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The Political Science Club of Kwantlen

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# A Note from the Editors:

The editorial staff of the 2016-17 edition of the *Kwantlen Journal of Political Science* is privileged to present the publication on behalf of the Political Science Club of Kwantlen. The articles you are about to read were selected from among the very best essays submitted to KPU's Political Science faculty following the publication of the 2015 edition of the *Journal*. They showcase the academic achievements made by students in Political Science, and we would like to congratulate the student authors. Their contributions to academia are noteworthy.

We would like to express our gratitude to Dr. Greg Millard for being this year's Faculty Advisor. Without his support, this edition would not have been possible. We would like to extend our gratitude to Dr. Millard for his assistance in encouraging the club to take on this endeavor. We encourage future students who wish to see their work published to contact the Political Science Club of Kwantlen to get involved.

We hope you enjoy the *Journal* as much as the editorial staff enjoyed working on this project!

Patrick McIlveen, Caitlin McCutchen and Nelson Juma

KJPS Editors, 2016/7

*Patrick is a fourth year Political Science Major. His academic interests include human rights, international security and international organizations. Patrick would like to pursue a career in the public sector working for a municipality. His interests outside of academia include cooking, spending time with his family and home brewing his own beer. Patrick would like to thank Caitlin and Nelson for helping this year's journal reach the final stages.*

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# Two Solitudes and Beyond: Pierre Trudeau, the *Official Languages Act*, and the progress of Canadian pluralism

*Geoffrey Nilson*

No concept of the Canadian identity held more sway in public and political consciousness in the 20th century than novelist Hugh MacLennan's "Two Solitudes."[1] The false perception MacLennan created, of a Quebec perpetually at war with itself, torn between federalist responsibilities and dreaming of sovereignty, is a perception exceedingly mythologized. The reality is complicated and involves many political and social factors. At the forefront of these factors is language. Identity is inseparable from language and in spite of dramatic increases in non-Francophone and non-Anglophone populations in the last fifty years of the 20th century, the 2001 Census showed that 82% of reporting Canadians spoke either English or French as their mother tongue.[2] But the complex narrative of bilingualism is more than a simple statistic, and no character plays a bigger role in the story than Pierre Elliot Trudeau.

This paper will explore the *Official Languages Act* (OLA) and the policy of institutional bilingualism of English and French, through which the public could choose in which official language they received public services. Pierre Trudeau's ideas about federalism and French Canada's role in Confederation, along with the recommendations from the Royal Commission on Bilingualism and Biculturalism (B&B Commission), propelled the OLA through parliament with all party support. The short-term views on the results of the OLA were mixed. Millions were invested annually on language training for the civil service and language education subsidies for provincial public schools. But by the 1980s, critics viewed the OLA as deeply flawed, ineffective, and expensive. The Act was dismissed as Trudeau's failed attempt at stopping the Quebec nationalist movement, but the bulk of the criticism amounted to mostly conservative ideology rather than evidence-based assessment. Analysis of the long-term effects, however, has highlighted the successes of the OLA, specifically in official language education, and in attitudes toward Canadian multicultural society, where individual human rights are respected and enshrined in the Charter of Rights and Freedoms. The OLA has contributed to the fabric of a Canada that views itself as a "just society, highly regarded worldwide not for [its] wealth or strength, but for [its] peaceable and humane nature,"[3] and the act continues to be a benchmark for the nation's willingness to embrace cultural and linguistic diversity as official government policy. In the short term, the *Official Languages Act* was an unsuccessful

attempt by Pierre Trudeau's Liberal government at staving off French Canadian nationalism and separatist sentiment in Quebec. In the long term, however, the act succeeded in creating institutional bilingualism in the federal government, becoming a policy benchmark in Trudeau's legacy, and helping build the social and political framework for national Canadian pluralism.

Background: Official Bilingualism in Brief

The decision by the Liberal governments of Lester Pearson and Pierre Trudeau to actively promote English and French as two official languages was a decisive break from the historical discourse regarding language issues in Canada.[4] The *Official Languages Act* flowed directly from the recommendations published in the reports of the Royal Commission on Bilingualism and Biculturalism called by Prime Minister Lester Pearson in 1963. The B&B Commission recommendations were as follows: 1) bilingualism should be institutional rather than individual; 2) bilingualism should be personality bilingualism not territorial bilingualism, meaning that Canadians should receive services wherever linguistic minority numbers warranted; 3) the federal government should appoint a permanent Commissioner of Official Languages; 4) there should be access to minority language education in "bilingual districts" of minimum language population of 10%; 5) second language instruction should be made compulsory in Canadian schools; and 6) both English and French should be freely spoken and supported in the National Capital Region.[5]

The "federal government's responses [to the B&B Commission] were virtually unprecedented in the history of royal commissions, as to the completeness of [the government's] treatment of the Commission's recommendations."[6] The OLA, which came into law in 1969 under the administration of Pierre Trudeau, developed a more formal framework for the use of English and French in an institutional context. Legal protection of English and French was rooted in the *British North America Act*, specifically Section 133 which allowed the use of both languages in parliamentary debate and court proceedings, and which made mandatory the printing of laws in both languages in Canada and in Quebec. What Trudeau wanted to do with the OLA was to craft a policy that would respond to a Canadian linguistic duality, offering government services and education in English and French across the country. He also sought to respond to the Quiet Revolution in a way that made the federal government relevant to French Canadians, while staving off Quebec separatism.[7] Trudeau fought vigorously (if unsuccessfully) against attempts for French uniligualism in Quebec.

