that China was the most influential economic country or regional organization in Southeast Asia, of which 67.2 percent agreed they were worried about its growing regional influence on Malaysia. Finally, 57.1 percent of Malaysian respondents said they had little or no confidence in whether China’s proposed “open, green, and clean” approach to the BRI would “lead to a fairer deal for your country as a recipient of BRI loans.” The Malaysian government’s sentiments towards China and the BRI are rather unique in that the welcoming attitude adopted by former Prime Minister Najib Razak was swiftly replaced by a less friendly posture in the wake of Razak’s scandal-ridden ousting. Under Razak, “no other major economy in Southeast Asia had so enthusiastically embraced” the BRI, as evidenced by the fact that Kuala Lumpur and China signed agreements worth more than US$30 billion. However, the Malaysian government’s friendly tune stopped shortly after Razak’s 2018 electoral defeat and the subsequent ascension of Prime Minister Mahathir Mohamad. Influenced by the debt pressures of various projects and the BRI’s role in Razak’s career-derailing corruption scandal (discussed later in this paper), Mohamad “pledged to review all of Najib’s China projects, sending Beijing’s mammoth infrastructure initiative, which [had] struggled mightily to get set for takeoff, into an uncertain funk.”

8.2. ...Despite Economic Logic

Kuala Lumpur has maintained its newly cautious stance towards China and BRI despite Malaysia’s pressing need for infrastructure financing and China’s prominence in the Malaysian economy, particularly as a dependable investor in infrastructure. By Global Infrastructure Hub’s estimates, Malaysia will only receive US$383 billion of the US$460 billion of infrastructure investment it needs from 2016 to 2040 if current investment trends hold. This funding gap is especially severe in Western Malaysia, where “the highway system of [Western Malaysian states] Sabah and Sarawak is underdeveloped and of poor quality, and the demand for expressways is rapidly increasing with a growing population and economic development.”

With this in mind, China’s economic presence and historically reliable investment in Malaysia (particularly in the infrastructure sector) would logically establish China as an attractive source of infrastructure financing. Prior to 2012, Malaysia was not a major recipient of Chinese FDI; only 0.8 percent of Malaysia’s total net FDI inflow in 2008 originated from China. According to official statistics from Malaysia’s central bank, this share only grew to 3 percent by 2018. In spite of this low number, multiple studies suggest that this figure vastly underestimates the true volume of Chinese FDI in Malaysia. Utilizing official statistics, Tham Siew Yean, a Senior Fellow at the ISEAS - Yusof...
Ishak Institute, concluded that China actually accounted for 14.4 percent of Malaysia’s 2016 inbound FDI, largely as a result of the Belt and Road Initiative. Another study estimated this share to have reached 24.5 percent by 2018, placing China as Malaysia’s largest investor. As for infrastructure financing, Sino-Malaysian infrastructure investment cooperation was cemented following the Asian Financial Crisis of 1997 and has only flourished in the intervening decades. From 2015 to 2020, China and Malaysia signed US$135 billion worth of contracts in infrastructure and real estate projects. In 2017 alone, China signed 773 new engineering contracts in Malaysia, equating to a contract amount of over US$24 billion. Why, then, would Malaysia be so hesitant towards the BRI?

8.3. Explaining Resistance: The Inequitable Nature of BRI Packages

Like the two other case studies, Malaysia’s newly hostile stance can be explained by BRI projects’ disproportionate employment of Chinese firms and workers, involvement in corruption scandals associated with government elites, and concerns about financial equitability.

For this case study, I will be discussing the East Coast Rail Link (ECRL), one of Malaysia’s most prominent BRI projects. The 418-mile-long ECRL is designed to start at the northeast corner of peninsular Malaysia and follow the coast to Kuantan Port before cutting across the central region to Malacca and terminating at Port Klang. The ECRL is not only “the first land link between the contested South China Sea and the busy Strait of Malacca shipping corridor,” but also a potential means of mitigating economic disparities between the poorer east coast and the richer west coast by easing shipping for the former. Construction on the rail link began in 2017 and is scheduled to be completed by 2024, though the project’s temporary suspension and debt renegotiations have likely prolonged this timeline. The ECRL is being built by the CCCC and is financed by EXIM Bank.

