

CALIFORNIA LEGAL STUDIES JOURNAL

2025 Edition

California Legal Studies Journal
2025 Edition

Copyright © 2025 by California Legal Studies Journal.

Authors retain all rights to their articles.

ASUC Sponsored.

California Legal Studies Journal is not an official publication of the Associated Students of the University of California. The views expressed herein are the views of the writers and not necessarily the views of the ASUC or the views of the University of California, Berkeley.

Table of Contents

A Letter from the Editor-in-Chief	4
Contributions	5
“Africa’s Last Colony: Western Sahara” by Eyasu Abraham	6
“Terrorist or Freedom Fighter? Differentiating Between Terrorism and National Liberation Movements in Palestine” by Riley Bryant	21
“Excluded and Overlooked: An Examination of Asian American Identity, Immigration, and In/equality in the United States (19th Century - Present Day)” by Stephanie Lee	36
“New York Times Company v. Sullivan: An Analysis Regarding the First Amendment and a Landmark Libel Decision” by Jacob Khang Nguyen	48
“Beyond Bail: How Reform Can End Systemic Inequities” by Jennifer Nungaray	58

A Letter from the Editor-in-Chief

Dear Reader,

It has been my honor to present to you the hard work of both authors and editors in this 2025 edition of the California Legal Studies Journal. Every year, the journal calls for submissions from the best and brightest of individuals across the country to submit their work to our journal. Our editorial team works one on one with authors to fine-tune and edit their pieces for publications and public consumption.

Our journal was initially created as a method of getting academic writings on issues within the legal world out to the public, but has since then developed over time into something much more. The journal stands for equality and respect between all, and most of all the exchange of free, precise ideas.

Over the course of thirty-eight weeks our dedicated editorial staff has worked in conjunction with the few selected authors to bring you, our readers, high quality writing and ground breaking opinions and ideas on an array of topics. I sincerely hope that you enjoy this edition of the journal and thank you for your dedication as a reader to our journal.

With Gratitude,

Samantha Dalton

Samantha Dalton
Editor-in-Chief

Contributions

2025 Edition Editorial Staff

Samantha Dalton, *Editor-in-Chief*

Maneh Davityan, *Deputy Editor-in-Chief*

Daniel Hou, *Head Editor*

Samantha Lindsay, *Assistant Editor*

Aidan Wang, *Assistant Editor*

Aditi Patel, *Assistant Editor*

Joanne Park, *Assistant Editor*

2025 Edition Contributing Authors

Eyasu Abraham, *University of California – Santa Cruz*

Riley Bryant, *New York University*

Stephanie Lee, *University of California – Santa Cruz*

Jacob Khang Nguyen, *University of California – Los Angeles*

Jennifer Nungaray, *University of California – Santa Cruz*

A special thank you to our wonderful printing service University of California Berkeley's Creative Lab for the print version of this beautiful journal.

Email: callegalstudiesjournal@gmail.com

Website: <https://callegalstudiesjou.wixsite.com/california-legal-stu>

Africa's Last Colony: Western Sahara

Eyasu Abraham

Abstract

Following the decolonization of the Western Sahara in 1975, there have been disagreements and conflict between Morocco and the Polisario Front over who is the rightful sovereign over the region. The conflict remains unresolved. This paper explores the role of international law, and more prominently, the role of the international community in this conflict and how that has evolved throughout time. An analysis of sources and various international treaties has demonstrated the international community's shift from pursuing the ideals of self-determination to a prioritization of their own self-interest. At the start of the conflict, much of the international community supported a self-referendum in Western Sahara that would allow the people of Western Sahara to determine their own autonomy. Many condoned Morocco's occupation of Western Sahara including the United Nations. Today however, we see that much of the international community now supports Morocco. Treaties such as the Abraham Accords demonstrate why this shift occurred and why there isn't much criticism of Morocco's occupation in Western Sahara.

Preface

When starting this research paper, I wasn't sure what to expect, as my knowledge of Western Sahara was very limited. Prior to this research project, my only prior knowledge on this topic was the fact that Western Sahara was regarded as the last colony in Africa. The only thing I knew was that Morocco had control over the region and that international media access to the region was also heavily limited. To me, Western Sahara was this mysterious place that no one seemed to know or care about. As a result, I was curious to learn more and decided to make it my research project. When I first started this project, my main research question was how do Morocco and Western Sahara both use international law to advocate for their sovereignty of the region? However, as I continued to delve deeper into the history and current complexities of this case, my research question and argument evolved. It shifted because I discovered that through time, the opinion of the international community as well as the legal discourse on this topic had shifted dramatically. I was surprised to see the shift from anti-colonialism starting in the 1960's, to a complete disregard for it today concerning the Western Sahara. As I noticed this shift, I initially had difficulty in how to change or shape my research question and thesis so that it was supported by my findings. Feedback from my classmates and Professor on my rough draft were instrumental in helping me solve my problem and frame my argument in a way that is supported by the research I conducted. Throughout this process, not only was I able to learn more about the current relationship between Morocco and Western Sahara, but also how to properly ask a research question. I didn't expect writing a research question to be so hard, but the process of writing this paper has helped me significantly in understanding how to present a good research question. I truly enjoyed writing this research paper and hope that you enjoy reading it as well.

Introduction

The Western Sahara is a disputed territory on the northwest coast of Africa. The Sahrawi people who are indigenous to the region claim their sovereignty under the Polisario Front, which is also known as the Sahrawi Republic. However, Morocco believes that the region is rightfully theirs. When Spain decolonized and left the Western Sahara in 1975, it was soon annexed by Morocco and has since been the subject of a long running conflict between Morocco and the Polisario Front, who are the representatives of the Sahrawi people. The actions of the international community on this situation, such as continually delaying a referendum, has further prolonged the conflict as the territory is still being disputed. As a result, by analyzing the conflict between Morocco and the Polisario Front, I hope to show that the actions of the international community and international law itself demonstrate a

shift from the ideals of decolonization and a right to self determination that followed the Second World War towards a modern day prioritization of self interest by members of the international community when dealing with matters relating to sovereignty and territorial integrity. By addressing the history of this conflict, what international law has had to say about the dispute, the role and actions of the international community and how that has changed throughout time, as well as the experience of the Sahrawi people as a result of this conflict, I hope to better understand the effects of international law on this conflict as well as how each side's claim to sovereignty over the region interacts with international law and the principles of self-determination.

Spanish Sahara

It is important to understand the history of Western Sahara and its relationship with Morocco in order to make sense of the current conflict. Western Sahara was formerly a colony of Spain from the years 1884 through 1975. We see that the origins of Sahrawi nationalism date back to while they were still under Spanish colonialism. “Generally speaking, Sahrawi nationalism was structured by the meeting of two social and territorial components: young people from the interior, who did not view the paternalistic Spanish policies as emancipatory; and members of the Sahrawi diaspora, who refused to accept any nationality other than their own and who advocated for the union of all Sahrawis in a single political entity” (Correale, 2024). After the conclusion of the Second World War, in following the global trend of decolonization, the United Nations included Western Sahara as one of the territories in which the principle of self-determination should be applied to. Spain began the process of decolonization and planned to allow the Sahrawi people to vote in a referendum determining their sovereignty. As stated, “The (Spanish) government adopted measures to allow the population to express itself, including via a referendum to be held under the auspices of the United Nations in the first half of 1975” (Correale, 2024). However, Morocco and Mauritania intervened and requested that the United Nations General Assembly hold an advisory opinion on the following questions. “1. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius)? If the answer to the first question is in the negative, 2. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?” (ICJ-Case 61, 1974). In its advisory opinion, the Court ruled that the territory was in fact not terra nullius prior to Spanish colonization as both the Moroccan kingdom and the Mauritanian entity held historical links to the region. However, the ICJ also ruled that these historical links were not sufficient to establish any tie of territorial sovereignty to either Morocco or Mauritania. Morocco proceeded to ignore the advisory opinion of the Court and proceeded to mobilize an army and penetrate Western Sahara in

October of 1975. Spain proceeded to cede the territory without holding a referendum which allowed Morocco and Mauritania to split up and claim sovereignty over the region of Western Sahara.