The *Official Languages Act* (1969) broadened the scope of Section 133 of the *British North America Act,* giving equal status to English and French languages in Parliament,

before the courts, and throughout the federal government. The Act supported the development of official language minority communities while also advancing the equal status and use of English and French. All federal institutions, including the Parliament of Canada, Crown Corporations, and all federal departments, were considered target institutions (Section 3). Parliamentarians and the public had the right to use both English and French, and parliament is obligated to provide simultaneous interpretation of debates and proceedings (Section 4). Acts of parliament must be enacted, printed and published in both official languages (Sections 5 to 13). Other than in the Supreme Court of Canada, citizens have the right to be heard by a judge who understands the official language chosen for the proceedings without the need for an interpreter (Sections 14 to 20). This was applicable in the Tax Court of Canada, Federal Court and Federal Court of Appeal, the Human Rights Tribunal, Social Security Tribunal, and the Immigration and Refugee Board. The purpose of the OLA was not to make every Canadian speak both official languages but to ensure the federal government's ability to provide services in the official language of choice without delay (Sections 21 to 33). Employees of federal institutions have the right to work in the official language of choice in specific regions of the country—what is known as the Bilingual Belt—that runs from New Brunswick through to the National Capital Region (Sections 34 to 36). This right to work included rights of access to work tools and the right to be supervised, write, speak and access training in the official language of choice. The Act set out in clear terms the commitment to equal opportunity of employment and advancement in federal institutions while also supporting the advancement of both official languages in all parts of Canadian society (Sections 39 to 45).[8]

Criticisms of the OLA continue to be based on attitudes towards Canada's linguistic duality and the idea that bilingualism was imposed on Canadians, but the federal approach to official languages of which Trudeau was the chief architect, was based on institutional bilingualism: the responsibility of government to communicate with citizens "coupled with a commitment to serve its citizens in their official language."[9] There was no imposition of bilingualism, only a commitment to provide equal access language rights for the two majority populations of Canadian society. But as will be seen, Trudeau's reasoned approach based on linguistic equality and a centralized federalism, was not enough to stop either the rise of separatism or critiques of the policy.

Short-Term Criticisms

In his essay "The Politics of Official Bilingualism in Canada," Milton Esman outlines the political objective of the OLA as "to convince the French speaking minority

concentrated in Quebec that they are fairly treated and should commit their political future to Canada."[10] Trudeau believed he could mitigate French Canadian discontent by equality or parity in language status and practice. This belief came directly from his essay "Federalism, Nationalism, and Reason," in which he outlined that if a Canadian government serves the needs of Francophones, there would be no need for French Canadian separatism.[11] The OLA was an initial success, at least anecdotally. Before the OLA, public services—including federal, capital, administrative, and armed forces sectors of government—worked completely in English. After the OLA, the government instituted a bilingual language regime throughout Canada that "ensure[d] equal status for both official languages."[12] Unfortunately, the grievances of French Canadians who lived in Quebec could not be mitigated by official bilingualism and, consequently the dream of the B&B Commission evaporated. By 1974, Quebec, under a federalist Liberal provincial government, had favoured French unilingualism. "On 31 July 1974, Bill 22 was enacted into law. It declared French to be the sole official language of Quebec, provided that all professionals licensed by the province must qualify in the French language, required that large and medium-size enterprises convert to French at the managerial level and increase the number of French speakers in their ranks, and decreed that all children of immigrants who cannot demonstrate a working knowledge of English henceforth attend French medium schools."[13] Furthermore, Ontario had also refused to adopt a bilingual regime, thus marginalizing French minorities in the east and northeast of the Province. Trudeau learned quickly that it was difficult to reconcile Canada's two official languages in the face of rapidly changing diversity and the complications of jurisdictional spheres.

In the decade after the enactment of the OLA, data signaled a vast improvement in the numbers with regard to not only Francophone presence in government services but in the numbers of employees who use the French language most at work.[14] Esman attributes this to the fact the "policy was vigorously enforced by [Trudeau,] a fluently bilingual prime minister who was deeply dedicated to this principle, who insisted that the 'French fact' be recognized and accepted throughout Canada, and who appointed Francophones conspicuously in unprecedented numbers to senior positions."[15]

Qualified bilingual incumbents in bilingual jobs continued to increase, from 53 percent in May 1974 to 80 percent in September 1977, and Francophone employees were much more likely to use French at work, especially in Ottawa where half the positions are bilingual."[16] Trudeau succeeded in his goal of making a federal government that served the needs of French Canadians and provided those opportunities equal to those provided to English Canadians. He made the civil service accessible and placed bilingualism at the heart of federal government and its institutions. The Trudeau government was extremely generous in financial

allocations for public service language training—reaching $503 million for the year 1978/79—and the results were impressive. “In the space of a decade, language behavior within federal institutions changed: public services [we]re increasingly available in both languages; French [wa]s used as a language of work; and an increasing proportion of staff members at all ranks c[a]me from backgrounds where French [wa]s the native language.”[17] Yet outside the federal government, bilingualism did not have the same success.

Esman declared official bilingualism a failure after a decade because he viewed the OLA (that passed with all party support in 1969) as Quebec vote-buying rather than the reasoned stance Trudeau outlines in “Federalism, Nationalism, and Reason” of a government that serves French Canadians as equal to English Canadians. Esman blames the party whip system for a lack of opposition in the House. He claims that lack of opposition did not reflect actual public sentiment regarding official bilingualism but offers no data to substantiate his claims. Instead, he relies on the traditional straw man of the conservative populist: the “elites.” “Political elites successfully mobilized elites of other sectors—journalists; educators; clergy; financial, industrial, and labor leaders—into an elite phalanx that supported the official language policy as an expression of enlightened citizenship and a prerequisite to the future of a united Canada.”[18] To Trudeau the destiny of French-Canadians lay not in self-segregation but in the opportunity to participate as equals in all dimensions of endeavor everywhere in Canada. To Esman, Canada is not a bilingual nation, but one of territorial unilingualism, and the territorial unit is the province. The truth was the federal government was unable to bind its provincial counterparts with regard to official bilingualism and each province had their own regional concerns they were forced to abide by. For better or for worse, the OLA did not bring the "two solitudes" together.

