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The Politica Online



The Politica Online is the web version of the *East Bay Politica*. Like its predecessors, *The Politica Online* was written and edited by students at California State University East Bay. This is a forum for students to showcase their research and writing, and it is an opportunity for students to work together to reach a large audience outside the campus

DEPARTMENT OF POLITICAL SCIENCE
CSU East Bay

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Meet the Editors



Donald Brophy: "I am currently a senior double majoring in political science and international studies with an emphasis on international relations. The simple fact that I lived abroad in Indonesia during my formative years naturally sparked my interest in political science. Those who grow up abroad are often called third culture kids and we are definitely fortunate to have such an experience being exposed to a wide variety of cultures. This naturally led me to take numerous international theory based classes and to pick up another foreign language. As for future plans, I would like to work abroad with an international organization focused on refugee issues."

Nareene Karakashian: "As a first generation Armenian- American, my family was not very active in American politics. My teachers in high school were the first to introduce me to government and how it affects daily life, and sparked my initial interest in politics. I transferred from a community college in southern California as a junior to Cal State East Bay only knowing that I liked studying politics. The wide variety of classes that I took allowed me to narrow my interests to the realm of state politics. The time I have spent at this university has motivated me to become more politically active both off and on campus. I have become heavily involved in ASI by volunteering on three committees and have recently started a summer internship program with State Senator Loni Hancock. My future plans involve going to law school and using the tools I have gained from Cal State East Bay to work as a legislative aide in the state capital."



Caylen McGehee: "I began my Undergraduate Studies majoring in Psychology at Clark Atlanta University in Georgia. I transferred to Cal State East Bay my second year and enjoyed my experience in general Political Science courses. One year later I discovered my success in Political Science, which was very beneficial to my concentration in Law. My plans post-graduation are to apply to Law schools for the Fall of 2012, while gaining an experience working in the field of Law, and eventually pursuing Entertainment Law. My experience in the Political Science Department has been enlightening and it has well-prepared me for my future success in law."

Stephanie Murti: "It wasn't until a school field trip to Washington, D.C in high school that my love for politics was sparked. It was at that moment that I realized the potential impact of one person on the entire world. From then on, I dedicated myself to the study of Political Science and more specifically International Relations. Recently I have been accepted into The Washington Center International Affairs Internship Program and my post-graduation plans are to apply to graduate schools focused on international policies."



The Role of Education in the Israeli-Palestinian Conflict

by

Donald Brophy

The division between the Israeli and Palestinian collective identities is a significant feature in their ongoing conflict. Social identity theory can be applied in characterizing the collective identity. The theory defines identity as “that part of an individual’s self-concept which derives from his [or her] knowledge of his [or her] membership of a social group (or groups) together with the value and emotional significance attached to that membership” (Makkawi 2008, 28).

The development of an individual’s self-concept can be attributed to a variety of socialization processes. Individuals can be influenced by real life experiences, information dispersed by the media, and through the values imparted by one’s friends and family. The state also plays an important role in shaping the collective identity through its educational system. A state may wish to exercise social control in various ways such as by enforcing the status quo or by permitting the airing of divergent viewpoints.

An important tool in a state’s educational system is textbooks. They “act as the interface between the officially state-adopted and sanctioned knowledge of the culture, and the learner. Like all texts, school textbooks remain potentially agents of mass enlightenment and/or social control” (Abu-Saad 2007, 23). This description illustrating the function of textbooks parallels the discussion concerning the expectations over a state’s educational system. Both Israel and Palestine manage their respective educational systems to promote distinct historical narratives which, in turn, shape their respective collective identities.

The educational system in Palestine is under pressure from two competing influences: the Palestinian Authority (PA) headed by Fatah and Hamas. Prior to the Oslo Accords of 1993, Palestinians had little control over their educational system. There was a reliance on foreign textbooks published in Jordan and Egypt, with the contents of these textbooks were subject to censorship by the Israeli occupation authorities. The Oslo Accords afforded the Palestinians some control over their educational system and this led to the establishment of the Ministry of Education of the PA in 1994 and the eventual development of a unified Palestinian curriculum. In addressing Palestinian history, the new textbooks under this unified curriculum were guided by a Palestinian narrative presenting the “establishment of the State of Israel in most of Palestine in 1948 as a disaster (nakba) for the Palestinians, a majority of who became uprooted and were forcibly expelled from their homes” (Moughrabi 2001, 7). The inclusion of maps depicting Palestine and the use of the phrase “Palestine” in this

new narrative is a stark departure from the previously censored textbooks that were more customary prior to the Oslo Accords.

This expanded Palestinian narrative within the PA curriculum did not go unnoticed. The Center for Monitoring the Impact of Peace (CMIP), a Jewish-American nongovernmental organization cautioned that the expansion of this Palestinian narrative advocated an anti-Israeli agenda. CMIP's premise was that the "new PA schoolbooks fail to teach their children to see Israel as a neighbor with whom peaceful relations are expected. They do not teach acceptance of Israel's existence on the national level, nor do they impart tolerance of individual Jews on the personal level" (Moughrabi 2001, 8).

There were serious consequences. The United States pressured the United Nations Relief and Works Agency for Palestinians Refugees in the Near East (UNRWA) to discontinue the use of newly-published Palestinian textbooks in the schools managed by UNRWA in the West Bank and Gaza Strip. The World Bank's also warned of possible a possible decrease in the funding for the publication of textbooks and the training of new teachers.

Moughrabi examines one of CMIP's assertions pertaining to the role of textbooks in the de-legitimization of Israel. CMIP attests that the new textbooks "de-legitimize" Israel by referring to Israel in a context that breeds contempt; a context that accredits Israel with forcibly expelling and massacring Palestinians and characterizing Israel as a colonial conqueror of Palestine. In examining the Palestinian textbooks, Moughrabi did not find any mention of such massacres and he asserts that CMIP's statement lies on a weak foundation because it has already been widely acknowledged by both Israeli and non-Israeli historians alike that Israel's actions in forcibly expelling Palestinians and in the destruction of their villages do indeed mirror that of a "settler colonial entity" (Moughrabi 2001, 11). In response to the accusations of an anti-Israeli agenda, the Ministry of Education of the PA stated that the reference to Israel as an occupier in their textbooks is widely considered factual knowledge within an international context as represented in various United Nations (UN) resolutions.

This illustrates the difficulty in shaping a Palestinian narrative that is acceptable to both sides. The establishment of the state of Israel in 1948 and the resulting occupation of the West Bank and Gaza Strip are real life experiences for Palestinians and the problem lies in "how to teach these common experiences in a way that satisfies the need to impart factual knowledge without also imparting stereotypes of and prejudice toward the country and people that Palestinians hold responsible for their dispossession" (Moughrabi 2001, 15). The new textbooks and the PA curriculum are guided by several principles as proposed by the Ministry of Education in order to achieve concordance. The PA curriculum encourages students to think independently instead of solely memorizing facts. A concept of citizenship and the promotion of democratic values are emphasized. Additionally, in promoting cooperation and tolerance, students are encouraged to respect the opinions of others.

The other competing influence on the educational system of Palestine is Hamas. According to one scholar, Hamas through the "means of education are trying to

increase the awareness of the students, and to enable them to cope with the ideological crisis unfolding not only in Palestine, but in the Arab Middle East as a whole” (Jensen 2006, 58). Despite winning the PA’s general legislative elections in 2006 and taking control over the Gaza Strip the following year, Hamas has yet to implement its own curriculum for education in Hamas-ruled territory. Schools in the Gaza Strip continue to follow the PA curriculum. Observers argue that by not introducing their own curriculum, Hamas values the international legitimacy currently associated with the PA’s curriculum. Additional considerations include the associated costs in carrying out such revisions for their own curriculum and if such revisions would further fracture Palestinian unity.