Annexation of Western Sahara

The Polisario Front had different objectives and wasn't just going to let Morocco annex the region. Following the departure of the Spanish, members of the Sahrawi nationalist movement proclaimed the Sahrawi Arab Democratic Republic (SADR) as the rightful government of Western Sahara. Backed by Algeria, the Polisario Front fought hard to contain the Moroccan invasion and was also able to hold off and defeat the Mauritians. Following the defeat of Mauritians in 1979, they signed a peace treaty with the Polisario Front, withdrew from the occupied Western Sahara, and recognized their autonomy. Morocco then proceeded to occupy the regions that Mauritania departed from. As a result, Morocco ended up controlling 80% of Western Sahara while the Polisario Front that represented the Sahrawi people controlled the other 20%. To prevent further attacks from the Polisario Front, Morocco proceeded to build a wall in Western Sahara that separated the region occupied by Morocco from the region occupied by the Polisario Front. The wall was heavily mined and is over 2,700 kilometers long, making it one of the largest military infrastructure projects in the world (Chograni, 2021). The two sides agreed to a ceasefire in 1991, and the United Nations promised a referendum to determine the fate of the territory. The referendum proposed by the United Nations would include options of independence, autonomy, or integration with Morocco. As stated, "The referendum was to be organized and conducted by the UN Mission for the Referendum in Western Sahara (MINURSO), but it has yet to take place. The planned referendum has been repeatedly delayed due to a dispute between Morocco and the Polisario Front over who is eligible to vote on the status of the territory" (Chograni, 2021). As a result, the two sides were headlocked into a ceasefire with no referendum or action by the United Nations for decades. In 2020 however, the Polisario Front decided to return to active resistance against Morocco. "In November 2020, the 1991 cease-fire collapsed when Morocco seized a section of the UN buffer zone to clear a blockade of a key route by Polisario activists and in response the Front resumed its attacks against Morocco in the Western Sahara" (Fabiani, 2023). The conflict is still ongoing to this day.

International Law and the United Nations

The role of international law and the United Nations in this conflict between Morocco and Western Sahara is also quite interesting to analyze. Both the Polisario Front and Morocco have attempted and continue to use international law to back their claims of sovereignty over the region. As we have seen earlier, Morocco attempted to bring its case before the ICJ claiming that Western Sahara was part of a historic “Greater Morocco” and as a result, had a right to control the region under their flag. Despite the ruling of the ICJ and the advisory opinion that the Sahrawi people had a right to a referendum for self-determination, Morocco ignored the ICJ and proceeded to occupy the region. It is quite interesting to consider how Morocco blatantly dismissed the ICJ’s ruling and faced essentially zero consequences. The lack of accountability for dismissing international law has further extended this conflict. The United Nations had labeled Western Sahara as a Non-Self Governing Territory and has since established a mission to resolve the conflict. The mission is identified as Mission for the Referendum in Western Sahara also known as MINURSO. As stated by the UN, “The settlement plan, as approved by the Security Council, provided for a transitional period for the preparation of a referendum in which the people of Western Sahara would choose between independence and integration with Morocco” (MINURSO, 2024). However, we see that this referendum still hasn’t taken place. The mission is still ongoing however, and the UN peacekeeping force is active in Western Sahara. The UN Secretary General stationed in the Western Sahara submitted a report earlier this year in October stating that, “The situation in Western Sahara continued to be characterized by tensions and low-intensity hostilities between Morocco and the Frente POLISARIO. Progress in the political process remained challenging despite the ongoing efforts of my Personal Envoy for Western Sahara, Staffan de Mistura” (MINURSO, 2024). Tensions have continued to flare and the Polisario Front has started to become more aggressive. As we see, it has been quite difficult for the UN MINURSO mission to really make any progress in this conflict. This can come down to a couple of reasons. It could be a lack of cooperation from both Morocco or the Polisario Front. It could also be the fact that the Mission has so few members dedicated towards this issue. According to the report of the Secretary General, there are only 229 military personnel assigned to this mission. The Secretary General also states, “The Mission's lack of access to local interlocutors west of the berm continued to severely limit its ability to collect reliable situational awareness information and to assess and report on developments across its area of responsibility” (MINURSO, 2024). Because of their lack of numbers as well as the lack of cooperation from Morocco and the Polisario Front, it has been quite difficult for the Mission to make any real progress in coming up with a solution for this conflict. Through their occupation of Western Sahara, Morocco is also in violation of the UN Charter. Article 73 of the UN Charter states,

“Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end...” (UN Charter, 1945). Morocco’s occupation in the region has resulted in the majority of the Sahrawi population being forced to flee and live as refugees in Algeria. Their actions do not uphold the responsibilities and expectations that were set in the Charter. It is clear here how Morocco picks and chooses what type of international law applies to them as they follow laws that are convenient for their situation, but completely disregard other laws.

The Organization of African Unity

The relationship between the Polisario Front and the African continent is also quite interesting to consider as it has changed throughout the years. Prior to the foundation of the African Union in 2002, Africa’s representative body dealing with diplomatic and international matters was known as the Organization of African Unity (OAU). The OAU was founded in 1963 by four African states: Egypt, Ethiopia, Liberia, and South Africa who were also founding members of the UN. The Sahrawi Republic joined the OAU and became a member in 1982. From its inception in 1963, the OAU’s objective was to promote the unity and solidarity of African states as well as to safeguard the sovereignty of African states. As stated in the OAU Charter, “We, the Heads of African States and Governments assembled in the City of Addis Ababa, Ethiopia; CONVINCED that it is the inalienable right of all people to control their own destiny; CONSCIOUS of the the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples; Determined to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of our States, and to fight against neo-colonialism in all its forms” (OAU Charter, 1963). The addressed goals of the OAU in 1963 make it very clear that the organization was dedicated towards promoting freedom, solidarity, and the inalienable right of self-determination. When the Sahrawi Republic joined the OAU in 1982, the organization was committed to finding a solution to the conflict in Western Sahara that aligned with the goals stated in the charter. As a result, Morocco withdrew and left the OAU in 1984 due to the presence of the Sahrawi Republic in the organization as well as the organization’s recognition of the Sahrawi as an independent nation. The actions of the OAU demonstrate the ideals of decolonization and self-determination that allowed the Sahrawi Republic to become a member and gain

support throughout Africa. However, with the formation of the African Union that replaced the OAU, we see that the tide shifts towards Morocco's favor.

The African Union

The African Union was founded in 2002 in order to promote peace and security within the continent as well as to accelerate economic and social development. The African Union was to build upon the OAU's work while addressing the challenges of a changing world. They are also focused on fostering unity and solidarity as well as defending sovereignty and territorial integrity. The African Union has a court of justice and an all African parliament that is focused on achieving these goals. The Polisario Front was recognized as a member of the OAU and continued to be recognized as a member when the African Union was founded. Morocco on the other hand, left the OAU in 1984 when the organization had accepted the SADR as a member. However in 2017, Morocco rejoined the African Union which showed a shift in the organization's stance on the conflict in Western Sahara. The Union's readmittance of Morocco showed that Morocco was able to gain diplomatic ties with other African countries and shift the opinion of other African countries into their favor. The key to this seems to have been Morocco's aggressive push towards making economic deals with other African countries in the last couple decades. Morocco has marketed itself as a leading economic investor throughout Africa which has gained the country much diplomatic support throughout the continent. This became clear as in 2018, the African Union decided to limit its efforts in Western Sahara. "The AU's new decision to limit its efforts means that unlike before, its Peace and Security Council (PSC) won't discuss the Western Sahara situation among ambassadors in Addis Ababa where security issues are usually considered" (Louw-Vaudran, 2018). The African Union's decision to step back from this conflict indicates its desire to appease Morocco as a member of the Union. By limiting their involvement, the AU has decided to support the United Nations' process in the region meaning that they no longer have a major role in this conflict. "The latest move is a reversal of the AU's January agreement that called for 'joint AU and UN facilitated talks for a free and fair referendum for the people of Western Sahara'" (Louw-Vaudran, 2018). The decision of the African Union directly favors Morocco and demonstrates that the objectives of the organization are changing. African countries and the Union itself have demonstrated that they are willing to ignore the principles of freedom and the right to self-determination that they swore to uphold if it means economic gain.