Long-Term Positives

When Stéphane Dion developed an action plan for official languages in the final years of Prime Minister Jean Chrétien’s Liberal government, he called Canada’s official language policy, without a shred of irony, “one of the country’s greatest success stories ever.”[19] Compared to the analysis put forth by Milton Esman, it is difficult not to read Dion’s proclamation as unconvincing hyperbole, but once it becomes clear that Dion is looking at the policy from a fundamentally different perspective than Esman—a long-term perspective rather than short-term perspective—the idea of the OLA as success story become more convincing. While Esman’s evaluation of official language policy came after only ten years, Dion, writing his report in the early years of the 21st century, had the benefit of almost forty years of history to make his

judgment. Dion also based his evaluation on the research methods of the B&B Commission, which he called the "most extensive humanities research program ever known in Canada," and the fact that official languages policy stemmed directly from the research, data, and recommendations of the Commission. His assessment of the success of the OLA was founded on not only the tangible, albeit slow, progress of bilingualism, but the idea that the government enacted policy in accordance with the research and data of the Commission.

After Royal Assent to the OLA in 1969, language rights were enshrined in the Constitution Act in 1982 and the OLA went through significant amendment by the Conservative Mulroney government in 1988, ensuring the act was in compliance with the Charter of Rights and Freedoms. Long term statistics from 2001 show that the Anglophone majority was much more open to Canada's linguistic duality than it was when the OLA was passed in 1969. Official languages policy was especially popular among youth, and the majority of parents supported their kids learning a second official language in school.[20] Mastery of English among Francophone youth rose from 31% in 1971 to 42% in 2001. Mastery of French among Anglophone youth outside Quebec rose from 7% in 1971 to 14% in 2001.[21] Dion called the progress of individual bilingualism good but too slow. The progress of institutional bilingualism—the original intention of the OLA—on the other hand, was significant. The public service went through an incredible transformation, from a near English unilingualism in 1971 to a government of 37% bilingual positions and Francophone representation at all levels in the hierarchy. There was also a transformation of educational institutions in minority Francophone communities. Dion fills his short report for the Chrétien government with data that support his claims for the long term success of the OLA rather than basing his assessment, as Esman did, in vague populism, and let's face it, conservative, pro-English ideology. Dion accepts there is still much work to do with regard to official languages policy in Canada, namely with adaptations regarding Indigenous languages and their place among the founding cultures of the country, but he ends his article with a sentiment that is hard to disprove: "Francophones could only dream 40 years ago about the institutions and rights they enjoy today."[22]

The Triumph of Canadian Pluralism

Shortly after the OLA was passed in 1971, the federal government opted for multiculturalism within a bilingual framework. Pierre Trudeau described policy that "[would] help break down discriminatory attitudes and cultural jealousies. National unity, if it is to mean anything in the deeply personal sense, must be founded on confidence in one's own individual identity; out of this can grow respect for that of others and a willingness to share ideas, attitudes and assumptions."[23] And Trudeau's

policy has been a success by any standard with Canada becoming one of the most culturally diverse countries on earth. 84% of recent immigrants (after four years in the country) say they would do it all over again given the chance.[24] In his book *Unlikely Utopia: The Triumph of Canadian Pluralism*, Michael Adams argues that Canada is good at managing diversity and that "this claim is neither vacuous national boosterism nor a quaint, deluded idea lifted from some 1970s government brochure."[25] For Adams, the triumph of Canadian pluralism comes because the country has managed where other nations have failed: to overcome, in most parts, its longstanding history of racism. Beginning with the treatment of Indigenous peoples by European colonists and continuing with Victorian attempts at racial purity, Canada has an extensive history of institutional racism and government policy discriminating against immigrants from all over the globe. It was not until in 1967 with the introduction of the points system by Immigration Canada that the Canadian government abandoned explicitly racist immigration policies.[26] On the role of the B & B Commission and the Official Languages Act in advancing the notion of Canadian pluralism, J.L. Granatstein writes that the "contributions were in detail not great; what [they] did do was help prepare English Canadians for the necessity of change. That was a major achievement, immeasurable as it might be."[27] The development of the OLA prepared the Canadian public for the acceptance of racial and linguistic diversity as a central part of Canadian life. For his part, Pierre Trudeau recognized this fact when he said in a speech to the Ukrainian Congress of Canada, "there is no such thing as a model or ideal Canadian. What could be more absurd than the concept of an all Canadian boy or girl? A society that emphasizes uniformity is one which creates intolerance and hate."[28] Trudeau, through his steadfast efforts for individual human rights, bound the OLA and federal policies of multiculturalism as benchmarks of his political legacy, and ensured pluralism as essential to the fabric of a modern Canadian society.

## Conclusion

Recent trends in Quebec toward anti-immigrant policy such as the Quebec Charter of Values[29] make it seem as if the dreams of bilingualism and national pluralism are evaporating. Michael Adams sees these types of policies as stemming not from directly racist beliefs, but from fear of immigrant minorities harming or diluting the status of the French identity in Quebec. French Canadians in Quebec fought long and hard, with high costs, for their recognition through the Quiet Revolution, and the public is understandably uneasy about any non-Francophone cultural capital creeping into Quebec society. Still Adams writes: "When my Catholic mother and Protestant father married in Walkerton, Ontario in 1945, it raised plenty of eyebrows, including their parents'. One generation on, I won't be surprised or dismayed if either

of my kids brings home a person of any background, or either gender. Contexts change. Values change. People change."[30] The change Adams describes would not have been possible without the efforts of Pierre Elliott Trudeau and the Official Languages Act. Both tried their best to reconcile the two solitudes of French and English Canada within the national federalist context. When evaluating official language policy in Canada it is helpful to remember that though conflict between English and French Canadians is almost always in a different stage of development, with different factors helping and hindering the relationship, "the polarization of a political community along any single dimension, or through the coalescing of differences in tandem with any single cleavage (over religion, for example, or language, or race, or— as the Marxists would have it—class) is a recipe, not for resolving conflict, but for ensuring that it will persist and become more intense."[31] In the short term, as assessed by Milton Esman, the OLA was an unsuccessful attempt by Pierre Trudeau's Liberal government at staving off French Canadian nationalism and separatist sentiment in Quebec. In the long term, in a surprise to everyone save its advocates, the act succeeded in its goal of widespread institutional bilingualism in the federal government, becoming a policy benchmark in Trudeau's legacy and helping build the social and political framework for Canadian national pluralism.