These do not mean that Hamas disregards the value of education; in fact the Hamas charter states that in order to achieve its ideological and political views, it is “important that basic changes be made in school curriculum to cleanse it of the traces of ideological invasion that affected it as a result of the Orientalists and missionaries who infiltrated the region following the defeat of the Crusaders at the hands of Salah al Din” (Manor and Mizrahi 2010). In order to achieve its goals, Hamas uses the selective employment of teachers to impart such views. The teachers serve as mediators between the students and textbooks and they often encourage the students to apply an Islamist frame of reference. The goal is to create “sound Muslims,” by “instilling in the individual student an organized way of thinking, a vigilant conscience, awareness, good conduct and a holistic (that is to say, Islamic) view of life” (Jensen 2006, 63). The overall purpose is to rewrite history and to convey Islam’s capacity in addressing this ideological crisis that is affecting the Arab Middle East.

The Internet is another tool in education. In 2002, the Al-Fateh website was created and it “expresses the same religio-political positions that Hamas takes in its charter, including the doctrine that the entire land of historic Palestine is *waqf* (an Islamic endowment) and that its liberation by violent *jihad* is a religious duty” (Manor and Mizrahi 2010).¹ One prevalent theme in the website is contempt for the West stating that many Western achievements are Islamic in origin, and that Western values are inferior to Islamic values and are a source of corruption. Another theme concerns the annihilation of Israel. The website “depicts the Map of the Middle East without Israel, and instead shows only ‘Palestine.’ It avoids the phrase ‘the State of Israel,’ instead employing terms of derogation and condemnation, including the ‘Zionist entity,’ ‘the cursed state,’ the ‘state of the monstrous entity,’ the criminal state,’ the ‘alleged entity, and the ‘thieving usurping entity’” (Manor and Mizrahi 2010). There are regular instances of demonization in the portrayal Jews whereby they are dehumanized, depicted as less than human, and simply generalized as enemies of Islam. Another alarming theme is that the website glorifies the exploits of suicide bombers by posting graphic images to desensitize viewers of the website and by publishing their last wills and testaments. This is an effort to prepare the youth to “follow in the footsteps of the fighters in order to liberate this land from the impurity of the contemptible Jews ... know[ing] clearly that my blood will be shed and my organs scattered” (Manor and Mizrahi 2010). This content is more extreme than the PA’s and

¹ There is no direct relation between the Fatah party and the Al-Fateh website, this perceived link is purely linguistic and coincidental with Fateh meaning “conqueror” and Fatah meaning “conquest”.

it further serves as an obstacle to any semblance of a unified Palestinian collective identity.

According to some scholars, the historical narrative maintained in the Israeli educational system is guided by orientalism and Zionism. Orientalism depicts a division between a superior West versus an Eastern “Other” characterized by “despotism and resistance to progress; and since the Orient’s value was judged in terms of, and in comparison to the West, it was always the ‘Other,’ the conquerable and the inferior” (Abu-Saad 2007, 21). Orientalism lends itself to Zionism in creating a perception that the Palestinian people are indeed conquerable and inferior, thus offering a rationalization for the establishment of the Jewish state of Israel in Palestine. Palestine was seen as a “land without a people, for a people without a land” under Zionism and as a land for the Jews to escape persecution. The purpose of textbooks in the Israeli educational system is to glorify and justify the state of Israel.

A particular focus of these textbooks was rejection the Palestinian historical narrative up until 1948 because it “never explained or even acknowledged the dispersion and dispossession of the Palestinian people as a result of Israel’s establishment, and instead attributed the motivating forces for Arab violence to their ‘anti-Semitism’ and hatred of Jews” (Abu-Saad 2007, 25). In a study analyzing textbooks in the 1970s through the 1980s, negative characterization of Arabs continued to be a prominent feature through which “de-legitimizing labels such as “human savages,” “bloodthirsty,” “gangs of murders,” “infiltrators and terrorists,” or “robbers” appeared frequently. The books presented 82% of occupations held by Arabs as being related to either violence (soldiers, robbers, or gang members) or to primitive farming and manual labor” (Abu-Saad 2007, 26).

The negative characterizations of Arabs within Israeli textbooks, though still predominant, have become more moderate since the late 1990s. This has led to some disagreements within Israeli society over the content in these contemporary textbooks because Palestinians are represented as victims of the Israeli-Palestinian conflict. In 2001, some textbooks were removed from the curriculum and then Education Minister Limor Linvat stated that “no nation studies its history from the point of view of the enemy or the point of view of the United Nations. The State of Israel is a Jewish and democratic state and this should direct the perspective of its education system” (Abu-Saad 2007, 28). Even though some of these recently published textbooks may be introducing controversial content, two principal elements remain: maps fail to include Arab settlements prior to 1948 reaffirming the notion of a “land without a people, for a people without a land”, and the exclusion of Arab authors and advisors.

Palestine and Israel use their educational systems to promote distinct historical narratives in an effort to consolidate their respective national collective identities. The primary tool in imparting what they constitute as “legitimate knowledge” are their textbooks. Within this context, the issue over “legitimate knowledge” revolves around what specifically is included and excluded in these textbooks. Teachers are also critical factors because they play an important role in selecting what material to teach and have considerable influence in shaping the frame of reference from which students view such material. Both the educational systems of Palestine and Israel instill a notion of the “Other.” Notwithstanding orientalism’s lack of applicability in the

Palestinian context, both Palestine and Israel teach personalized concepts of the "Other." Hamas has been particularly effective in shaping such a concept by means of disdainful condemnation through the Al-Fateh website. Both Palestine and Israel are culpable in this bitter disdain for each other. This perpetuation of antagonistic perceptions over the past half century on account of Israel and Palestine has clearly contributed to the current impasse. Although there have been some signs of increased tolerance, it is likely both states will continue to use education as a means of social control in preserving the prevailing notion of a collective identity.

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Student Activism Grows at CSU East Bay

As a student intern in the California Faculty Association (the union representing thousands of faculty, professors, coaches, among others throughout the CSU system), and as a leader in Students for Quality Education, I have worked with the student movement in the university.

The student movement is a direct response to the social and economic conditions that students confront in their daily lives. The CSU system that was once recognized as the “People’s University” has turned away from its original intentions. While we should recognize that CSU’s problems are in part due to the lack of political leadership on the part of our local and state representatives, we also need to recognize the role played by university administrators and executives.

For example, how can one justify the rise in tuition? Since 1998, student tuition has increased by 242 per cent. Many of our courses have been cancelled, some of our talented faculties have been let go, and student services have been cut. This situation is made more unjust by the increase of administrative and executive salaries by 69 per cent.

The realization of this inequality has led to an increase in student activism. Events such as our March 2nd *Day to Defend Public Higher Education* and our April 13th *People’s University Day of Action* serve to awaken students from the passive and dormant, yet satisfying lives that they have been accustomed to.

Same-Sex Marriage and the Equal Protection Clause: A Legal Analysis

by

Russell Sutherland

The Equal Protection Clause in the 14th Amendment in the United States Constitution reads “...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”² This clause has traditionally been used, in part, as the basis for many court cases which challenge classification based on race, marriage, ethnicity and gender. In American society today, same-sex marriage is a controversial social issue. Not surprisingly, the public debate primarily revolves around the morality of same-sex marriage rather than on its legal points.

This is a common occurrence with controversial social issues. Debating the morality (or the immorality) of an issue often brings up emotions into the subject, whereas debating the legal arguments requires careful evaluation and understanding of legal principals which few people are prepared to do. In addition, removing emotion from a legal debate is vital in coming to a conclusion based on legal principals and the law. For example, each person will have their own perspective on the morality of a law which creates separate classifications based on an individual’s gender. Any number of variables, such as religious views or geographical location, may affect that opinion. However, these social variables should have no impact in the establishment of laws relating to the topic because those variables are subjective. Do laws restricting marriage to opposite-sex couples violate the 14th Amendment’s equal protection clause? This is the primary research question legal scholars on both sides are attempting to answer.