8.3.1. Concerns Regarding Preferential Employment of Chinese Firms and Workers

Firstly, Malaysian BRI projects are designed such that Chinese firms and workers usually receive preferential employment, to the detriment of their domestic equivalents. Thanks to the unbalanced nature of Malaysian BRI packages, Chinese companies tend to “control the whole supply chain in their outbound investments and [price] out local [firms] in the process.” Indeed, Chinese firms mostly import their own supplies and equipment for BRI projects. An analogous narrative of outcompeting locals has unfolded for Chinese and Malaysian workers employed by BRI projects. Local contractors and business representatives have complained that “little of the work in China’s projects goes to Malaysian companies and workers,” as “the Chinese tend to bring their own skilled and unskilled workers” and “[import] supplies such as steel and machinery from China.”

With good reason, the ECRL has come under fire for its partiality towards hiring Chinese firms and imported Chinese labor. As will be discussed in the next section, a damning investigation by the Wall Street Journal revealed that the ECRL was purposefully constructed in a way that Chinese firms would not only be chosen to build and finance the project, but would also enjoy “above-market profitability” as part of a corrupt scheme. Since this was the case and a closed bidding process was in place, the CCCC presumably possessed a large degree of influence over the project’s terms. Perhaps unsurprisingly, local complaints that Chinese companies and workers dominated the ECRL soon emerged. These grievances were notably egregious given that the ECRL “boasts a strong pro-Malay undertone as almost the entire stretch of the railway passes through the three ethnic Malay-heavy states of Pahang, Terengganu, and Kelantan.” Driven by such concerns, Kuala Lumpur initiated a successful post-Razak push to renegotiate the terms of ECRL to include more Malaysian firms and workers. In the end, CCCC “agreed to increase local participation in the construction activities to 40 percent, up from 30 percent earlier.” Even after this concession, domestic workers and firms only claim minority participation in construction activities, showing the extent to which the ECRL’s terms still hire their Chinese counterparts to a greater extent.

8.3.2. Corruption Concerns

Worries about corruption within BRI projects were more than justified; indeed, Wall Street Journal reporters exposed collusion between Chinese officials and the Malaysian government to exchange attractive stakes in BRI projects for aid in obscuring Razak’s corrupt activity. Chinese officials promised to use
their clout to cover up Razak’s illegal exploitation of 1 Malaysia Development Berhad (1MDB), a state-run investment fund officially established to finance Malaysian development projects:

“China would use its influence to try to get the U.S. and other countries to drop their probes of allegations that allies of then-Prime Minister Najib Razak and others plundered the fund known as 1MDB ... The Chinese also offered to bug the homes and offices of [Wall Street] Journal reporters in Hong Kong who were investigating the fund, to learn who was leaking information to them.”

Additionally, Chinese corporations agreed to help covertly repay 1MDB’s debts. Malaysia’s Anti-Corruption Commission later concluded that “RM1.2 billion ([US]$280 million) paid up front to Chinese contractors for the ECRL and pipelines was secretly funneled back to Malaysia to repay 1MDB loans” in August 2017. In return, documents “describe a plan proposed by Malaysian officials for Chinese state companies to build two large projects”—the US$16 billion ECRL and the US$2.5 billion Trans Sabah Gas Pipeline (TSGP)—“with funding from Chinese banks.” Importantly, these projects were designed to secretly provide profits above market value to the Chinese state companies under the guise of legal capitalist conduct. As said by Chinese official Xiao Yaqing in the leaked documents, “the public must believe ‘all [BRI] initiatives are market driven for the mutual benefit of both countries’ despite the reality otherwise.”