# Pursuing a Commitment to the Responsibility to Protect

## Curtis Russell

First promulgated in a report issued by the International Commission on Intervention and State Sovereignty (ICISS) in 2001, aptly titled *The Responsibility to Protect*, the concept of the responsibility of a state to protect its own citizens from atrocity crimes (hereafter referred to as R2P) has rapidly gained recognition throughout the international community. Born out of a collective desire to prevent atrocities such as those which had been committed in Srebrenica and Rwanda, R2P initially appeared to enjoy widespread support, with its core tenets unanimously agreed upon by member states at the 2005 World Summit.[1] Organized into three pillars, R2P seeks to redefine the concept of national sovereignty by shifting the focus from territorial control to responsibility to protect citizens. Despite initial signs of promise, the first ten years of R2P's existence have unfortunately been marred by controversy and half-measures. Following the R2P-mandated operation which overthrew the Gaddafi regime in Libya in 2011, much of the debate surrounding R2P has focused on its third pillar: authorizing member states to intervene militarily within a country that is unable or unwilling to uphold its commitment to protect its citizens.[2] However, R2P implementation faced challenges prior to 2011, and continues to face difficulty regarding its first two pillars in the years since, controversy concerning its third pillar cannot be said to account for all of the problems in implementing R2P. Broadly speaking, challenges to the international community's commitment to upholding R2P as an international norm fall into three categories: political, moral, and tactical. With reference to case studies throughout Africa and the Middle East, this paper will seek to briefly explain these challenges and attempt to establish an optimistic yet pragmatic outlook regarding the likelihood of R2P's success beyond its infancy.

The first and perhaps most pressing obstacle facing the successful implementation of R2P as an international norm can be described as a general lack of political will among international actors. This problem has plagued United Nations (UN) operations since the inception of the organization, and was instrumental in contributing to the very atrocities which necessitated the creation of R2P as a guiding principle. As the UN has a very limited capacity for generating military, diplomatic, or economic leverage over states which commit crimes against humanity, it falls on member states themselves to commit to engaging with one another over humanitarian issues. As humanitarian interventions are expensive and promise no tangible return for political-elites, states have been understandably reluctant to initiate such operations.[3] Furthermore, as unsuccessful military interventions, such as those in Libya, Iraq, and Afghanistan, can

tarnish the instigators reputation internationally and domestically, political elites are discouraged from taking the initiative to prevent further human suffering.[4] This dilemma is exacerbated in democratic countries, where the political elites have to contend directly with public opinion in the form of elections. An unpopular military engagement can be devastating for an elected leadership, especially if the public itself does not support the idea of humanitarian intervention to begin with. This has been the case in both Britain and the United States in the years following wars in Iraq and Afghanistan, which, while technically not carried out in the name of R2P, contributed to a lack of public confidence in the concept of military intervention.[5]

Visible public support for R2P's core tenets is crucial for the success of the principle. Without the realistic threat of coercive action in the form of sanctions, severance of diplomatic relations, or military intervention, it is unlikely that those states which are determined to commit atrocities could be persuaded otherwise, i.e., to protect the rights of their citizens. In the wake of post-electoral violence in Kenya in 2007, R2P was invoked as a means of preventing further escalation of violence. Had it not been accompanied by threats of economic sanctions by the United States, it is uncertain whether peaceful resolution would have been achieved as quickly as it was.[6] While it did not directly invoke Chapter VII of the UN Charter, the case of Kenya stands as an example of successful R2P implementation because the threat of coercive action was believable.[7] However, as public opinion in democratic countries has shifted toward a reluctance to support coercive measures, potential aggressors may act freely in suppressing human rights, safe in the knowledge that threats of intervention are unfounded.[8]

The international community must be willing to demonstrate its support for upholding their commitments to R2P. Currently there are no meaningful international repercussions for state actors who fail to uphold this commitment, while there are a plethora of potential risks associated with doing so. In order for R2P to become an accepted international norm, democratic governments must be willing to stake their reputations on the success of humanitarian missions.[9] It is also essential to establish dialogue between political elites and the public in order to create a political culture prioritizes the protection of human rights. As long as political leaders face no meaningful repercussions for failing to uphold R2P commitments, widespread atrocities and neglect will continue to proliferate. An example can be clearly seen in the European Union's mishandling of the ongoing Syrian refugee crisis, wherein only Germany, which accepted more refugees in 2015 than the rest of the European Union combined, can claim to have contributed its fair share to the protection of vulnerable persons.[10] Aside from the deceased, refugees are the most obvious example of victims of gross human rights violations, and yet the burden of the Syrian refugee crisis has

thus far fallen almost entirely on five regional states: Iraq, Egypt, Lebanon, Turkey, and Jordan.[11] The overwhelming inequality of R2P commitment can change, but only if states are held accountable for failing to do their part.