The United States

The role of the international community in this conflict is also quite interesting to consider. The United States, Algeria, France, and Spain are all heavily invested in this conflict. Each of these countries use international law to justify their actions for whichever side they support. Analyzing each of these countries' positions on this conflict as well as their intentions will give us a better understanding on how there has been a shift from the ideals of the right to self-determination for all people to a modern day prioritization of self interest when dealing with matters of sovereignty and territorial integrity. Starting with the United States, it is simple to see their position as they clearly back Morocco. Historically speaking, the United States and Morocco have always shared solid diplomatic relations. In fact, Morocco was one of the first countries that recognized the newly independent United States in 1777. During the Cold War, when the conflict in Western Sahara initially started, the United States continued to support Morocco as they viewed them as a key ally in the Cold War. As stated, "The United States has used Moroccan territory for air bases and communications and will need to do so again if the Rapid Deployment Force is to become a reality. If Hassan were to lose the Western Sahara, his regime would be toppled. An unstable or unfriendly Morocco will hurt the interests of Israel, Egypt, and Zaire... The United States will have to provide money, arms, and food to help Morocco in the struggle against the Polisario. It is worth the price to keep Morocco friendly and stable" (Zoubir, 1990). However, the United States also wanted to remain neutral during this time in order to not jeopardize its relations with Algeria, who were staunch supporters of the Polisario Front. Urged by the United States, King Hassan of Morocco began to hold diplomatic talks with Algeria and the Polisario Front which was seen as a great success as both sides were able to agree to a ceasefire in 1991. The willingness of Morocco to meet with the Polisario Front was very well received and implied hope of a peaceful resolution. "The superpowers, too, welcomed the new developments. The American ambassador to Morocco presented a letter to Hassan from President Ronald Reagan in which the King was congratulated for 'seeking a diplomatic solution in Western Sahara'" (Zoubir, 1990). However, following the conclusion of the Cold War and leading into the modern day, we see a change in the policy of the United States regarding their role in this conflict. In December, 2020, the President released a statement that demonstrated his full support of Morocco. "Now, Therefore, I, Donald J. Trump, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim that, the United States recognizes that the entire Western Sahara territory is part of the Kingdom of Morocco" (U.S. Embassy, 2020). The United States views Morocco as a key ally in North Africa as well as with relations in the Middle East. As a result, the United States is willing to support Morocco's claim of sovereignty over the entirety of the Western Sahara. This decision to recognize the entirety of Western Sahara as a part of the Kingdom of Morocco reverses decades of American policy on this matter. "Trump's announcement ended nearly thirty years of U.S. support for UN-led negotiations and places the United States at

odds with the majority of the international community, which swiftly criticized the U.S. action as a violation of the right to self-determination” (American Journal of International Law, 2021). This decision came as part of a deal with Morocco in which they would normalize relations with Israel. Under the Abraham Accords, in which the United States recognized Moroccan sovereignty over Western Sahara, Morocco officially recognized Israel and agreed to the mindfulness, “That the establishment of full diplomatic, peaceful and friendly relations is in the common interest of both countries and will advance the cause of peace in the region, improve regional security, and unlock new opportunities for the whole region” (Abraham Accords, 2021). Under the Abraham Accords, it is clear to see the diplomatic shift of the United States regarding the conflict in Western Sahara. The accords demonstrate the United States’ shift from pursuing global ideals such as anti-colonization and the right to self-determination towards a prioritization of self interest. The United States supports Morocco’s autonomy proposal as the only possible and feasible solution to this conflict. They no longer believe that an independent Sahrawi state is a realistic option in resolving this conflict. As stated by the White House, “We urge the parties to engage in discussions without delay, using Morocco’s autonomy plan as the only framework to negotiate a mutually acceptable solution. To facilitate progress toward this aim, the United States will encourage economic and social development with Morocco, including in the Western Sahara territory” (U.S. Embassy, 2020). It is clear that the United States fully supports Morocco’s plan and won’t consider a referendum to determine the self-determination of the Sahrawi people. The United States has demonstrated that it is willing to set aside the rights and autonomy of the Sahrawi people in order to pursue diplomatic and economic gain in the Middle East.

France

France, like the United States, is now a key supporter of Morocco. However, their support for the integration of Western Sahara into Morocco didn’t happen until recently. In July earlier this year, French President Emmanuel Macron released a letter that demonstrated France’s shift towards recognizing Morocco’s sovereignty over the disputed territory of Western Sahara. “The letter states that the ‘present and future of Western Sahara fall within the framework of Moroccan sovereignty.’ In his correspondence with the Moroccan king, Macron added that ‘France intends to act consistently with this position at both national and international levels’”(Zaaimi, 2024). Prior to French President Emmanuel Macron’s decision to back Morocco earlier this year, France’s stance on this matter was one of neutrality that sought to follow the plans of the United Nations Security Council. In recent years however, France’s relationship with Morocco was struggling. This was a big problem for Macron as he viewed Morocco as a key ally in the Middle East and the

Maghreb. The deteriorating relations between the two countries was made clear as Morocco had recalled their ambassador in France at the start of 2023 as well as a visa crisis occurring between the two countries later that year. “France, however, never stopped courting Morocco, because Paris did not want to lose strategically important economic and political ground in Africa” (Zaaimi, 2024). As a result, this move by France is an attempt to shore up ties with Morocco as France is worried about its waning influence in the Maghreb and the rest of the continent. This diplomatic decision came to the dismay of the Polisario Front and Algeria who were quick to express their disappointment in France and called for a just referendum in order to resolve this conflict. France’s realignment towards supporting Morocco in this conflict is ultimately due to their desire to protect their economic gain and a purely political decision that disregarded violation of international law by Morocco. Like the United States, France has decided to prioritize its own economic and diplomatic interests over the rights and freedom of the Sahrawi people.

Spain

As the former colonizer of Western Sahara, Spain is also heavily involved in the outcome of this conflict. Following their departure from Spanish Sahara in 1975, Spain had agreed to remain neutral in this conflict and work with the United Nations in order to achieve a solution. This has been the status quo for Spain regarding the Western Sahara for decades. However, in 2022, Spain completely departed from their stance that Moroccan presence in the Western Sahara was an illegal occupation. During this time, Spanish Prime Minister Pedro Sanchez released a statement explaining, “Spain considers the autonomy initiative presented by Morocco in 2007 as the basis, the most serious, realistic and credible, for resolving the dispute” (Parra, 2022). The decision of Spain to switch their stance on the matter came due to immense pressure from Morocco. “Bilateral tensions exacerbated when a mass influx of migrants reached Ceuta, a Spanish exclave in North Africa, in May 2021, with some 6,000 of them attempting to cross the border. The Spanish city was completely unprepared for the situation. Morocco relaxing its border controls made the departure of those migrants possible” (Caviero, Pafia, 2023). Morocco had also pulled its ambassador out of Madrid. This was interpreted by Spain as an attempt by Morocco to manipulate Madrid into conceding their position on Western Sahara. Morocco’s attempt worked tremendously as within the following year, Spain had shifted its stance on Western Sahara. The Spanish were keen to fix ties with Morocco since they viewed them as a valuable ally in North Africa and the Middle East. As a result, they didn’t hesitate to change their stance on Western Sahara when Morocco applied pressure. Spain is yet another example of a country that has shifted its stance on Western Sahara from one founded on ideals of self-determination to a stance based on diplomatic and economic ties.