Honing in on the ECRL again, the project was deeply involved in corrupt dealings meant to benefit Prime Minister Razak and his allies. The initial allocation of the rail contract to CCCC was noncompetitive, having been negotiated by Razak without an open tender. Moreover, ECRL expenditures were allegedly increased to secretly divert funds in service of 1MDB’s debt instead. The project was projected to cost US$16 billion, but “should have cost only [US]$7.25 billion to build, according to an earlier estimate by a Malaysian consultancy”; the project cost was increased by 50 percent not only to enrich the CCCC, but also so that the CCCC would receive US$5 billion to help meet some of 1MDB’s debt obligations. The CCCC carried out their end of the bargain, agreeing to “funnel money through shell companies to help repay 1MDB’s debts, and to assume [US]$4.78 billion of 1MDB debts between 2016–22 in exchange for largely fake ‘assets’ valued at [US]$5.63 billion.” The suspiciously erratic dispensation of funds also indicated that unusual activity was afoot. At one point, the Malaysian government had disbursed US$2 billion in funds for the ECRL despite the fact that none of the construction work had been completed. Though the ECRL’s link to corrupt activity are numerous, they are perhaps not surprising, given that multiple nations and the World Bank have previously accused the CCCC of fraud and corruption.

8.3.3. Financial Equitability Concerns

Thirdly, Malaysian BRI packages often entail financially inequitable terms, aggravating Kuala Lumpur’s fears of shouldering excessive costs. Within two months of his electoral victory, Mohamad suspended the Chinese-backed ECRL, the Multi-Product Pipeline (MPP), and the TSGP due to excessive debt pressures on the state; in total, these three projects amounted to US$22 billion in value. The latter two projects remain under suspension due to unresolved debt concerns, and negotiations to recoup existing expenditures are ongoing. At the outset of the projects, a CNY12.9 billion loan from EXIM Bank was taken out to cover 85 percent of the costs for the MPP and the TSGP. The terms of this loan, including 3.25 annual interest rate (0.75 percent above the median interest rate on Chinese loans to other emerging market nations) and a guarantee by the Malaysian government in the event of the borrower’s default, increased Kuala Lumpur’s potential financial liability. These concerns were only exacerbated by the disbursement of funds far outpaced work completed on the MPP and TSGP. According to an official press release by the Ministry of Finance in May 2019, its fully-owned subsidiary, Suria Strategic Energy Resources, had paid RM8.3 billion of the RM9.4 billion pipeline projects’ contract value regardless of the fact that only 13 percent of the work had been completed. Furthermore, this work had not been audited nor verified, calling its existence and quality into question. Relatedly, the projects were “extremely lucrative for the contractors,” the SOEs China Petroleum Pipeline Engineering Company and Huanqiu Project Management Beijing, “because payments were made based on timeline progress regardless of work progress done, if any.”

While the ECRL was officially restarted in 2019, it too was afflicted by fears of and renegotiations over ballooning costs and financially questionable terms. Initially, China’s EXIM Bank was “slated to fund over 90 percent of the total costs of the project” at a high interest rate of 3.5 percent. In light of the
exposure of the corrupt dealings under the ECRL, government officials understandably questioned the fairness of the loan and the feasibility of repayment. Prime Minister Mohamad gave China an ultimatum: either renegotiate the project or pay US$5.2 billion in termination fees.\textsuperscript{191} “Apparently recognizing that it had a great deal to lose in Malaysia,” China only agreed to renegotiations after it became clear that Kuala Lumpur would not compromise on reducing its potential debt liability.\textsuperscript{192} After around a year of negotiation discussions, the Malaysian government approved the ECRL’s resumption only after project’s costs, as well as the size and terms of the EXIM Bank of China loan, were drastically reduced. Expenditures were lowered by a third from RM65.5 billion to RM44 billion, projected interest payments were cut from US$8.9 billion to US$5.8 billion, and “the Chinese agreed to take a 50 percent stake with Malaysia Rail Link to operate and maintain the rail and bear half the risk if the project faces financial difficulties.”\textsuperscript{193} Fears of saddling the state with exorbitant costs drove Malaysian politicians to publicly and aggressively push back against the ECRL’s terms with marked success.

9. Implications and Conclusion

Seven years into the BRI, it has become clear that the Initiative and the projects that fall under its jurisdiction have not proceeded without extensive criticism. In examining economic explanations behind resistance towards the BRI, this paper has argued that BRI packages in Southeast Asian countries tend to employ Chinese firms and workers over their local counterparts, profit government elites through unlawful means, and incorporate financially inequitable terms that disadvantage host country governments. Nevertheless, China has demonstrated its (sometimes begrudging) willingness to renegotiate the terms of its projects to be more economically equitable, thus showing that BRI projects are not inflexible in nature. Below, I outline possible reforms China may consider instituting in its existing and future BRI packages.