The second distinct series of challenges facing the international community's commitment to R2P relate to the moral difficulties of establishing an R2P framework, which is accepted in its entirety by all state actors. Despite unanimous acceptance for the principle of R2P at the 2005 World Summit, which saw the largest gathering of heads of state in world history, divisions have emerged over rivaling interpretations of how to implement R2P.[12] This divide is most clearly visible between the Global North and South, or the developed and developing nations.[13] While the South's commitment to the first two pillars of R2P is absolute, member states in Asia and Africa have expressed apprehension regarding the idea of a norm which allows for intervention at the expense of national sovereignty.[14] Often stemming from the tumultuous colonial histories of these states, this reluctance has manifested itself as a veil of uncertainty and confusion concerning how and when humanitarian intervention is permissible.[15] Indeed, the absence of a clear framework for the implementation of R2P constitutes the potential norm's most persistent limitation, ensuring that whenever it is invoked it is mired in controversy.

However, it would be erroneous to assume irresponsibility on the part of the Global South or a lack of commitment to the idea of R2P. Since 2005, both Brazil and China have proposed their own interpretations of R2P in the form of Brazil's "Responsibility while Protecting" (RwP) and China's "Responsible Protection" (RP), which emphasize the importance of monitoring and transparency while maintaining an adherence to the core values set forth in the ICISS report.[16] Rather than attempts to undermine the legitimacy of R2P, both RwP and RP should be considered to be valuable contributions to the discourse on how to properly engage in humanitarian intervention.[17] Furthermore, support for RwP and RP demonstrates that Brazil and China – which represent key emerging global powers – acknowledge the necessity for a policy which permits non-consensual military intervention in order to protect against gross human-rights violations.[18] These divergences are not indicative of a fundamental weakness inherent in R2P, but rather show the Global South's commitment to seeing R2P become a fully-fledged norm that is acceptable to all member states.

Nevertheless, there remains significant room for improvement in reconciling the differing perspectives of Northern and Southern states vis-à-vis R2P. A common myth surrounding R2P is the belief that R2P represents the imposition of Western values. This is a misconception.[19] While it is true that most of the discourse surrounding R2P

and humanitarian intervention is conducted by Northern state academics, it is important to note that R2P only received unanimous support at the World Summit due to extensive dialogue between Northern and Southern state leaders.[20] The concept of humanitarian intervention itself was first proposed by the African Union, which has remained a strong supporter of the principle.[21] By propagating the myth that R2P is a solely Northern concept, states in the Global South retain room to maneuver by distancing themselves from unpopular operations carried out in the name of R2P.[22] The international community must overcome this divide and each member state must assume responsibility in order for R2P to succeed and gain credibility. Only when Southern states vocally adopt leadership roles in promoting R2P globally will R2P cease to be misrepresented as a uniquely Northern concept.

Finally, the international community's commitment to R2P is weakened further by the unsteady alliance that has emerged between R2P and traditional Peacekeeping operations.. Libya represents the only example of an R2P-mandated military intervention, other cases of R2P implementation have occurred through UN mediators and peacekeepers.[23] However, there have been difficulties in integrating peacekeeping within the practices of R2P. Traditionally, peacekeepers were tasked with conflict resolution and ensuring peace and stability between state actors, without attention given to the protection of civilians.[24] The crises in Rwanda and Bosnia in the 1990s have since caused a growing expectation for the UN to include human rights protection guarantees in its peacekeeping forces. As a result, the majority of peacekeeping missions currently in operation hold mandates which bestow upon them the responsibility to ensure the protection of human rights, often in accordance of Chapter VII of the UN Charter, which permits the use of force.[25] Some have argued that this has compromised peacekeepers' claims to impartiality, as "it is difficult… to tactically protect civilians without being seen as strategically taking sides."[26] As peacekeepers operating in accordance with R2P principles are still subject to the consent of all parties to any given conflict, this has forced peacekeepers to often have to choose between protecting civilians and upholding their mandate. As an example, the case of the genocide in Darfur saw the extent of the organization's reliance on state consent, as UN peacekeepers were unable to act in the country without the consent of the regime committing the act of genocide.[27]

Additionally, peacekeeping missions carried out in the name of R2P suffer from the same chronic problems that beset all other UN-mandated peacekeeping operations: a lack of manpower, insufficient funding, and rampant political apathy. In South Sudan, for instance, negotiations between two warring parties were delayed for five months in 2014 as the UN was forced to prioritize its attention and resources elsewhere.[28] The Central African Republic has also suffered immensely from a lack of

UN support, largely owing not to negligence on the part of the UN but to its strained capacity to respond to crises.[29] The UN simply does not have the resources necessary to sustain its own commitment to R2P, a problem arising directly from the international community's failure to commit to the organization and its principles.

Nevertheless, the first ten years of R2P's existence have not been entirely disastrous. While the events unfolding in Syria have been widely condemned as a failure of R2P, it is worth acknowledging that the simple fact that states feel it necessary to shift blame or to justify their actions with regards to R2P is a clear indicator that the concept has taken root in the minds of key actors in the international community.[30] This is also apparent in states' willingness to condemn those – such as China and Russia – which are perceived to be standing in the way of R2P implementation.[31] The general discussion about R2P focuses not on whether it should exist, but rather how to implement it in a pragmatic sense, is further evidence of its gradual acceptance by the international community. Moving forward, states must be willing to persevere with R2P in order to establish reputations for protecting human rights. R2P needs to be constructively negotiated with a clear framework established in order to avoid controversy and encourage international participation. Finally, states must be willing to support UN peacekeeping operations when they are deployed, and grant them mandates, which are flexible enough to permit a staunch commitment to R2P. The UN has demonstrated an ability to learn from its mistakes, and so it would be inappropriate to judge the success or failure of R2P by its first decade alone.