Algeria

Algeria, on the other hand, is one of the key supporters of the Polisario Front. Algeria states that its support for the Polisario Front is purely from a moral obligation and standpoint. “The Algerians claim that their support for the Polisario is simply a matter of principle, of helping a neighboring country in need. Algerian support was also crucial in the initial humanitarian relief efforts” (Zunes, 1995). The Algerians have been a key supporter of the Polisario Front since the start of the conflict in the 1970’s and still are today. In 2023, when Morocco and Algeria met at the UN to discuss possible solutions, Algeria’s position was clear and they expressed their disappointment in Morocco for continuing to deny the Sahrawi people the right to a referendum. Algerian Ambassador Amar Bendjama stated at the meeting, “We Algerians have chosen the camp of justice, decolonization, freedom, self-determination and human rights... This commitment applies to the cause of the Sahrawi people, who have been waiting for nearly half a century for the UN to do them justice” (Africa News, 2024). The position of Algeria is clear, they support the Polisario Front and want a just referendum to take place in order to allow the Sahrawi people to determine their own autonomy. Regarding the actions of other countries that have recently started to support Morocco’s autonomy over Western Sahara, Algeria has responded swiftly by condoning those actions and even going as far as severing ties with some nations. “After the United States and Spain sided with Morocco, Algeria responded by severing diplomatic relations with Morocco in 2021 and recalling its ambassador in Madrid in 2022. Algeria also disrupted gas exports to Spain through Morocco by closing the EU-Maghreb pipeline just as tensions were building around Russia’s gas exports ahead of its full-scale invasion of Ukraine” (Zaaimi, 2024). Following the actions of France earlier this year, Algeria had also decided to recall its ambassador in Paris as well. Algeria seems to be one of the few nations that has continued to support the Polisario Front and hasn’t changed its stance on the matter like other countries have. Their actions indicate that they are still committed to finding a solution that incorporates a referendum that enables the Sahrawi people to vote for their future.

Human Rights Violations

The actions of Morocco in occupied Western Sahara also include numerous human right violations. These include the restriction of freedom of expression, repression of dissent, torture, and much more. Moroccan courts have continued to display intolerance towards free speech and have proceeded to imprison activists and journalists who express views in favor of the Polisario Front. Moroccan authorities have also repressed dissent against the King and the right to a peaceful assembly in Western Sahara. “Between May 4th and June

20th, police put under surveillance the house of Sahrawi activist Mahfouda Lefkir in Laayoune city in the north of Western Sahara, after she visited Dakhla city in the south of Western Sahara in solidarity with activists there. Law enforcement officers followed her every time she left her home, stopped activists visiting her by beating them in front of the house, and verbally insulted her and her family” (Amnesty, 2023). Moroccan authorities also used force to dispel peaceful gatherings from taking place. As stated, “Law enforcement officers prevented the Sahrawi human rights organization CODESA (Collective of Sahrawi Human Rights Defenders) from holding its first national congress in Laayoune. Attendees told Amnesty International that law enforcement officers used physical violence against them” (Amnesty, 2023). Authorities actively and systematically prevent the gatherings of Sahrawi supporters and hinder the work of NGOs and organizations that are committed to the liberation of the Sahrawi people. Moroccan officials have also resorted to torture and violence in order to repress dissent and limit the expression of views contrary to the Moroccan throne. “On April 18th, law enforcement officers had arbitrarily detained for 90 minutes Abd El Tawab El Terkzi in Laayoune after he appeared in a video of a Spanish tourist saying that he was a proud Sahrawi and favoured the self-determination of his people. The officers tortured and otherwise ill-treated him by cuffing and hooding him, slapping his face, spitting on him, and threatening to rape him and kill him using acid” (Amnesty, 2023). These incidents are all examples of the broader human rights crisis that are occurring in occupied Western Sahara. Not much has been done by the international community to deter or hold Morocco accountable for their human rights violations.

Sahrawi Refugees

Because of Moroccan occupation of Western Sahara after the departure of Spain, the majority of the Sahrawi population was forced to flee and live as refugees in Algeria. It has since been 50 years since Sahrawi refugees started residing in Algeria making it the world’s 2nd longest running refugee crisis. The conditions the refugees have lived in for the past 50 years aren’t exactly ideal either. “The so-called Sahrawi refugees live in five camps near the town of Tindouf in Western Algeria, characterized by temperatures that can exceed 50 degrees Celsius and very low rainfall. The harsh and isolated desert with frequent sandstorms, limits livelihood and economic opportunities... 88% Sahrawi refugees are food insecure or at risk of food security. 60% are economically inactive, and a third are without any source of income whatsoever” (United Nations, 2024). With conditions like this, the livelihood of Sahrawi refugees is significantly limited. These refugee camps rely almost entirely on humanitarian aid in order to feed and nourish their inhabitants. However, these refugee camps aren’t a permanent solution as the Sahrawi people are at risk of losing their identity and culture. The Sahrawi people have continued to be denied a long promised

referendum that would enable them to determine their autonomy for the last half-century and the referendum seems less likely than ever to occur following the backing of Morocco by major international powers.

Conclusion

The conflict in Western Sahara between Morocco and the Polisario Front is still ongoing today. Morocco continues to justify their occupation of the Western Sahara claiming that the region is part of a historical “Greater Morocco”. The Polisario Front, on the other hand, continues to be backed by Algeria and seeks a referendum in which the Sahrawi people will have the option to determine their autonomy. Following the conclusion of the Second World War, there was a global trend of decolonization and an emphasis that all people should have the right to self-determination. Western Sahara was no different as the United Nations had planned to hold a referendum. However, as we have seen, Moroccan intervention delayed this process. The international community was initially devoted to finding a solution to the conflict on the ideals of anti-colonialism and self-determination. However, as time progressed, we have seen that countries such as the United States, France, and Spain have all shifted from those ideals and have chosen to prioritize their own self interest by backing Morocco. After addressing the history of this conflict, what international law has had to say about the dispute, the role and actions of the international community in relation, as well as the experience of the Sahrawi people, it is clear that there has been a distinct shift. We see the shift from the ideals of decolonization and a right to self determination following the Second World War, towards a modern day prioritization of self interest by members of the international community when dealing with matters relating to sovereignty and territorial integrity. This will undoubtedly have consequences in the 21st century as other countries may use Morocco as a precedent for their actions when dealing with matters of sovereignty and territorial integrity. In terms of the current conflict in Western Sahara, the Polisario Front will now be facing an uphill battle as prominent members of the international community have backed Morocco as the rightful sovereign of Western Sahara.