9.1. Policy Recommendations for China

Presuming Beijing wants to decrease Southeast Asian resistance towards the BRI, China may consider the following steps to remedy the economically inequitable aspects of its BRI packages.

Firstly, China should ensure its packages include provisions for incorporating locals to a greater extent and economically equitable financing structures. These are especially imperative for two reasons. First off, Chinese corporations are evaluated according to economic targets. Moreover, these corporations are often responsible for and have great flexibility in implementing the state’s loosely defined BRI plans, frequently bypassing formal processes through ad hoc arrangements in their own favor.\textsuperscript{194} Thus, these corporations have little incentive to include such provisions on their own. While employing mainland corporations, mandating the use of Chinese suppliers, importing workers to Southeast Asia, and including economically inequitable financing terms may be more economically beneficial for the Chinese economy, these actions come at the expense of sustaining healthy bilateral relations with Southeast Asian countries in the future. Friendly relations are not just valuable in and of themselves, but can be economically valuable in terms of signing more project agreements and avoiding costly delays or suspensions. While the state usually takes a more hands-off approach to BRI implementation, Beijing should mandate corporations include explicit provisions aimed at striking a healthy balance between satisfying the BRI’s need to support Chinese industry and the importance of maintaining goodwill with its Southeast Asian neighbors.

Secondly, China should impose and enforce more stringent corruption prevention mechanisms for its corporations. On China’s side, weak general enforcement of anti-corruption laws and the fragmented nature of China’s development financing system both contribute to the issue of corruption within BRI projects. Corruption prevention mechanisms have fallen short; for instance, China established, but has done little to enforce, a foreign bribery law dating back to 2011.\textsuperscript{195} Furthermore, China’s development financing system is plagued by numerous flaws, as is robustly outlined by Table 1 in Hamieri and Jones 2019. As stated before, “the formal process is often bypassed through ad hoc arrangements,” meaning BRI projects are established and governed in a “piecemeal manner”; the Chinese government may give overall guidance, but the implementation of such plans is usually carried out by state-owned enterprises that prioritize profit-seeking.\textsuperscript{196} On the side of host country elites, infrastructure projects represent opportunities to enrich themselves individually via financial kickbacks and bribes and enrich their allies with lucrative contracts. Given that Chinese projects “are vulnerable to region-
al favoritism and can be easily exploited for political gain,” “construction is a notoriously corrupt sector,” and “many developing countries have limited capacity to assess projects’ viability or ensure their appropriate governance,” BRI projects are particularly vulnerable to illicit collusion between Chinese corporations and government elites.197 China should work to implement new anti-corruption laws and mechanisms, as well as enforce those that exist, both generally and within the BRI specifically.


While it is clear that China’s BRI efforts suffer from various economic inequities, it is unclear where this phenomenon derives from. Were these features intentionally included as part of a larger “debt-trap diplomacy” scheme? To be clear, debt-trap diplomacy entails “luring poor, developing countries into agreeing [to] unsustainable loans to pursue infrastructure projects so that, when they experience financial difficulty, Beijing can seize the asset, thereby extending its strategic or military reach.”198 Fears of debt-trap diplomacy have been exacerbated by rhetoric from Washington, with Director of the Office of Trade and Manufacturing Policy Peter Navarro and Secretary of State Mike Pompeo advancing this narrative in particular.199 On the other hand, existing scholarship on the BRI’s presence in various regions of the world have questioned the extent to which China has engaged in deliberate debt-trap diplomacy (see Hurley et al. 2018, Ferchen and Perera 2019, Rajah et al. 2019, Jones and Hamieri 2020, and Singh 2020).

It may be that the economic inequities discussed in this paper are unintended consequences of the fact that “BRI projects follow the logic of economics, not of geopolitics,” rather than symptoms of debt-trap diplomacy.200 In any case, this paper only explores a part of the story; further research into the BRI will only grow more relevant as the Initiative continues to expand its already-exceptional scope, size, and significance.

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