# Geographic disparities in human rights enforcement: assessing the efficacy of regional human rights regimes.

## Mihran Keurdian

The groundbreaking work of the United Nations (UN) in expanding and strengthening the field of international human rights has inspired important developments in securing human rights worldwide at the regional level.[1] Accordingly, regional human rights regimes in Africa, the Americas, and Europe have played a significant role in monitoring, promoting and protecting human rights among member states, primarily via intermediary intergovernmental organizations, namely the African Union (AU), the Organization of American States (OAS), and the Council of Europe (CoE) respectively.[2] Situated within a broader international legal infrastructure and rooted in a global framework of human rights treaties and protocols, regional human rights regimes are relatively coherent, independent human rights systems, by and large codified in three principle regional human rights treaties—the African Charter on Human and Peoples' Rights (ACHPR), the American Convention on Human Rights (ACHR), and the European Convention on Human Rights (ECHR).[3] In addition, relatively new regional bodies, with fewer functions and enforcement capabilities, have formed in recent years to monitor human rights conditions in the countries of the Middle East and Southeast Asia.[4] Thus, regional human rights protection mechanisms constitute important pillars of the international system for the monitoring, promotion and protection of human rights.

Yet despite some similarities in their core philosophical commitments to the idea of human rights, regional systems differ widely with respect to substantive operational policies and capabilities, modes of implementation and overall regime efficacy. But what are the distinctive features of these regional systems and how exactly do they differ from one another, both with respect to theory and practice? Do some regional systems problematize the indivisibility and universality of human rights with political resistance grounded in notions of cultural relativism? Finally, why is the European human rights system comparatively more effective than its counterparts and what accounts for this relative success? In pursuing these questions, this essay will critically evaluate the effectiveness of the various contemporary regional human rights regimes, and will argue that the longstanding ascendancy of liberal political ideology and a history of democratic values, traditions and governance models have played a vital role in the comparative success of the European system of human rights protection.

The UN's Universal Declaration of Human Rights (UDHR) is a milestone document in the modern history of human rights. Article 1 of the UDHR states that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[5] When adopted in 1948, the UDHR became the first internationally embraced legal document since the Second World War that concentrated on the promotion and defence of universal human rights.[6] Thus the UDHR shepherded the concept and discourse of human rights protection into the realm of international law, enshrining the idea that human rights are inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being, regardless of her or his nationality, language, religion, ethnic origin or any other status.[7] Together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—both adopted by UN member states in 1966 and entered into force in 1976—the UDHR formed an integral part of what came to be known as the International Bill of Human Rights.[8] In combination with a series of international human rights treaties and other legal instruments adopted by the UN over time, the International Bill of Human Rights has expanded the body of international human rights law and has inspired the construction of substantive regional human rights mechanisms. Beginning with the adoption of the European Convention on Human Rights in 1950, the trend to elaborate regional human rights standards continued with the adoption of the American Convention on Human Rights in 1969, which was subsequently followed by the African Charter on Human and Peoples' Rights, adopted in 1981.[9]

Contemporary regional human rights regimes share a number of features in common. Each of the regional human rights systems was established under the auspices of an intergovernmental organization composed of member states.[10] By creating and joining regional human rights treaties, member states have agreed to respect, protect, and guarantee the enjoyment of specific freedoms for all people within their territories. In Europe, Africa and the Americas, the key feature of each system is a complaints mechanism through which plaintiffs can seek justice for human rights violations committed by a state party or agent thereof.[11] The regional human rights commissions and courts determine whether the state identified in a complaint is responsible for the alleged violation and, if so, distinguish what policy changes should be enacted to ensure that the violations do not recur and whether restitution should be provided. However, regional human rights systems are not meant to take the place of national courts. Rather, parties alleging human rights violations before a regional human rights body must generally first try to resolve the problem using any appropriate remedies that are available at the local or national level. Thus, a member state will only be considered internationally responsible for human rights violations

if it failed to remedy problems domestically, in a suitable and timely manner, when it had the opportunity to do so.[12]

In addition to adjudicating individual complaints, regional human rights systems engage in a range of human rights monitoring and promotion activities. The Inter-American Commission and African Commission, in particular, prepare reports on human rights practices of concern, carry out country visits, and monitor the rights of vulnerable groups and emerging human rights themes by appointing experts or special rapporteurs to focus on those topics.[13] The regional human rights courts, on the other hand, typically only receive complaints and do not engage in other monitoring or promotion activities. These courts also contribute to the legitimization and understanding of regional human rights treaties by offering advisory opinions on the meaning of treaty provisions.[14] However, despite the aforementioned similarities, the nature and duties of each regional human rights system, as well as the legal doctrines and philosophical standards they apply, vary widely and are established in regional treaties as well as in each intergovernmental body's rules of procedure.

The European human rights regime, organized under the auspices of the Council of Europe, is the oldest and most progressive regional system.[15] Founded in 1949 and headquartered in Strasbourg, France, The Council of Europe is responsible for both the European Convention on Human Rights and the European Court of Human Rights (ECtHR).[16] The European Convention on Human Rights, signed in 1950 and entered into force in 1953, defines and guarantees a robust schedule of human rights and fundamental freedoms operational throughout Europe.[17] All forty-seven-member states of the Council of Europe have signed the Convention and are therefore under the binding jurisdiction of the European Court of Human Rights in Strasbourg.[18] Thus the ECtHR is authorized to adjudicate complaints against all Council member states and is the only international court with jurisdiction to deal with cases brought forth by individuals. Since individuals, groups of individuals, non-governmental organizations and states may all submit petitions concerning alleged violations of the European Convention on Human Rights, the Court has a backlog of thousands of cases and a multi-year waiting list to file applications.[19] Despite this legal logjam, however, the ECtHR has addressed an extraordinary range of issues once considered matters of domestic jurisdiction, and has produced a vast and diverse body of case law on civil and political rights violations.[20]