References

- "The Abraham Accords." United States Department of State. Last modified January 13, 2021. <https://www.state.gov/the-abraham-accords/>.
- AfricaNews. "Algeria, Morocco Spar over Western Sahara at UN." Africanews. Last modified August 13, 2024. <https://www.africanews.com/2023/09/27/algeria-morocco-spar-over-western-sahara-at-un/>.
- Cafiero, Giorgio, and Alissa Pavia. "What's Behind Spain's About-Face on Western Sahara?" Foreign Policy In Focus. Last modified March 20, 2023. <https://fpif.org/whats-behind-spains-about-face-on-western-sahara/>.
- Chograni, Houda. "The Polisario Front, Morocco, and the Western Sahara Conflict." Arab Center Washington DC. Last modified July 8, 2021. <https://arabcenterdc.org/resource/the-polisario-front-morocco-and-the-western-sahara-conflict/>.
- Correale, Francesco. "A History of Western Sahara." Oxford Research Encyclopedia of African History. n.d. <https://oxfordre.com/africanhistory/africanhistory/display/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-1202>.
- Fabiani, Riccardo. "The Western Sahara Conflict: A Fragile Path to Negotiations." Atlantic Council. Last modified August 3, 2023. <https://www.atlanticcouncil.org/in-depth-research-reports/report/the-western-sahara-conflict-a-fragile-path-to-negotiations/>.
- "Human Rights in Morocco/Western Sahara." Amnesty International. Last modified, 2023. <https://www.amnesty.org/en/location/middle-east-and-north-africa/north-africa/morocco-and-western-sahara/report-morocco-and-western-sahara/>.
- Louw-Vaudran, Liesl. "AU Limits Its Role in Western Sahara Crisis." ISS Africa. Last modified September 11, 2018. <https://issafrica.org/iss-today/au-limits-its-role-in-western-sahara-crisis>.
- MINURSO | United Nations Mission for the Referendum in Western Sahara. n.d. https://minurso.unmissions.org/sites/default/files/sg_report_on_the_situation_concerning_western_sahara_1_october_2024.pdf.
- "OAU Charter, Addis Ababa, 25 May 1963." African Union. Accessed December 11, 2024. <https://au.int/en/treaties/oau-charter-addis-ababa-25-may-1963>.
- Parra, Aritz. "Spain Changes Stance, Backs Moroccan Rule in Western Sahara." AP News. Last modified March 18, 2022. <https://apnews.com/article/europe-africa-spain-morocco-western-sahara-8d5520942af0fff9c316796830c705af>.
-

- U.S. Embassy Rabat. "Proclamation on Recognizing The Sovereignty Of The Kingdom Of Morocco Over The Western Sahara." U.S. Embassy & Consulates in Morocco. Last modified December 10, 2020.
<https://ma.usembassy.gov/proclamation-on-recognizing-the-sovereignty-of-the-kingdom-of-morocco-over-the-western-sahara/#:~:text=Therefore%2C%20as%20of%20today%2C%20the,over%20the%20Western%20Sahara%20territory.>
- United Nations. "Chapter XI: Declaration Regarding Non-Self-Governing Territories (Articles 73-74)." United Nations. Accessed December 11, 2024.
[https://www.un.org/en/about-us/un-charter/chapter-11.](https://www.un.org/en/about-us/un-charter/chapter-11)
- United Nations. "Far from the Headlines: After 50 Years Refugees from Western-Sahara Are Still in Camps." United Nations Western Europe. Last modified March 12, 2024.
[https://unric.org/en/far-from-the-headlines-after-50-years-refugees-from-western-sahara-are-still-in-camps/.](https://unric.org/en/far-from-the-headlines-after-50-years-refugees-from-western-sahara-are-still-in-camps/)
- "United States Recognizes Morocco's Sovereignty Over Western Sahara." *American Journal of International Law* 115, no. 2 (2021): 318–23. [https://doi.org/10.1017/ajil.2021.11.](https://doi.org/10.1017/ajil.2021.11)
- "Western Sahara." Cour Internationale De Justice - International Court of Justice | INTERNATIONAL COURT OF JUSTICE. n.d. [https://www.icj-cij.org/case/61.](https://www.icj-cij.org/case/61)
- Zaaimi, Sarah. "France Has Sided with Morocco on the Western Sahara. How Might Algeria Respond?" Atlantic Council. Last modified August 1, 2024.
[https://www.atlanticcouncil.org/blogs/new-atlanticist/france-has-sided-with-morocco-on-the-western-sahara-how-might-algeria-respond/.](https://www.atlanticcouncil.org/blogs/new-atlanticist/france-has-sided-with-morocco-on-the-western-sahara-how-might-algeria-respond/)
- Zoubir, Yahia H. "The Western Sahara Conflict: Regional and International Dimensions." *The Journal of Modern African Studies* 28, no. 2 (1990): 225–43.
[http://www.jstor.org/stable/160861.](http://www.jstor.org/stable/160861)
- Zunes, Stephen. "ALGERIA, THE MAGHREB UNION, AND THE WESTERN SAHARA STALEMATE." *Arab Studies Quarterly* 17, no. 3 (1995): 23–36.
[http://www.jstor.org/stable/41858127.](http://www.jstor.org/stable/41858127)

**Terrorist or Freedom Fighter? Differentiating Between Terrorism and
National Liberation Movements in Palestine**

Riley Bryant

Abstract

In the chaos of international politics, it is easy to get swept up in emotionally-charged rhetoric surrounding individuals and groups that, while helping shift public perception in favor of a regime's agenda, are often not entirely accurate. This is especially true for the ongoing Israel-Palestine conflict, in which many of the non-state actors have been described as both legitimate authorities and violent terrorist organizations. However, defining terrorism is no easy task for international lawyers, and who is counted as a "terrorist organization" largely shifts based on who is assigning the label. This paper seeks to examine the actions of non-state actors in Palestine, including the Palestine Liberation Organization (PLO), Fatah, and Hamas, in order to determine the extent to which they qualify as "terrorist organizations." Additionally, this paper aims to situate the operations of these organizations within the legal framework of "National Liberation Movements," or "NLMs," and thus determine the legality of support from UN members towards these organizations.

Coming out of the World Wars, the mid-20th century saw a period of rapid decolonization and independence movements that led to the most concentrated influx of new independent states in modern history. However, few, if any, came easily; most were the result of bloody regional conflicts over borders and power. One such conflict that still has not seen a peaceful resolution is that of Israel-Palestine.

The Israel-Palestine conflict refers to the decades of fighting and instability in the historical Palestinian territories as a result of contrasting political agendas following the dissolution of the Ottoman Empire. Leading up to and continuing throughout the Holocaust, rising anti-Semitic attitudes in Europe propelled the political Zionist movement, which eventually found settlement in what was, at the time, Mandated Palestine. However, the Jewish expats and indigenous Arab Palestinians quickly found themselves at odds with each other as a result of contradictory promises made by the British and other interfering entities. Since the earliest clashes, through the notable outbursts of 1948, 1967, 1973, the Intifadas, and still today, the issue of state autonomy for Israel and Palestine has been framed to be mutually exclusive and posing a threat to the existence of the other. As a result, particularly at the behest of the wider-recognized Israeli government, the Palestinian territories have been subject to incredibly stringent regulation, restriction of movement, and loss of property.

The primary objective of the Israeli forces in this conflict is to secure a “Jewish homeland,” in connection with the ideologies of Zionism and early-20th century rhetoric.^{[1][2][3]} On the Palestinian side, the central cause of the various resistance groups is the liberation of the Palestinian people from Israeli occupation, which oppressively restricts many aspects of life in the Palestinian territories. These groups will turn to whatever means they are able, including armed struggles and combative action.^{[4][5]}

The Israel-Palestine conflict, as one of the most destabilizing conflicts of the region, has seen most of the international community choose to support one side or the other, be it financially, diplomatically, or simply verbally. As a result, different parties have differing perspectives on the legitimacy of the combatants; namely, allies of Israel have repeatedly labeled Palestinian resistance groups as “terrorist” organizations, while others treat these organizations as legitimate authorities and the international representatives of the Palestinian people. With these extreme discrepancies, which are based primarily on relative perspective and opinions, it is important to establish a consistent standard to which one can hold these groups and determine their legal status— a legal status that drastically changes the way states are legally-permitted to interact with the parties to the conflict.