From *Loving v. Virginia*³ to *Perry v. Schwarzenegger*⁴ the legal interpretation of the 14th Amendment’s Equal Protection Clause has been applied to several cases and established important legal precedent. Based on this established precedent and a Living Constitution analysis of the U.S. Constitution, laws restricting marriage to opposite-sex couples do in fact violate the Equal Protection Clause of the 14th Amendment.

² U.S. Const. am 14, § 1.

³ *Loving v. Virginia* 388 U.S. 1 (1967)

⁴ *Perry v. Schwarzenegger* 704 F. Supp. 2d 921 (N.D. Cal. 2010)

Loving v Virginia

Though the primary issue of this case was racial discrimination, the precedent established in *Loving v. Virginia* is important for its application of equal protection of homosexual individuals' rights under the law based on the equal protection clause. The precedent established in this case has been used and applied by judges in many other cases since the ruling in 1967.

The plaintiffs in this case were Mildred Loving and Richard Loving. Mildred was of Native American and African decent, while Richard was Caucasian. As residents of Virginia, the Racial Integrity Act prevented Mildred and Richard from getting married. This act required the state to maintain a list of an individual's race and banned any marriage between white and colored residents of the state.

In 1958, Mildred and Richard traveled to the District of Columbia where interracial marriage was legal and were married. When they returned to their home in Virginia, they were arrested and charged under two separate laws: section 20-58 which prohibited interracial couples from leaving the state to marry; and as well as section 20-59 which certified any form of miscegenation was punishable with prison for up to five years. These two laws were the subsequent focus when the case was brought to the U.S. Supreme Court.

The Lovings plead guilty and were sentenced to one year in prison, but that sentence was suspended with a conditional provision which required the couple to leave Virginia. The couple relocated to the District of Columbia. There, on behalf of the couple, the American Civil Liberties Union (ACLU) filed a motion to have the conviction thrown out on the grounds that it violated the 14th Amendment of the U.S. Constitution. The constitutionality of the law was brought before and analyzed in front of the Virginia Supreme Court of Appeals.⁵ Chief Justice Harry Carrico argued, citing *Pace v. Alabama*,⁶ that because the law did not differentiate between two races, both parties were being treated equally. Thus discriminating based on race can be construed as constitutional as long as one race is not favored over another. This was the conclusion reached by several other state courts around the country, as noted in Justice Carrico's opinion in the case, while citing a previous Virginia Supreme Court case *Naim v. Naim*.⁷ He said, "Virginia statutes relating to miscegenetic marriages were fully investigated and their constitutionality was upheld. There, it was pointed out that more than one-half of the states then had miscegenation statutes and that, in spite of numerous attacks in both state and federal courts, no court, save one, had held such statutes unconstitutional." Carrico, however, does not explain why it is constitutional. Instead he assumes it is because other judges have concluded similar laws are constitutional.

The legal processes and proceedings above are important in understanding the context under which the U.S. Supreme Court analyzed and ruled the laws to be unconstitutional, as well as how observations and considerations provided in the court's opinion can be applied to current same-sex marriage legal proceedings.

⁵ *Loving v. Commonwealth of Virginia* 206 Va. 924; 147 S.E.2d 78; (1966)

⁶ *Pace v. Alabama* 106 U.S. 583

⁷ *Naim v. Naim* 197 Va. 80 (1955)

The United States Supreme Court, in a 9-0 ruling, found the two Virginia legal statutes to be unconstitutional. The primary focus and legal interpretations by all courts involved but most importantly the Supreme Court, revolves around an individual's race as a classification under the law. In the court's ruling, several important legal interpretations took place which established key precedent for the court.

It should be noted that the legal justification offered by the trial court judge meant to further establish the discriminatory practices by the state of Virginia which existed in 1958. U.S. Supreme Court Justice Earl Warren noted the discriminatory nature of the lower court's decision when he mentioned trial judge Leon Brazile's statement that "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And, but for the interference with his arrangement, there would be no cause for such marriage. The fact that he separated the races shows that he did not intend for the races to mix."⁸ He also mentioned the Virginia Court of Appeals' statement in upholding the ruling: "Neither the Fourteenth Amendment to the Constitution nor any other provision of that great document contain any words or any intendment to prohibit the state from enacting legislation to preserve the racial integrity of its citizens" as well as "to prevent the obliteration of racial pride."⁹

Justice Warren noted that the courts' justification is in part attempting to preserve "a doctrine of white supremacy."¹⁰ Herein the court begins to apply its interpretation of the Virginia laws and apply them to the 14th Amendment and equal protection clause. In its overturning the Virginia Supreme Court decision, the U.S. Supreme Court established important precedent which would be cited and applied to future marriage-related court cases throughout the United States. It is important to remember that the Loving's were contending a social classification (race) was being used to justify the government's discrimination against them. They contended that by using a social classification to separate them as U.S. citizens from other citizens, they were being denied equal protection under the law. The U.S. Supreme Court agreed and flipped the state court's logic when applied to the 14th Amendment.

First, according to the Supreme Court "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause."¹¹ Second, and more importantly, the court established marriage as a fundamental right by saying "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival."¹² By protecting race as a social classification under the equal protection clause, it can be argued that discrimination against same-sex marriage falls into the same category, as gender is also a social classification.

⁸ *Loving v. Virginia* 388 U.S. 3 (1967)

⁹ *Naim v. Naim* 197 Va. 80 (Lexis-Nexis HN 16) (1955)

¹⁰ *Loving v. Virginia* 388 U.S. 7 (1967)

¹¹ *Loving v. Virginia* 388 U.S. 12 (1967)

¹² *Loving v. Virginia* 388 U.S. 12 (1967)

Gender based discrimination falls under the same equal protections as racial discrimination and should be applied to same-sex couples.

The Bases for Protecting Individuals

An examination of how the U.S. Supreme Court applies the concept of gender classification to laws which specifically target homosexuals is important in establishing that the equal protection clause protects same-sex couple's marriage rights. In *Romer v. Evans*¹³ the U.S. Supreme Court affirmed a Colorado Supreme Court ruling overturning a state referendum which prevented any government-imposed legal protection for homosexuals. In 1992, Colorado voters passed a referendum known as Amendment 2. This referendum was in response to a rise in various ordinances throughout the state which attempted to protect those discriminated against based on their sexual orientation. Amendment 2 sought to prevent any governmental action (legislative, executive or judicial) which intended to protect any homosexual. In essence, it prevented homosexuals from being classified as a protected class, which would consequently allow discriminatory policy to exist and additionally prevent homosexuals from being recognized under the equal protection clause. After Amendment 2 was passed, it was challenged through litigation in the Colorado court system. Several individuals, municipalities and groups, including the ACLU, filed a lawsuit to prevent the implementation of Amendment 2 temporarily while the legal processes were conducted. The court affirmed a temporary block of the law. Those challenging the law said Amendment 2 was designed to prevent homosexuals from receiving the same rights afforded to everyone else and as such violated the 14th Amendment of the U.S. Constitution. The state argued the goal of Amendment 2 was to prevent homosexuals from being provided special rights strictly because of their sexual orientation. According to the state, the purpose of Amendment 2 was only to prevent homosexuals from being held above all other individuals in the eyes of the law through the special classification.

Any law which may limit the political power of a minority group is examined using a *structured scrutiny guideline system*. The Colorado Supreme Court, after applying strict scrutiny (the highest level of scrutiny) in its examination of the law, found Amendment 2 to be unconstitutional because it did not express a compelling government interest and created a permanent injunction against it.¹⁴ Strict scrutiny is the legal guideline applied when analyzing laws which specifically target minority groups which may impact their ability to participate in the political process under the context of the equal protection clause. If a court finds compelling state interest in the existence of the law, as well as deems the law to be written in a very narrow manner so as to limit its potential negative impact on the minority group, than the law can be upheld. As noted by the court, "A legislative enactment which infringes on a fundamental right or which burdens a suspect class is constitutionally permissible only if it is 'necessary to promote a compelling state interest.'"¹⁵ In this instance, the Colorado Supreme Court found that Amendment 2 did not hold up under strict

¹³ *Romer v. Evans* 517 U.S. 620 (1996)

¹⁴ 882 P.2d 1335

¹⁵ 882 P.2d 1335,(Lexis-Nexis HN 2)

scrutiny because “States have no compelling interest in amending their constitution in ways that violate fundamental federal rights” and “The state has failed to establish that Amendment 2 is necessary to serve any compelling governmental interest in a narrowly tailored way.”¹⁶ Subsequently the amendment was blocked by the court via affirming the lower court’s decision.