In addition to the European Convention on Human Rights, there is the European Social Charter, which is the European counterpart to the UN's International Covenant on Economic, Social and Cultural Rights (ICESCR).[21] The European Social Charter was originally concluded in 1961, with a revised version adopted in 1996 that entered

into force in 1999.[22] Forty-three Council of Europe member states are party to the Charter and compliance is monitored by the European Committee of Social Rights through a regular state reporting mechanism.[23] The European Committee of Social Rights is comprised of fifteen independent members, elected by the Council of Europe's Committee of Ministers for a period of six years, renewable once.[24] Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the relevant protocols, decisions and conclusions reached by the European Committee of Social Rights must be respected by the states concerned; even if they are not directly enforceable in the domestic legal systems, they can provide the basis for positive developments in social rights through legislation and case law at the national level.[25]

It has been argued that the relative success of the European human rights model is due in large part to the longstanding and far-reaching influence of liberal political theory and democratic governance models. Liberalism prioritizes individual civil rights and liberties as the highest political value and thus regards the safeguarding of human rights as a precondition for socioeconomic progress and political stability.[26] Liberal democracy, rooted in the tenets of natural law, is understood by its proponents to be a legitimate and proper political pathway to achieve international peace and security, economic and social progress and development, and respect for human rights—the three pillars of the United Nations mission as set forth in the UN Charter.[27] Moreover, the relative success of the European regional system rests in part on the existence of robust domestic institutions within member states, particularly executive constraints that are key to ensuring compliance with the decisions of the European Court of Human Rights and the European Committee of Social Rights.[28] Thus, when domestic institutions enforce the Court's and Committee's rulings, the results can be significant changes in states' human rights policies and practices region-wide. This is in part due to the prolific range of legal remedies to human rights violations handed down by the ECtHR, which range from providing compensation to victims to revising or repealing statutes, reopening criminal proceedings, modifying administrative rules and freeing illegally detained individuals.[29]

The Inter-American Commission on Human Rights (IACHR), whose mission is to promote and protect human rights in the Western hemisphere, is operationalized through the Organization of American States (OAS), an intergovernmental organization comprised of the thirty-five member states of the Americas.[30] Created by the OAS in 1959, the Commission has its headquarters in Washington, D.C, and together with the Inter-American Court of Human Rights (IACtHR), installed in 1979, the Commission comprises the institutional core within the inter-American system

for the protection of human rights.[31] In 1948, several months before the adoption by the UN General Assembly of the Universal Declaration of Human Rights, the Ninth International Conference of American States meeting in Bogotá, Colombia adopted the American Declaration of the Rights and Duties of Man.[32] This declaration was followed in 1969 by the signing in San José, Costa Rica of the American Convention on Human Rights (also known as the Pact of San José), which came into force in 1978.[33] The American Convention on Human Rights is a comprehensive human rights instrument, similar to both the European Convention on Human Rights and the International Covenant on Civil and Political Rights. As noted earlier, the organs of implementation of the Pact of San José are the Inter-American Commission on Human Rights—corresponding to the UN's Human Rights Committee under the International Covenant on Civil and Political Rights—and the Inter-American Court of Human Rights (IACtHR).[34] The IACtHR is constrained by the fact that it can only consider applications (that allege violations of either the American Declaration of the Rights and Duties of Man or of the American Convention on Human Rights) consigned to its docket by way of non-binding referrals made by the Commission.[35] Moreover, only twenty-three of thirty-five member states of the OAS have ratified the Convention and some states, notably the United States, do not recognize the Court's jurisdiction.[36] Thus, given these political fetters and legal limitations, the Inter-American system of human rights protection is not as comprehensive or robust as the European model, facing perennial challenges to its jurisdiction from powerful states in the region based on considerations of state sovereignty and the principle of non-interference in the internal affairs of states.

The African human rights regime is the youngest of the leading three judicial or quasi-judicial regional human rights systems, and was created under the auspices of the African Union (AU), an intergovernmental organization consisting of fifty-three African states, whose mandate includes the safeguarding of African democracy and human rights.[37] In addition to monitoring regional human rights issues, the AU focuses on building a sustainable regional economy, especially by creating an effective common African market and bringing an end to intra-African conflict.[38] The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is the region's principal human rights instrument, which originally emerged under the aegis of the Organisation of African Unity (OAU), the predecessor to the AU.[39] The African Commission on Human and Peoples' Rights (ACHPR), a quasi-judicial organ of the AU, is tasked with promoting and protecting human and collective rights throughout the African continent. The Commission has advisory and contentious jurisdiction concerning the interpretation and application of the African Charter on Human and Peoples' Rights, and its jurisdiction extends to those member states that have ratified the Protocol to the African Charter on Human and Peoples' Rights on the

Establishment of an African Court on Human and Peoples' Rights.[40] In 2004, the AU Assembly resolved that the future Court on Human and Peoples' Rights would be integrated with the African Court of Justice.[41] With the creation of the African Court on Human and Peoples' Rights, the Commission will have the additional task of preparing cases for submission to the Court's jurisdiction; however, the AU's decision to merge the African Court on Human and Peoples' Rights with the Court of Justice has delayed its establishment.[42] Although it has not yet been established, the Court of Justice of the African Union is intended to be the AU's principal judicial organ, designed to take over the duties of the African Commission on Human and Peoples' Rights, as well as act as the supreme court of the African Union, interpreting all necessary laws and treaties.[43] The African human rights system has undergone some remarkable developments since the adoption of the African Charter on Human and Peoples' Rights, the cornerstone of the African human rights system, in June 1981. Contemporary challenges, including chronic underfunding, continue to test the African human rights system as it continues to develop and strengthen over time into a robust, effective regime of human rights protection for Africans.