State behavior, although built on individual state sovereignty, is meant to be constrained by international law (as the states have consented).^[6] Amongst these laws is the concept of state responsibility and the duality of state privileges, which outlines the standard threshold of responsibility that every state must uphold in order to enjoy the privileges of international recognition. State responsibility to follow international law was left uncodified until 2001, with the passing of UNGA Resolution 56/83 which outlined the legal consequences of committing “internationally wrongful acts.” Under Rs. 56/83, states can be held accountable for “breach[es] of an international obligation of the State,”^[7] including “both treaty and non-treaty obligations,” as clarified by the International Law Commission in their Draft Articles on Rs. 56/83.^[8]

Under the principles of state responsibility, states can be held accountable for internationally wrongful acts that, even if not directly attributable to the central organ of the state’s government, were directly or explicitly supported by that government. For example, during the Iranian hostage crisis of 1979, although the actions of the militants were not associated with the Iranian State, the ICJ ruled that the Iranian State’s endorsement of the militants’ actions and subsequent inaction towards resolution transformed the nature of the event into an action accretable to the Iranian State. Here, Iranian leaders were found to be in violation of state responsibility for indirect actions.^[9] This concept is the foundation behind the idea of state-sponsored terrorism.

In order to understand state-sponsored terrorism, it is important to first differentiate between terrorism and other forms of non-state violence. Terrorism is considered to be one of the most vile forms of violence that could be committed against humanity. Distinguishable from violent outbursts caused by states or organized militant groups, it is often characterized by its deliberate targeting of civilians and use of fear as a means to achieve a goal, whether motivated by religion, politics, vengeance, or other purposes. Generally speaking, terrorism can be distinguished from other violence—such as war—in several ways: a smaller scope of aggression, the targeting of civilians, sporadic or less-coordinated attacks, and the purpose of pressuring change by inciting fear, to name a few. It is important to recognize that terrorism is not solely committed by non-state actors, despite what the collective impression on the public may be; states and state actors can just as easily carry out or endorse violent acts of terrorism that follow the above trends.^[10]

The United Nations has issued several resolutions condemning terrorism in all forms, although the scope of these forms remains vague. Both the General Assembly and Security Council have taken extensive measures to develop infrastructure that addresses terrorism, such as Res. 3034(XXVII) (1972), Res. 46/51 (1991), and Res. 1269 (1999).^{[11][12][13]} Res. 49/60 was the first resolution of its kind to extensively outline the role of the state as it pertains

to terrorist activity, both within and outside their borders.^[14] Though these resolutions set the groundwork for addressing terrorist activity at the international level (Res. 49/60 is still considered the foundational standard for state responsibility on these matters), it is perhaps Res. 1373 by the Security Council that most explicitly instructs member states on how to suppress terrorist activity. Passed in 2001 shortly after the September 11 attacks, the resolution calls on the collective security clause of the UN charter to organize a united international front against non-state combatants that engage in terrorism.^[15]

Under the current international law regarding counter-terrorism, all states have a responsibility to reject terrorist activity within their borders, as well as to take all necessary measures to combat it.^{[16][17]} In the most recent iteration of the Counter-Terrorism Framework, built upon the 2006 United Nations Global Counter-Terrorism Strategy (UNGCTS), states must, “refrain from organizing, instigating, facilitating, participating in, financing, encouraging or tolerating terrorist activities,” as well as provide full support and cooperation to UN-sponsored counter-terrorism measures and “step up all efforts to improve the security and protection of particularly vulnerable targets, such as infrastructure and public places.”^[18]

The idea behind state-sponsored terrorism is that a state, directly or indirectly, either led an act of terrorism, supported the terrorism of a non-state actor or another state, or failed to uphold the standards laid out in the UNGCTS. Most authoritative sources on this topic stem from a US-centric definition, which includes a list of states whom the US deems as guilty of sponsoring terrorism or otherwise breaching the duties of UNGCTS.^[19] At present, this list is comprised of Cuba, Democratic People’s Republic of Korea (North Korea), Iran, and Syria.^{[20][21]} In each of these cases, the role of the state was deemed to be counter-productive to the prevention of terrorist activity, and, from the perspective of the US, worthy of restricted diplomatic relations. In fact, it is this political ostracization that traditionally stands as one of the strongest deterrents from state-sponsored terrorism.

Still, though it may be redundant to explicitly clarify, not all non-state armed groups are categorized as terrorist organizations, and state support of such non-terrorist groups would, unquestionably, not constitute state sponsorship of terrorism. While it is the duty of all states to promote peace, they are also endowed with the responsibility to ensure the principles of human rights and the UN are maintained around the world. For that reason, in cases where groups are acting in the name of self-determination or another legitimate cause (as defined by the UN Charter or relevant resolutions), state support is both allowed and encouraged.

The UN Charter enshrines the right of “self-determination of peoples” as a core tenet of

the institution.^[22] Over time, however, the privileges afforded to those acting in the name of self-determination has been refined and expanded by ICJ rulings and General Assembly resolutions. Most prominently, the Declaration on Principles of International Law (Declaration on Friendly Relations) declared the protection and promotion of self-determination was a responsibility of the state of the highest priority.^[23] Self-determination can be internal (proper representation in political processes) or external (independent statehood or autonomy), although realization of one of the two is an inalienable right of all peoples under the UN.^[24]

Self-determination is a form of motivation that can uniquely justify actions that might otherwise contradict the mission of the UN. Taking shape during the era of decolonization around the world, the idea of using force in pursuit of political independence is generally accepted as justified, as it is understood that these are the only methods at the disposal of the oppressed parties (the language used by the General Assembly is “all available means, including armed struggle”).^[25] Given the legal weight of the concept, self-determination is not a term to be used lightly. In order to moderate the use of “self-determination” as a justification for actions that do not truly perpetuate the liberation of peoples, there is legal standing for these liberation groups as “national liberation movements,” or NLMs. NLMs are cited in the Additional Protocol to the Geneva Conventions (Protocol 1) as:

- “peoples...
- “...fighting against colonial domination and alien occupation and against racist regimes...
- “...in the exercise of their right of self-determination.”^[26]

An example of justified state sponsorship of an NLM is the American financial and military support of the Afghan Mujahideen in the late 20th century, who were fighting to repel Soviet-backed forces. Beginning with a covert CIA program in 1979 and lasting until the Soviet withdrawal from Afghanistan in 1989, the United States funneled billions of dollars into the country in order to support the rebel resistance against communist influences.^[27] It was this American support that directly allowed the Mujahideen to gather their numbers in isolated pockets of the country and continue their (typically violent) attacks against the ruling party; additionally, the flourishing of the Mujahideen has been cited as directly enabling the rise of major terrorist organizations of the 1990s and 2000s, including the Taliban and Al-Qaeda.^[28] Despite this explicit link to terrorist activity, the cause—liberating the Pashtun majority from oppressive anti-Islamic communist rule— was legitimate enough (in the name of internal self-determination and freedom from alien political influence) to justify the US’ support.

The line between “war,” “terrorism,” and “national liberation movement” is very blurred,

and this can make determining the legal status of parties within a conflict incredibly difficult. In the case of the Israel-Palestine conflict, the extended length of the conflict has enabled the fragmentation of Palestinian authority groups into several different organizations, all claiming legitimate authority over the representation of the Palestinian people. These groups, depending on the state, have been labeled as both terrorists and NLMs. This discrepancy begs the question— do Palestinian resistance organizations qualify as terrorist groups, and what are the legal implications of state sponsorship in relation to the actions and operations of these groups?