The State of Colorado appealed to the federal courts and the case soon came before the U.S. Supreme Court. The state once again argued that the law simply denied special rights to homosexuals. The U.S Supreme Court, in a 6-3 vote, disagreed with the State of Colorado and upheld the Colorado Supreme Court’s decision, though using a slightly different legal principal called *rational basis scrutiny*. In writing the majority opinion for the court, Justice Anthony Kennedy expressed several important ideas and established precedent which can be applied to the debate regarding constitutionality of laws restricting marriage to opposite-sex couples.

First, Justice Kennedy noted that Amendment 2 attempted to disqualify an entire class of persons from seeking protection under the equal protection clause. He writes: “Disqualification of a class of persons from right to seek specific protection from law is unprecedented in U.S. Supreme Court jurisprudence. Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the Equal Protection clause. It is not within our constitutional tradition to enact laws of this sort.”¹⁷ Here, Justice Kennedy establishes that homosexuals as a group may seek specific protection as a principal of equal protection. This means homosexuals could subsequently seek protection under the law for marriages.

He continues by quoting the Colorado Supreme Court decision, as well as noting the basis for the primary state interest is centered on what he believes is animosity towards homosexuals: “A second and related point is that laws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected. If the constitutional conception of equal protection of the laws means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.”¹⁸ If the primary motivation for limiting marriage rights of same-sex couples is animosity towards the minority group as Justice Kennedy indicates, then it would seem that any laws restricting rights of homosexuals, including marriage laws, would immediately fail the rational basis scrutiny test.

In the dissenting opinion, Justice Antonin Scalia espoused a *constitutional originalism* legal argument whereby he proclaimed that the court was in no position to hear or rule on such a case, as sexual orientation was not a consideration when the 14th Amendment was written. Justice Scalia, writing for both Chief Justice William Rehnquist and Justice Clarence Thomas in the dissent, proposed that Amendment 2 “is rather a modest attempt by seemingly tolerant Coloradans to preserve traditional sexual mores against the efforts of a politically powerful minority to revise those mores

¹⁶ 882 P.2d 1335 (Lexis-Nexis HN 8)

¹⁷ *Romer v Evans* 517 U.S. 620 (Lexis-Nexis HN 5)

¹⁸ *Romer v Evans* 517 U.S. 620 (Lexis-Nexis HN 8)

through use of the laws.”¹⁹ The problem here lies within the ethical theory of moral subjectivism. An act of immorality to one individual may not be immoral to another; it is simply an expressed individual opinion. The distinction between moral relativism in a culture and hard established legal precedent cannot be clearer in this case.

If marriage is a fundamental right, as established in *Loving v. Virginia*, legislation blocking that fundamental right would appear to be unconstitutional as well. The U.S. Supreme Court held in *Lawrence v. Texas*²⁰ that laws forbidding certain homosexual acts were unconstitutional because they targeted a specific group. This overturned a previous court ruling in *Bowers v. Hardwick* which criminalized these sexual acts.²¹ Justice Scalia referenced the *Bowers v. Hardwick* decision as evidence the court should not consider the case, while completely ignoring the *Lawrence v. Texas* precedent. He explained (in reference to *Bowers*): “If it is rational to criminalize the conduct, surely it is rational to deny special favor and protection to those with a self-avowed tendency or desire to engage in the conduct.”²²

An originalism-based argument such as the argument Justice Scalia uses contains a serious flaw. If you apply the concept of original intent in this instance, you must apply it to all law and policy adopted by the federal government. If the written authors of the equal protection clause, or more broadly the entire U.S. Constitution do not specifically mention or intend to include a particular issue, then the law or policy can be easily invalidated. This would mean the constitutionality of many current government programs and departments could be in question. The court’s job has always been to interpret current law while using the constitution as a basis for that interpretation. Justice Kennedy’s argument is based on sound and principally logical legal analysis. By this interpretation, laws restricting marriage to opposite-sex couples could be invalidated on the basis that the government has no legitimate compelling interest in enacting such laws.

Proposition 8

Until 2010, federal courts had not directly become involved in, or ruled on, any case directly related to the constitutionality of laws restricting marriage to opposite-sex couples. With California voters passed Proposition 8 in 2008, the first step in a series of important legal challenges was made eventually leading to Federal District Court Judge Vaughn Walker ruling in *Perry v. Schwarzenegger* that the ban of same-sex marriages in California violated the equal protection clause in the 14th Amendment.

Proposition 8 seemingly contradicts the California Constitution’s equal protection clause by directly and openly discriminating on the basis of sexual orientation. As established by the California Supreme Court’s ruling *In re Marriage*

¹⁹ *Romer v. Evans* 517 U.S. 620 (Dissent)

²⁰ *Lawrence v. Texas* 539 U.S. 558 (2003)

²¹ *Bowers v. Hardwick* 478 U.S. 186 (1986)

²² *Romer v. Evans* 517 U.S. 620 (Dissent)

Cases,²³ any voter referendum or legislative law which prevents same-sex couples from marrying violates the California constitutional rights of same-sex couples residing in the state.

The *In re Marriage Cases* ruling from the California Supreme Court in May of 2008 resulted in the legalization of same-sex marriages in California. In the majority opinion written by Chief Justice Ronald M. George and with the concurrence of three other justices, the court established that strict scrutiny must be applied in this case because the law targets a classification (sexual orientation) of people considered to be in the same category as gender, race and religion. They noted that “the statutes in question properly must be understood as classifying or discriminating on the basis of sexual orientation, a characteristic that we conclude represents — like gender, race, and religion — a constitutionally suspect basis upon which to impose differential treatment.”²⁴ In addition, the court designated marriage as a right which government does not have the power to abolish or limit for any of its people, similar to the conclusion the U.S. Supreme Court came to in *Loving v. Virginia*: “[T]he right to marry is not properly viewed simply as a benefit or privilege that a government may establish or abolish as it sees fit, but rather that the right constitutes *a basic civil or human right of all people*.”²⁵ Though this case came before the California Supreme Court and as such the ruling is only applicable to California, the above interpretations of the law and the resulting precedent, if viewed within the context of federally protected classifications of persons per the 14th Amendment, certainly can be considered in a federal case.

After Proposition 8 was passed, the American Foundation of Equal Rights (AFER) on behalf of two same-sex couples, sued in the U.S. Federal District Court of Northern California challenging the Federal constitutionality of Proposition 8. The case gained notable media attention as a result of the well-known attorneys representing the two same-sex couples in court. Davis Boies and Theodore Olson had previously gained notoriety by opposing each other in the *Bush v. Gore*²⁶ case in 2000. The couples in this case had both been denied marriage licenses by county clerks, one in Alameda County and another in Los Angeles County. The suit brought forth on behalf of the plaintiffs named then California Governor Arnold Schwarzenegger and then Attorney General Jerry Brown as defendants. When the suit was filed, the California Supreme Court was hearing *Strauss v. Horton*,²⁷ a case which challenged the validity of the technical aspects (such as revision vs. amendment) of Proposition 8. The court ruled Proposition 8 was valid but the marriages performed between the *In re Marriage Cases* ruling in May of 2008 and the passage of Proposition 8 in November of 2008 were valid. The primary focus now shifted to Judge Vaughn Walker and the case before him.