Asia is the only geographic area that does not have a human rights court or commission or conventions to promote or protect human rights within the region as a whole.[44] As a result, Asian countries vary considerably with respect to their general legal and philosophical disposition toward human rights protection.[45] However, in recent years various initiatives for human rights cooperation have been developing at the regional, sub-regional and national levels.[46] Thus, the constituent elements of a human rights system—norms, institutions and modes of implementation—are gradually emerging into a nascent, Asia-wide human rights system, especially in East Asia. For instance, in 2009, the Association of Southeast Asian Nations (ASEAN), an intergovernmental organization comprised of ten Southeast Asian member states, established an Intergovernmental Commission on Human Rights. Three years later, it adopted the ASEAN Human Rights Declaration, although no regional human rights convention or court has been established to date.[47] Also, in the Middle East and North Africa, a newly created human rights monitoring body, the Arab Human Rights Committee, was established in 2009 to oversee compliance with the Arab Charter on Human Rights (ACHR).[48] The ACHR, drafted within the framework of the Arab League, came into force in 2008, a development that was generally welcomed by the international community, human rights oriented NGOs, as well as the UN's High Commissioner for Human Rights.[49] The ACHR in general affirms the principles contained in the UN Charter, the Universal Declaration of Human Rights, and the International Covenants on Human Rights, and was seen as a possibility for the Arab states to confirm their commitment to the universality of human rights.[50] However, since the Charter does not provide for a complaints mechanism—but rather

establishes a process through which the Committee receives and reviews periodic state reports and makes recommendations as deemed appropriate—the adopted text was seen by critics as disappointing and once again raised doubts as to whether Arab States are truly committed to the idea of universal and indivisible human rights.[51]

The relatively weak commitment to human rights norms in Asia gives rise to speculation and debate as to whether human rights are indeed universal. One point of view holds that the idea of human rights is a product of Western imperialism and therefore Asian countries, including the predominantly-Islamic Arab states, are not bound by the human rights catalogue proposed by the West.[52] Critics who reject the notion of Western-backed standards of human rights—on the grounds that such norms contradict Asian cultural and religious values, customs and traditions—embrace the contentious notion of cultural relativism, which maintains that the entire human rights corpus is a Eurocentric construct for the reconstitution of non-Western societies and peoples within a framework of culturally biased norms and practices.[53] It is interesting to note that, historically, the cultural relativist point of view, which rejects the indivisibility and universality of human rights, has been espoused by some of the worst human rights-averse regimes in the world.[54]

Today, the monitoring, promotion and protection of international human rights appears to be at an important juncture. Much progress to varying degrees has been made in the past fifty years in establishing consensus on particular issues, monitoring human rights abuses, enforcing human rights standards, and developing a body of international human rights law to guide this task into the future.[55] While many of the world's nations have agreed on some important fundamental human rights, disagreement persists as to the full set of human needs and activities that should be protected as rights. The United Nations human rights mechanisms—by creating and monitoring implementation of international law, including the principal international human rights agreements—continue to draw attention to a wide range of human rights issues, both thematic and country-specific, bringing new issues to the fore and providing crucial early warning functions. In other words, the UN, by means of its various human rights mechanisms, critically contributes to legal standard-setting and helps establish a rules-based international order founded on fundamental respect for universal human rights. Complementing and expanding on the UN's efforts, regional human rights protection mechanisms comprise important pillars of the international system for the promotion and protection of human rights. This essay has critically evaluated the main contemporary regional human rights regimes, both with respect to their particular institutional structures and their specific legal instruments—that is, each region's distinctive mechanism for implementing its human rights commitments by way of the major human rights treaties existing in Africa, the

Americas and Europe. Currently, five regional human rights mechanisms can be distinguished, varying significantly from a relatively advanced human rights protection system in Europe to an emerging one in Southeast Asia.

Within the Council of Europe, the European Court of Human Rights (ECtHR), the main human rights protection mechanism, seems to have become a victim of its own success, struggling to remain efficient due to its heavy workload. The ECtHR now faces a docket crisis of massive proportions, the consequence of the growing number of states subject to its jurisdiction, its favourable public reputation, and its expansive interpretations of individual liberties.[56] The Inter-American system is well developed but the divergent political systems within the OAS, together with the non-permanent and non-obligatory jurisdiction of the Inter-American Court of Human Rights (IACtHR), threaten to undermine the political weight and legitimacy of the system. Similarly, even though all essential elements of an effective regional human rights mechanism are put in place in Africa, ongoing financial as well as professional support will be crucial to overcome some important structural constraints that affect its effectiveness. And although the adoption of the Arab Charter of Human Rights in 2004 and the establishment of the Arab Committee of Human Rights in 2009 are important steps forward in the Arab World, the Charter in some parts is inconsistent with international human rights norms, and critics are sceptical about whether the members of the Committee are sufficiently independent to address human rights issues effectively.[57] Sub-regional mechanisms, such as the ASEAN human-rights policy apparatus, appear to be the most feasible solution in the Asia-Pacific region for the time being. However, no underlying human rights instruments (such as a binding regional human rights convention or court) have been developed for the system so far, significantly limiting the regional system's functionality and efficacy. Furthermore, the still predominant ASEAN political rationale of limiting human rights discussion by reference to state sovereignty and non-interference in internal affairs of states puts the effectiveness of this system in question.

Identifying a critical, longstanding obstacle to the operationalization of international human rights, Navi Pillay, former UN High Commissioner for Human Rights, wrote the following in a letter to the UN Security Council in 2014: "Short-term geopolitical considerations and national interest, narrowly defined, have repeatedly taken precedence over intolerable human suffering and grave breaches of—and long-term threats to—international peace and security."[58] In the final analysis, despite many improvements made in the promotion and protection of human rights at both the regional and international levels, particularly since the 1950s, there remains great frustration with international human rights law and its perceived inability to effectively safeguard fundamental human rights in many countries around the world.

This is in part due to the fact that state sovereignty is still often invoked to deflect action by the UN or regional human rights bodies intended to prevent serious human rights violations. The atrocious human rights abuses still being committed on a regular basis in many countries throughout Asia, for instance, attest to the fact that while progress has been made in the global normalization of human rights since the Second World War, there is still much more work that can and should be done to effectively monitor, promote and protect human rights throughout the world.

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