Defining Terrorism and Applying Palestinian Resistance Groups

Israeli leadership has asserted that Palestinian resistance groups, including the Palestinian Liberation Organization (PLO), Fatah, and Hamas, behave as terrorist organizations akin to some of the most infamous in history. However, as explained above, there is no clear definition of terrorism or what constitutes a “terrorist” group— thus, there are no clear guidelines to neutrally assess the credibility of these claims. In order to determine if these Palestinian resistance groups truly qualify as terrorist organizations (and are therefore deserving of the most heavy-handed retaliation efforts by the UN and its member states), one can look at what traits are shared amongst officially-designated terrorist organizations and subsequently contrast them with the Palestinian organizations.^[29]

These infamous terrorist groups to compare with are Al-Qaeda, the Taliban, and the Islamic State of Iraq and the Levant (ISIL). The primary opponent of each of these organizations has always been an entity that is stronger than they are (such as a state or national military). In order to effectively combat this asymmetrical opponent, these organizations have to resort to guerrilla tactics such as ambushes, hit-and-run attacks, and weaknesses in security infrastructure, typically in public and civilian-populated areas such as metros and sports arenas.^[30] Since these attacks are doing little to reduce the capacity of the opposing military itself (for example, they are not reducing the weapons stockpile or military communications of their opponent), their primary function is to use fear and instability to draw the oppositional authority’s attention to their cause; that is, these terrorist attacks are weaponizing fear in pursuit of a grander objective. This is where Palestinian resistance groups resemble the known terrorist organizations most closely. The tactics employed by groups such as Fatah and Hamas are not only the same type of guerrilla tactics used by the aforementioned jihadist groups, but in some cases are believed to be directly modeled off of them.^[31] Palestinian forces have been known to use rockets and mortars, improvised explosive devices (IEDs), and suicide bombings in order to combat the stronger Israeli military forces; many of these attacks have disregarded civilian immunity

and targeted unarmed Israeli citizens, including women and children.^{[32][33]} During the October 7, 2023 Hamas attack, 1200 Israeli civilians were killed across various cross-coordinated attacks in western Israel, the deadliest mass killing in Israeli history.^[34] Like in previous examples, these attacks did not actually reduce the weapons stockpile, enlistment numbers, or safety of Israeli leadership in any way; rather, it focused attention on the Palestinian cause, rallied international support (and condemnation), and weaponized fear to discredit the strength of their opponent.

It is important to clarify that terrorism and the designation of “terrorist organization” is based solely on the motivations and manifestations of the group’s operations; that is to say, the demographic make up, scale or frequency of attacks, source of funding, or other similar classifications do not preclude a group from being a terrorist organization. The most important designation here is that realized political authority does not factor into this label. As explained previously, states are equally as capable of perpetrating terrorist activity as any non-state actor, just as non-state terrorist groups are capable of holding onto political power. This is best illustrated by the Taliban regime, which is currently in governmental control of Afghanistan despite a history of terrorist denotations. The political authority of the Taliban does not impact their terrorist status simply because they are in control; their history, actions, and motivations are the relevant factors. As the ruling party, the Taliban has instituted incredibly stringent protocol, bringing concern for human rights within Afghanistan and, arguably, allowing them to use their political power to perpetuate the same fear-based control tactics as were used before they came to power.

Likewise, Palestinian resistance groups are also not to be evaluated on the strength of their political influence. Some may argue that, because they have been democratically-elected, groups such as Fatah and Hamas have moved past a guerilla terrorist organization and become a hostile, though weak, government;^[35] likewise, others may argue that these groups’ lack of concrete governance automatically categorizes their forceful exertion of authority as “terrorism.” Still, just as in the case with the Taliban, the strength of political authority is not to exempt nor condemn these groups to being labeled as terrorist organizations.

Additionally, much of the motivation for terrorist organizations is rooted in calling for change within a particular political system or government; in the case of these specific groups, it is a push for more conservative Islamist policies and promotion of extremist ideas. In a way, this is also true for Palestinian resistance groups, who are advocating for the withdrawal of Israeli occupation and the political independence of the Occupied Palestinian Territories (OPT). However, Palestinian groups, particularly those with political authority, are not typically as ideologically- or theoretically-driven in the same

way as the aforementioned terrorist organizations. The most distinct difference is the reciprocal history of Israeli violence and oppression in the OPT. Violence by Israel against Arab Palestinians, be it coordinated or isolated, has persisted into the present day; one such example in the long history of the conflict, in an offensive which is strikingly similar to the October 7th Hamas attacks,^[36] is the 1967 Six-Day War, initiated by Israel against Palestinian Arabs and neighboring Arab countries. In other cases of the aforementioned terrorist organizations, there is no history of military offensives from the larger power that were not solely for the purpose of countering the terrorism itself; in other words, the military chicken came after the terrorist egg. This is a critical disparity between the terrorist organizations and the Palestinian resistance groups, and resembles a war-like dynamic more than the suppression of violent terrorist outbursts.

Outside of a comparison of characteristics, many terrorist or extremist entities can be identified based on their relationship with one another. One of the most difficult obstacles of counter-terrorism agencies is the fluidity of actors between groups and even ideologies; there is record that Al-Qaeda, the Irish Revolutionary Army (IRA), the Revolutionary Armed Forces of Colombia (FARC), and South American narcotics industries are all connected through training, resources, and manpower.^[37] However, Palestinian organizations such as Hamas have no such ties to these organizations, and in many cases instead have strained or adversarial relationships with them.^[38] Though not definitive, this rejection of and by other groups who have been categorized as “terrorist organizations” suggests that the Palestinian resistance groups do not fit into their same category.

There is also something to be said about the self-description of these organizations. Two examples of this are the IRA’s use of the adjective “Revolutionary” in their title, and the fact that the American war for independence is referred to as the “Revolutionary” war. However, the language used in reference to Palestine is commonly “Liberation,” such as in the name “Palestinian Liberation Organization.” It is clear that this is not simply a passing coincidence; rather, the core values of these organizations and their mission is different. The groups of “revolution” are seeking to shift the status quo—the PLO is seeking to “liberate” the people of Palestine from alien occupation and the suppression of human rights.

Based on this analysis, it could be argued that Palestinian resistance groups qualify as terrorist organizations, although quite loosely. They have a history of violent, fear-mongering guerilla tactics taken as a measure to stand up against the Israeli occupation. Of course, this is largely because of the lack of resources to act at the scale of a “state;” however, as discussed above, this lack of political hold does not factor into the label of “terrorist organization.” Alternatively, the actions taken by Palestinian

resistance groups could be classified as acts of war, rather than terrorism, should you assert that it is in furtherance of Palestinian statehood.^[39]

Legal Implications of State Support of Terrorism

If we were to understand Palestinian resistance groups as terrorist organizations, what are the legal implications for states that, directly or indirectly, support their operations? Simply put, supporting designated terrorist organizations would constitute state-sponsored terrorism, which is a breach of international law. Because Palestinian resistance groups are not considered to be state entities, it is much harder for other states to support them or to enter into relations with them without explicitly supporting their advertised ideology. Should a state support these groups, they would be linked to the ideology; if the ideology is terroristic in nature, the state would be liable for perpetuating violence and disrupting peace. Additionally, all of the repercussions of becoming a state sponsor of terrorism, including political ostracization, would befall the sponsoring nation.

Under current state responsibility law, states that are found to be in violation of their state responsibilities are bound to remedy the breach by both ceasing operations and paying reparations to the victims of the act. In this case, that would look like ending the support and paying reparations to Israeli citizens that have been wronged by the actions of the Palestinian resistance groups.

National Liberation Movements and Palestinian Resistance Groups

Although Palestinian resistance groups could be found guilty of terrorist activity based on the definition above, there is one key difference between the Palestinian groups and designated terrorist groups, specifically relating to purpose and ideology. In this case, these Palestinian resistance groups are distinct because their mission— liberating the Palestinian people from Israeli occupation towards complete self-governance— is not contradictory to the values of the UN (even if their methods might be). Rather, it is in furtherance of the UN core purpose of promoting self-determination, as laid out in Art. 51 of the Charter.