Before the trial began, some important events took place. Then Attorney General Jerry Brown refused to defend Proposition 8, saying it violated the 14th Amendment. Judge Walker allowed the original group which organized and brought Proposition 8 to the ballot, led by State Senator Dennis Hollingsworth, to act as

²³ 43 Cal.4th 757

²⁴ 43 Cal.4th 757 (pg. 10)

²⁵ Cal.4th 757 (pg. 63)

²⁶ *Bush v. Gore* 531 U.S. 98 (2000)

²⁷ 46 Cal.4th 364

defendants. The plaintiffs filed a motion which would require the release of documents from the defendants' original campaign. The hope was that they would reveal official documentation showing discriminatory intent behind the Amendments' creation. If such intent did exist, it would have major implications in the case. As seen in *Romer v. Evans*, animosity towards a particular political minority group does not represent a compelling state interest, thus such an Amendment would not be warranted. The defendants claimed the release of such documents would violate the 1st Amendment and their freedom of speech. Though Judge Walker sided with the plaintiffs and demanded the release of the campaign's documents, upon appeal by the defendants to the 9th Circuit Court of Appeals, his decision was overturned. The arguments in the case were heard over several months and the case concluded with closing arguments in June of 2010.

In his ruling, Judge Walker first addressed the issue of majority support for a ban on same-sex marriage. He noted that fundamental rights cannot be put up to vote and as such, majority support is not a legitimate argument: "That the majority of California voters supported Proposition 8 is irrelevant, as fundamental rights may not be submitted to [a] vote; they depend on the outcome of no elections."²⁸ Furthermore, Judge Walker had determined that the primary motivation of the creators of Proposition 8 was prejudice towards homosexuals, derived from traditional moral values. In his ruling, Judge Walker said these motivations do not exhibit any state interest, which is necessary to hold up under strict scrutiny examination. He said "California's obligation is to treat its citizens equally, not to mandate its own moral code. Moral disapproval, without any other asserted state interest, has never been a rational basis for legislation. Tradition alone cannot support legislation."²⁹ Proposition 8 "disadvantages gays and lesbians without any rational justification"³⁰ and as such violates the equal protection clause.

During the trial, the primary focus of the defendants was to show the court that same-sex marriages had detrimental effects on the people. Doing so could have potentially been a basis for Judge Walker to determine that a compelling state interest did exist. In addition, the defendants claimed sexual orientation was not natural but behavioral, implying that people choose to be homosexual. Judge Walker concluded such ideas to be false, as the defendants provided no credible evidence to support their claims. In his ruling, he notes "Individuals do not generally choose their sexual orientation. No credible evidence supports a finding that an individual may, through conscious decision, therapeutic intervention or any other method, change his or her sexual orientation."³¹ Judge Walker continued saying, as further evidence suggesting the state had no rational basis to prevent same-sex couples from marrying, that "Same-sex couples are identical to opposite-sex couples in the characteristics relevant to the ability to form successful marital unions."³² Finally, Judge Walker concluded that "The children of same-sex couples benefit when their parents can marry" because

²⁸ 704 F. Supp. 2d 921 (Lexis-Nexis HD 13)

²⁹ 704 F. Supp. 2d 921 (Lexis-Nexis HD 23)

³⁰ 704 F. Supp. 2d 921 (Lexis-Nexis HD 26)

³¹ 704 F. Supp. 2d 921 (Lexis-Nexis Findings of Fact; #46)

³² 704 F. Supp. 2d 921 (Lexis-Nexis Findings of Fact; #48)

the children can directly benefit from the economic rewards married couples receive as a result of their state recognized marriage.³³

With a lack of evidence in support of the defendants' claims of a rational state interest in the existence of Proposition 8, combined with Judge Walker's determination that the origin of Proposition 8 is rooted in prejudice towards homosexuals, Proposition 8 was deemed a violation both the equal protection clause and the due process clause of the 14th Amendment. Judge Walker proclaims a ban on same-sex marriage through Proposition 8 does not even meet the requirements under any level of scrutiny, as "excluding same-sex couples from marriage is simply not rationally related to a legitimate state interest."³⁴ While citing *Williams v. Illinois*,³⁵ Judge Walker notes that the defendants proclaimed goal of preserving the tradition of marriage as a union between man and women only is not a rational basis for a law.³⁶ Finally, Judge Walker established an important idea that certainly may impact potential future rulings around the country in regards to same-sex marriages. He noted that banning same-sex marriage not only doesn't establish any state interest, but in fact harms the concept of equality within the state; "The tradition of restricting marriage to opposite-sex couples does not further any state interest. Rather, the evidence shows that Proposition 8 harms the state's interest in equality, because it mandates that men and women be treated differently based only on antiquated and discredited notions of gender."³⁷ For these reasons, California's ban on same-sex marriages was established to be unconstitutional for the first time ever in federal court.

Currently, Judge Walker's ruling is being appealed to the 9th Circuit Court of Appeals by the defendants in the case. As of this writing, the court is attempting to determine if the defendants have standing (*locus standi*). In this situation, the defendants must show they have suffered legitimate harm from the overturning of Proposition 8. More specifically, they must demonstrate they have experienced harm or will experience harm from the law to support their continued participation in the case. Without standing, their appeal would be rejected and Judge Walker's ruling would stand as law. This would result in the overturning of Proposition 8 and a lift on the ban on same-sex marriages.

The present results from this case must be encouraging for supporters in California of same-sex marriages. During the case, the defendants failed to convince Judge Walker that same-sex marriages had a negative impact on the lives of their children or any other individuals. This would indicate that proving *locus standi* would be a difficult thing to do before the 9th circuit court. Controversial social issues are always a popular political topic because as mentioned before, they evoke strong emotions from both sides. From this we can assume the issue of same-sex marriage will always be a very polarizing issue. In all likelihood, even if the 9th circuit court determines the defendants have no standing and upholds Judge Walker's ruling, there will be future legal challenges in California in regards to same-sex marriage. While the challenge to Proposition 8 may not reach the U.S. Supreme Court, certainly a future case in another state will eventually fall before the court. If the majority of the court

³³ 704 F. Supp. 2d 921 (Lexis-Nexis Findings of Fact; #56)

³⁴ 704 F. Supp. 2d 921 (pg. 997)

³⁵ *Williams v. Illinois* 399 U.S. 235

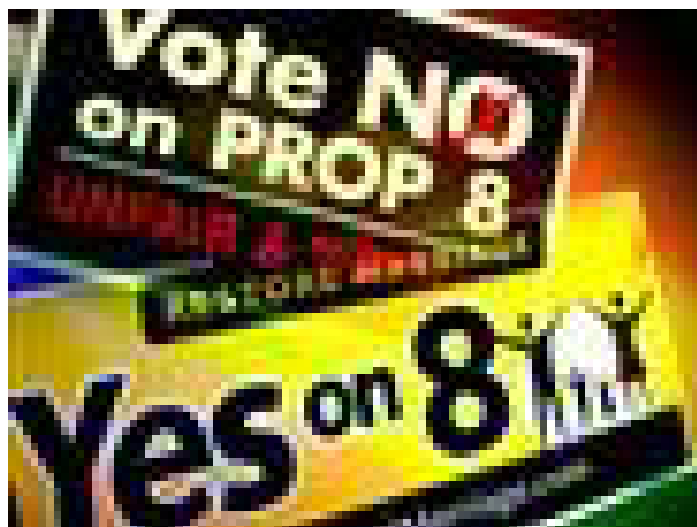
³⁶ 704 F. Supp. 2d 921 (Lexis-Nexis HD 18)

³⁷ 704 F. Supp. 2d 921 (Lexis-Nexis HD 18)

uses the same legal rational as Justice Anthony Kennedy on the *Romer v. Evans* case, we will likely see the legalization of same-sex marriage across the United States. This of course depends on the identity of the nine justices sitting on the court at the time of the case. There has been significant progress since the founding of the United States for minority rights, including homosexual rights. This should be encouraging to any supporter of same-sex marriage and the federal recognition of same-sex marriage appears to be an inevitable result of these minority rights' accomplishments. Same-sex marriage will be both legal and celebrated in the United States eventually. Pinpointing exactly when is difficult, but the cases discussed above indicate the inevitable legal support for same-sex couples is coming.



Russell Sutherland grew up in the San Fransisco Bay Area. After graduating from College Park High School, he briefly attended Diablo Valley College before transferring to California State University, East Bay. He is an avid fan of professional hockey. His hobbies include reading super hero comics, playing golf on the weekends and blogging about politics. His key political interests include American government and U.S. Foreign Policy. After graduation, Russell plans on finding a beautiful, loving wife and pursuing a career in politics.





From the Bay to the Potomac

The Panetta Institute Congressional Internship provides a unique opportunity to understand our nation's political system at an intimate level.

I had the rare chance to be a Congressional intern on Capitol Hill from August 28, 2010 to November 13, 2010. I worked for Congresswoman Laura Richardson from the 37th district of California and my time in Washington, D.C. was stellar.

While in Washington, I attended as many briefings and events as possible in order to build networks. My office was in the 7th floor of the Longworth House (which was adjacent to the U.S. Capitol). I met with lobbyists, assembled committee hearing binders, and wrote Congressional Statements for submission to the Congressional Record.

One of the most memorable experiences for me was when I got to attend a movie screening where Eva Longoria was on the Hill promoting a film called "The Harvest." The movie shed light on the rugged conditions of children working in agricultural labor at a young age. This was a particularly deep moment for me as I reflected on the fact that the stories of the children in this movie were identical to that of my parents and extended family. This realization, combined with the fact that I was the first person in my family to set foot in the nation's capital, made for a truly moving experience.

I feel fortunate to have been a firsthand observer and to have contributed in some small way to the national legislative process. Most importantly, this internship experience catapulted my confidence and helped me develop as a person. I became not only to become a leader on campus, but also to serve as a pillar of public service and as an example to others so that maybe they too would choose to use such a powerful experience to make a difference in their communities.

I would recommend this once in a lifetime opportunity not just to students who are political junkies, but to any member of our campus community who has a thirst for knowledge and the drive to utilize that knowledge to make a difference.

- **Christopher Prado**

2010 CSU East Bay Leon and Sylvia Panetta Congressional Intern

Public Policy Research Paper -- Alternative Energy Strategies for the US

by

Matthew Wiseman

Subject: Alternative Energy Policy in the United States

To: Dr. David Chu

From: Matthew Wiseman

The problem faced by the U.S. Department of Energy in developing a new energy policy is to shift the U.S. away from dependence on oil, natural gas and coal towards other more sustainable sources of energy. This is important for two reasons marking the importance of shifting away from the consumption of fossil-fuels. First, the U.S. is one of the countries primarily responsible for the output of CO₂ into the atmosphere linked to global warming. Second, the U.S. is heavily-dependent on fossil-fuels (particularly oil) extracted from other countries. Both problems have implications for the national security of the U.S.

Although U.S. policy-makers appear to be paying more attention to this problem, the consumption of fossil-fuels and natural gas is projected to far exceed production. According to data compiled by both the U.S. Department of Energy and Sandia Laboratories, in 2020 U.S. oil production would provide less than 30% of U.S. oil needs, while U.S. natural gas consumption will grow by over 50% with production only growing 14%. Although the U.S. has become increasingly energy efficient since the 1970's, population growth and increased standards of living have made our current reliance on fossil-fuels unsustainable (National Energy Development Group 2001, 9-10).

The major challenge involved in implementing alternative energy policies in the U.S. is the partisan political debate surrounding alternative energy issues. While the public generally agrees that alternative energy policies are needed, little consensus exists on how this is to be done. Some, particularly in the Republican Party, think that energy regulatory policies are unnecessary or that the government should limit itself to offering incentives rather than imposing restrictions. There is a prevailing belief that the private sector will develop new technologies to deal with our reliance on fossil-fuels. In contrast, others think that the best approach is to create broad regulations which would force industries and individuals to switch from fossil-fuels to alternative forms of energy. A third alternative is to offer industries incentives while also creating regulations to reduce fossil-fuel dependency (Mallon 2005, 26-27).

Both alternatives have costs and benefits. If the U.S. government does not implement new energy policies, limits itself to providing incentives (in the form of tax credits or federal grants) for industries to become more sustainable, the private sector could freely develop solutions. However, this approach means that industries are under no deadline to reduce their fossil-fuel consumption. A second problem with this solution is that the government would be responsible for a total subsidization of reversing dependence on fossil-fuels through giving out tax credits or federal grants. For example, in a speech at the University of Nevada in July 2010, President Barack Obama, stated that with regard to green energy tax credits and other incentives: "The problem is, there are not enough tax credits to go around, when we announced the program last year, it was such a success that we received 500 applications requesting over \$8 billion in tax credits. But we only had \$2.3 billion to invest. In other words, we had almost four times as many worthy requests as we had tax credits" (Muskal 2010, 1).

The second alternative is to heavily regulate both industries and individuals through taxation, restrictions, or other economic disincentives to discourage the use of fossil-fuels. The benefit gained from this alternative is that it would force both industries and individuals to switch from fossil-fuels to alternative forms of energy in a short amount of time, while also relieving the burden on the government of subsidizing alternative energy investment. However, opponents of regulation have argued that new regulations might slow economic growth while shifting the economic burden of alternative energy development to the public. In addition, although the government would not have to subsidize an alternative energy policy, increased funding would be needed for agencies to enforce these new regulations.

The third alternative is to increase incentives and regulation in order to develop alternative energy sources. By increasing incentives, the government is relieving some of the start-up costs incurred by industries and individuals in reducing their consumption of fossil-fuels. By increasing regulation, the government is acting as a driver to reduce fossil-fuel consumption in a timely manner while also distributing the economic burden between the public and government.

In developing an alternative energy policy which combines both incentives and regulation, the U.S. will also be able to adapt its energy policy to meet new technological breakthroughs and economic fluctuations. In pursuing alternative energy policy objectives, Howard Geller described in *Energy Revolution: Policies for a Sustainable Future* that:

Certain policies such as research and development, financial incentives, and procurement initiatives are most appropriate for stimulating commercialization and initial markets for new technologies. Other policies such as financing, voluntary agreements, and information dissemination are used to accelerate adoption once a technology is established in the marketplace. Policies such as regulations and market obligations are often used to maximize market share or complete the market transformation process. But there are many exceptions to these general rules (e.g. market obligations can be used to stimulate commercialization or incentives can be helpful throughout the process). An integrated approach to market transformation consists of a combination of "technology push" through research, development, and demonstration of "demand pull" through financial incentives, education and training, procurement, or market obligations and "market conversion" through codes and standards (Geller 2002, 48-49).

In this third alternative, the U.S. government would be providing a "push" for decreasing fossil-fuel use while also encouraging innovation and technological improvements in alternative energy development and use in the private sector.

The federal government could also draw lessons from the successes and failures of other countries as well as the individual states themselves in implementing alternative energy policies. At least fourteen states including California, Oregon and Washington have implemented their own alternative energy policies while collecting more than \$500 million per year in support of developing renewable energy (Berkeley Labs and the Clean Energy Alliance 2010, 1). Thus far, most of the states have been successful in reducing fossil-fuel use while converting to alternative forms of energy. For example, the state of California has used both regulation and incentives to reduce its use of fossil-fuels by 2020. While offering state grants and tax credits as incentives, California has also set targets to reduce its CO₂ emissions, instituting regulations which would reduce per capita emissions from 13 metric tons today to 2 metric tons by 2050 (Snuller 2009, 2-3).

Combining regulation and economic incentives also seems to be the most politically robust route to take in order to pursue a realistic alternative energy policy. This compromise could be a politically-acceptable solution bridging the gap between the first two proposed solutions. Also, making regulations and incentives adaptable to technological innovations and economic fluctuations relieves some of the economic and bureaucratic burdens of implementing new energy policies. As in the case of California, the government would present the "push" for implementing the development of alternative forms of energy while also providing incentives to businesses and individuals to decrease their use of fossil-fuels.

The projected outcome of each alternative depends on a number of factors: technological innovation, the state of the national economy, and the availability of funds for providing economic incentives.

If the first alternative is used, with industries and individuals allowed to implement their own alternative substitutes for fossil-fuels, there will be a gradual reduction in fossil-fuel use while having a minimal impact on the national economy. However, reductions in fossil-fuel use would be a very slow process because fossil-fuels remain relatively cheap to procure while there is no regulatory "push" for individuals or businesses to change their consumption habits. The trade-off in this alternative would be that the public would benefit financially in the short-term from a "hands-off policy" but would suffer in the long-term through the environment and increasing fossil-fuel prices. Currently, the federal and state governments already have a number of economic incentives for reducing use of fossil fuels, such as corporate and residential deductions, federal grants, and federal loans, yet there's no federal mandate for a nationwide reduction in fossil-fuel consumption.

Using the second alternative with a purely regulatory "push", the burden of alternative energy use would be placed strictly on businesses and individuals. Such regulation would include an increase in gasoline taxes (automobile use), utility taxes, and mandatory reductions by specific dates. The trade-off in this alternative would be that businesses and individuals would be burdened in the short-term by increased regulation and increased costs on goods needed for everyday functions, while

benefiting in the long-term in terms of social benefits including the health and welfare of future generations. Another negative consequence is placing the burden of switching from fossil-fuels to alternative energy onto the public. And because of the short-term costs in regulatory controls, negative public opinion could make this option politically unviable.

The third alternative, which would combine both economic incentives and regulatory controls to reduce the public's dependence on fossil-fuels, is a compromise between the first two alternatives. In effect, it would reduce the trade-offs faced between the first two alternatives while benefiting the public in long-term environmental and social benefits, and reducing the effect that switching to alternative sources of energy would have on the national economy. Additionally, due to the gradual increase of regulation, jobs and tax revenue displaced from fossil-fuel industries may be replaced by jobs and tax revenue in alternative energy industries. The economic benefits of regulatory and financial incentives would outweigh the short-term costs imposed on industries that are reliant on fossil-fuel consumption. The trade-offs faced by this alternative is that, while furthering both long-term economic and social benefits, short-term economic and social benefits would be delayed.

It is almost impossible to attach a monetary value to the savings derived from each alternative as serious action on reducing our dependence on fossil fuels is a relatively new political topic. Reviewing the states' track record in implementing their energy policies, it has been found that policies that provide economic incentives while setting mandatory increases in alternative energy production, have benefited certain states economically and socially. For example, in a report published by the National Renewable Energy Laboratory:

The taxes paid by renewable energy companies also strengthen the area, economic base, ultimately reducing the burden on individual taxpayers in the community; in fact, generating power from renewable resources contributes more tax revenue than generating the same amount of power from conventional energy sources. As an example, the California Energy Commission has found that solar thermal power plants yield twice as much tax revenue as conventional, gas-fired plants (National Renewal Energy Laboratory 1997, 4-5).

In view of the above information, it is my recommendation that the U.S. Department of Energy pursue a renewable energy policy which relies on both economic incentives and regulatory processes to reduce reliance on fossil-fuels. The reasons for this recommendation is that the federal government should provide a "push" for individuals and businesses to reduce their fossil-fuel consumption habits while utilizing alternative forms of energy while also minimally interfering with economic productivity. By utilizing a combined regulatory and incentive alternative, the U.S. will also accomplish its long-term goals of reducing our reliance on fossil-fuels while also protecting our environment from the effects of global warming. Below is an outcomes matrix showing the benefit of policies which pursue an economic incentive and regulatory agenda:

ALTERNATIVES	Short-Term		Long-Term	
	Environmental Goals	Economic Burden	Environmental Goals	Economic Burden
Economic Incentive, "Hands Off" Alternative	0	0	1	0
Regulatory Alternative	1	0	1	0
Economic Incentive and Regulatory Alternative	0	0	1	1

1= goals achieved
0= goals not achieved

The combined regulatory and economic incentive alternative is also the most politically feasible option open to a positive public opinion. By imposing regulations and incentives for both individuals and businesses, public opinion on alternative energy policies will remain positive, while decreasing the bi-partisan political attention paid to switching from fossil-fuels to alternative forms of energy. In conclusion, the best strategy for the U.S. Department of Energy to pursue is one of incremental regulatory statutes and increased financial incentives through federal grants and tax credits in pursuing new alternative energy policies.

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Matthew Wiseman spent four years in the U.S Army before being honorably discharged in 2006. After attending Las Positas Community College, Matthew transferred to CSUEB during the winter quarter of 2008 and graduated in March 2011. He is currently working for Kaiser Permanente and plans to pursue a Masters of Business Administration.



The Nuclear Non-Proliferation Regime

by

Stephanie Murti

In 1945, the world witnessed complete and utter annihilation of Hiroshima and Nagasaki, Japan by man-made nuclear technology. Later in 1968, members of the United Nations came together to combat the growing concern and potentially catastrophic consequences of nuclear weapons. They signed the Nuclear Non-Proliferation Treaty (NPT), a significant and influential document that combats the proliferation of nuclear weapons around the world.

Specifically, the NPT is based upon three pillars: 1) disarmament, 2) non-proliferation of nuclear weapons and 3) the right to peaceful development of nuclear technology/energy (United Nations 1968). When the NPT opened for signature in 1968 and went into force in 1970, over 188 states around the world became signatories including the five declared nuclear weapon states (NWS): the U.S., United Kingdom, China, Russia, and France, making the NPT one of the world's largest multilateral disarmament agreements (Spector 2009,115).

Currently, however, the Nuclear Non-Proliferation Treaty has been subject to a series of structural lapses that have led many nonproliferation experts, policy-makers and media pundits to declare that the demise of the NPT is approaching (Potter 2010, 68). They argue that the NPT is increasingly growing more irrelevant to the threats and challenges that are emerging in the international community: the text of the Treaty has too many loopholes, the regime lacks the infrastructure to enforce members' obligations, the actions of non-signatory states have overridden the goals of the Treaty, and the growing threat of nuclear terrorism is not addressed in the Treaty.

One of the challenges of the Nuclear Non-Proliferation Treaty is the amount of loopholes within the Treaty. One benefit to becoming a signatory to the NPT for non-nuclear weapon states (NNWS) is its guarantee of the right to peaceful development of nuclear technology. The Iranian nuclear program is the most controversial case in this regard.

In 2002, the United Nations and the International Atomic Energy Agency (IAEA) discovered that Iran, a signatory to the NPT, was secretly enriching uranium and producing plutonium. (Spector 2009,119). This brought attention to the fact that enriched uranium and plutonium are "dual-use", i.e. they can be used for both nuclear energy and the manufacturing of nuclear weapons. By allowing for the peaceful nuclear development, the NPT in a sense, allows access to the fissile materials needed for creating nuclear weapons which is the antithesis of the non-proliferation regime itself. The IAEA is indeed, responsible for inspecting all States parties to the NPT to ensure that the activities are within the safeguard framework. However, there is no verifiable way to ensure that states are not developing weapons of

mass destruction (Spector 2009, 113-114). The NPT's failure to specifically define "peaceful" application of nuclear capabilities permits the acquisition of nuclear technology that can bring them weaponry without technically violating the terms of the Nuclear Non-Proliferation Treaty (Cirincione 2005, 157-158).

This loophole becomes more problematic when one considers Article X of the NPT which states that each party to the Treaty has the right to withdraw if it decides that "extraordinary events have jeopardized the supreme interests of its country" (United Nations 1968). North Korea, for example, withdrew from the NPT in 2003. In claiming that North Korea's national interests trumped their obligations to the Treaty, North Korea made a highly controversial decision to withdraw from the NPT and make the easy transition from peaceful nuclear energy to full-fledged nuclear weapons manufacturing (Keks 2011, 26). Due to North Korea's withdrawal from the NPT, it is no longer obliged to follow the Treaty's rules and regulations which include opening up their domestic reactors to inspections from the International Atomic Energy Agency. The fear that North Korea might use its nuclear weapons, paired with the lack of multilateral cooperation, has meant that the nonproliferation regime has been extremely compromised.

Another significant challenge to the Nuclear Non-Proliferation Treaty is the lack of infrastructure to enforce the obligations within the Treaty itself. When North Korea withdrew from the NPT in 2003 there was nothing that the NPT parties could do about it. The UN Security Council, responsible for maintaining international peace and security, was also essentially paralyzed (Johnson 2010, 435). Even the Iranian nuclear program was sheltered by the very language within the NPT to allow the rightful development of their nuclear energy. Regardless of the United Nation's argument that Iran's history of clandestine nuclear activities were suspicious and demanded that Iran halt all activities, Iran acquired and was successful at developing nuclear materials that have dual-use capabilities (Spector 2009, 119).

The Nuclear Non-Proliferation Treaty is fundamentally voluntary, where even the inspections by the IAEA are tied with clauses that require government permission for inspections. The Additional Protocol is an extremely important tool in the non-proliferation regime in that it allows for the inspection for undeclared and possibly undeclared nuclear activities (IAEA 2010). However, the IAEA continues to be burdened by non-compliance issues and even the efforts of the Additional Protocol to safeguard agreements are voluntary (Pilat 2007, 474). If there is no way to guarantee that the Treaty is being followed by the guidelines and regulations set up by the treaty and inspected by the IAEA, there is no confidence in the effectiveness of the regime itself in combating the spread of weapons of mass destruction.

Another threat to the non-proliferation regime is the activities of non-signatory states, specifically India, Pakistan and Israel. It is quite obvious that non-signatories pose a greater threat to the realization of NPT's goals.

A major criticism of India's recent nuclear activities, for example, is the perceived widespread acceptance of the India-U.S. nuclear deal by the international community (Johnson 2010, 436). With this deal, the United States reversed thirty-four years of opposing nuclear cooperation with India, which had refused to sign the Nuclear Non-Proliferation Treaty in 1968 (Singh, 2008). The acceptance of India into the international nuclear club without actually signing the NPT shows a preferential treatment policy. This kind of special recognition allows India to be the recipient of contracts worth \$27 billion dollars to build 18-20 nuclear reactors in India (Singh, 2008). This is extremely problematic and counterproductive to the objectives in the NPT: it allows India to participate in the production of nuclear technology, thereby improving India's opportunities for nuclear weapons development without the constraints and safeguards of the International Atomic Energy Agency. Furthermore, India's international image is now changed positively by being supported by the United States: numerous Indian officials have pointed out that India is no longer equated with Pakistan but rather has "de-hyphenated" them from one another (Singh, 2008).

Pakistan is also another major concern. The main reason was the global nuclear smuggling network by Pakistani nuclear scientist Abdul Qadeer Khan (Spector, 131). A.Q. Khan successfully conducted up to six nuclear tests in 1998 along with being the main supplier of enriched uranium to Libya (Love, 251). Pakistan was able to conduct all of these because it is not a signatory to the NPT and is not held the same standards, expectations and obligations to withhold from nuclear testing. Also in not being a signatory, A.Q. Khan supplied the previously non-nuclear state of Libya with the clandestine program necessary to tread down the path of full blown nuclear capability in the future. With the history of Pakistan being that of being a "proliferator" of nuclear technology and as a "black-market broker" (Johnson 2010, 436) it is a high threat to the nuclear non-proliferation regime.

Finally, Israel has received tremendous scrutiny from the international community because of its nuclear arsenal. Israel is isolated and consistently threatened by its neighbors therefore nuclear weaponry provides military leverage (Keks 2011, 26). However, the existence of Israel's undeclared but widely acknowledged nuclear arsenal is problematic for that very reason. As far as the Middle East is concerned, Iran's peaceful nuclear program together with Israel's nuclear arsenal along with other Middle Eastern nuclear states, contributes to an already conflict-prone region (Cirincione 2005, 160). The combination of all of these three states-India, Pakistan and Israel-and the lack of their signatures on the NPT are key problems in the goals of an international regime set on the non-proliferation of nuclear weapons.

The final point and central issue of the Nuclear Non-Proliferation Treaty and its ever-increasing irrelevance in combating the threats of today is its inability to thwart the potential for nuclear terrorism. Ever since the 9/11 terrorist attacks on the United States in 2001, the issue of terrorism has been pushed into the forefront of not only the American agenda but also the international community's as well. Terrorists are the most difficult to deter from using nuclear weapons as opposed to state actors because they do not have territory, people nor national figures to protect and therefore the acquisition of nuclear weaponry and access to nuclear stockpiles poses the largest threat (Cirincione 2005, 159).

This issue is of extreme importance because of the numerous amounts of stockpiles of nuclear weapons around the world and the lack of security in protecting them from terrorist acquisition. While the 2010 Review Conference of the Nuclear Non-Proliferation Treaty called for further reductions of the largest stockpiles of nuclear weapons, which belong to the U.S. and Russia, there are still nuclear civilian technology sites around the globe (Ibid., 159). With the availability of nuclear technology and weaponry being widely dispersed across the globe, terrorists are not limited in their choice of where to acquire them. The IAEA imposes safeguards on nuclear energy programs and relies on their ability to verify that states are complying with those safeguards but as stated previously, these safeguards are voluntary. Without the mandatory compliance to increase security of nuclear stockpiles, it is possible to see a similar scandal such as the Abdul Qadeer Khan network (Keks 2011, 26). Members of the Nuclear Non-Proliferation Treaty were urged to emphasize their “capabilities to detect, deter and disrupt illicit trafficking in nuclear materials” (United Nations, 2010) but the lack of adherence to the other, less extreme obligations does not leave much confidence in the future success of this objective.

Furthermore, the emergence of terrorist organizations and radical fundamentalist groups operating in Pakistan, a state already known for its instability and nuclear proliferation, continues to counteract the efforts of the NPT and the nuclear non-proliferation regime (Cirincione 2005, 159). The problem with the Nuclear Non-Proliferation Treaty in its original form is that it did not take into account that there would eventually be actors outside of the Treaty that would not comply with the international norms and objectives. Terrorists are outside of the rational decision-making that is presumed of state actors when making choices regarding nuclear technology and nuclear weaponry. Therefore, no one should expect or believe that the NPT will serve effectively as a major source of nuclear weapons restraint for non-state actors (Potter 2010, 76).

Overall the Nuclear Non-Proliferation Treaty, in being the heart of the international nuclear non-proliferation regime, is in dire need of revamp in order to combat the threats posed in our current nuclear age. The loopholes and vagueness in regards to states and their right to develop peaceful nuclear energy continues to bring states on the brink of full nuclear capabilities. The lack of infrastructure and enforcement of signatories to the Treaty to the obligations of non-proliferation, disarmament and peaceful use of nuclear energy make the confidence and legitimacy of the entire regime questionable and weak. The continued pursuit of nuclear capabilities of the three key non-signatories-Israel, India and Pakistan-are threatening the safety of other nations along with the legitimacy of the regime who promises cooperation and protection. And finally, the inability for the Nuclear Non-Proliferation Treaty to combat the modern reality and fears of global terrorism pose the largest issue for the regime. Without a serious overhaul and re-examination on how to effectively and quickly adapt to the threats growing in the new millennium, the non-proliferation regime is in danger of collapse.

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ABOUT THE POLITICA

The *East Bay Politica* was an initiative of Prof. Melissa Michelson. Began in 2006, the first *Politica* was published in spring 2007 and has become a yearly forum for students to present their research and writing in political science.

The articles in *The Politica Online* were peer-reviewed and selected through a double-blind process. Students from different departments were asked to submit their papers for consideration.

The goal of *The Politica* is to present a variety of perspectives on the different subfields of political science. Interdisciplinary work is also encouraged.

The next issue will be published in May 2012.

For inquiries or for submission guidelines, please contact Prof. Ortuoste at maria.ortuoste@csueastbay.edu.