Palestinian right to self-determination has already been upheld in several documents from both the ICJ and General Assembly, as well as the widespread recognition amongst the legal community. In GA Resolution 67/19, in which the Palestinian delegation to the UN was granted the title of “observer *state* [emphasis added],” the General Assembly proceeded to affirm the “right to self-determination and to independence in their State of Palestine.”^[40] In the Wall case, the ICJ not only maintained the Palestinian right to

self-determination (and its lack of realization thus far), but also found that Israel's actions had actively impeded that right.^[41]

In order to determine whether the Palestinian resistance groups in question qualify as NLMs, they must be held up to the aforementioned standards as laid out in the Additional Protocol. First: do these groups represent the Palestinian "people?" These resistance groups are not only the political authorities in the OPT (in places where Israel is not in control), but also serve as the representatives of the State of Palestine to the United Nations.^[42] Additionally, representatives of the Palestinian resistance groups are the entities that have directly negotiated with Israeli representatives in peace negotiation processes since the 1990s.^[43]

Second: are these groups "fighting against colonial domination and alien occupation and against racist regimes?" Here, it is important to distinguish between Palestinians and Israelis in order to assert that the Israeli occupation is "alien;" this is particularly difficult when factoring in Jewish Palestinians or Arab Israelis. The clearest evidence of the intention of differentiation between the two groups is found in the Israeli legal codes, which have distinct clauses addressing Jewish and Arab inhabitants and parliament members.^[44] Additionally, Israel itself identifies a difference in "negotiations between Israelis and the Palestinians."^[45] They have attested to being an occupying power in the OPT, not an annexing power, meaning that, by Israel's own standards, they qualify as an "alien occupation;" additionally, language used in legal proceedings refer to the Palestinian territories as "occupied" and to Israel as "the occupying power."^{[46][47]} Thus, under legal analysis, official UN language, and Israel itself, Criterion Two is satisfied. Similarly, Criterion Three requires that the intention of the resistance group's actions be "in the exercise of their right of self-determination." As self-determination itself implies liberation from alien political influence, the arguments for Criterion Two also apply here. By these standards, the Palestinian resistance groups qualify as NLMs and thus fall under the specific legal classifications afforded to NLMs.

One important distinction made to NLMs is that they are restricted by international humanitarian law (IHL); that is, they cannot commit violence arbitrarily. While NLMs can be exonerated from otherwise-illegal usage of armed force, that force needs to explicitly be in furtherance of the peoples' self-determination and, generally speaking, civilians should be protected wherever possible.^[48] As has been established, this has not been true with regards to the offensive measures taken by the Palestinian resistance groups. While this does not suspend these groups' claims to NLM status, it potentially could become a legal liability in the event of formal Palestinian statehood; however, the likelihood of this theoretical new Palestinian state being brought before the ICJ for crimes committed prior to organized statehood is low, based on empirical evidence of NLMs during the

decolonization era.

Additionally, granting NLM status to Palestinian resistance groups affords one more benefit: international support. As previously mentioned, NLMs are a justified cause for states to offer direct or indirect support, including financial, military, and safe harbor. In a similar manner as the releasing of Palestinian resistance groups from the charges of terrorist activities, third-party supporters are released from the charges of state-sponsored terrorism when the cause is legitimate in the way that NLMs are legitimate. This is because state support for NLMs is equivalent to the promotion of self-determination around the world, a major state responsibility under relevant international law. For these reasons, states are not precluded from offering support to the Palestinian resistance groups; rather, they are encouraged under the language of state responsibility and self-determination law.

However, simply because state support of Palestinian resistance groups is legal, it is not a binding obligation. States are not required under the frameworks described above to give aid, in any form, to any other state or non-state actor. Political motivations are major considerations in determining if a state will offer aid, particularly for states that may have adverse consequences for supporting Palestinian resistance groups. For example, a Small Island Developing State (SIDS) may not have the political capital to spend on taking a stance that opposes the United States, a supporter of Israel. For this reason, states are able to make the decision themselves whether or not to support Palestinian resistance groups without a violation of the state responsibility to promote self-determination of all peoples around the world.

Conclusion

In conclusion, Palestinian resistance groups, while at times acting akin to terrorist organizations, are ultimately justified to use relevant force under NLM legal provisions. There is nothing in international law that precludes an NLM from simultaneously acting as a terrorist organization, particularly if that group is upholding civilian immunity from danger. However, as there is no formal definition of terrorism, I would argue that the ideology of self-determination and legitimate struggle for freedom from alien interference is a purpose that supersedes the burden of the label of “terrorist organization.” After all, “terrorism,” as previously mentioned, is meant to be representative of some of the most evil and atrocious violence to be committed by a state or non-state actor, while self-determination is considered a righteous and honorable cause. While there is obviously an ethical concern to be raised in the methods by which these organizations operate, one could likewise present an ethical concern towards the counter offensives of Israel, who has

repeatedly violated ICJ rulings; to disproportionately accost Palestinian liberation organizations as “terrorist organizations” is to ignore the equally-applicable label of “state-sponsor of terror” one could attribute to Israel. Additionally, this analysis finds that international support of Palestinian resistance groups is justifiable under the legal provisions of NLMs, similarly to the example given of American support of the Mujahideen in Afghanistan. While there may be political, economic, ideological, or other factors preventing a state from intervening, it is a legally sound position to take.

At a time when the Palestinian cause is, again, threatened by asymmetrical and disproportionate violence (which, notably, has violated other spheres of international law including humanitarian, occupation, and wartime conduct), it is important that states not hesitate to assist solely out of legal concern; the law discussed in this paper was created with empirical evidence in mind, understanding that “self-determination is rarely achieved without the use of force and armed struggle.”^[49] With two separate cases pending before the ICJ, it is possible that legal justice for the decades of violence in Palestine is on the horizon; however, the effectiveness of the international legal system in one of its most trying conflicts remains to be seen.

References

1. Balfour, A.J., *Balfour Declaration*, (1917) Israeli Ministry of Foreign Affairs
2. *Mandate for Palestine*, League of Nations Council (1922), UN Digital Library Archive A/292
3. “The Constitution of Israel.” compiled by Kohn, Leo. *The Journal of Educational Sociology* 27, no. 8 (1954): 369–79. <https://doi.org/10.2307/2263817>.
4. *The Palestinian National Charter*, Palestine National Council, art. 9 (1968). Retrieved from Yale Law Lillian Goldman Law Library Avalon Project Archive, https://avalon.law.yale.edu/20th_century/plocov.
5. There are many internal factions of Palestinian resistance groups; however, their core values and tactical strategies operate in largely the same way and, in the context of this paper, do not make a substantial difference in the ultimate legal analysis. For the purposes of this paper, these groups will be referred to collectively unless otherwise called out by name.
6. Only states that are member states of the UN and have ratified the relevant UNGA resolutions are bound to state responsibility. For the purposes of this paper, unless otherwise mentioned, it can be assumed that the mentioned “states” refer to these bound states.
7. *Responsibility of States for internationally wrongful acts*, U.N. Doc. A/RES/56/83 (Dec. 12 2001) pg. 1
8. *Draft Articles on Responsibility of States for Internationally Wrong Acts*, UN International Law Commission, 2001, legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.
9. Case Concerning United States Diplomatic And Consular Staff In Tehran (*United States Of America v. Iran*), Judgment, I.C.J. Reports 24 May 1980, pg. 35 para. 74
10. Falk, Richard. “Azmi Bishara, the Right of Resistance, and the Palestinian Ordeal.” *Journal of Palestine Studies* 31, no. 2 (2002): 19–33. <https://doi.org/10.1525/jps.2002.31.2.19>.
11. G.A. Res. 3034 (XXVII), U.N. Doc. A/RES/3034(XXVII) (Dec. 18, 1972).
12. G.A. Res. 46/51, U.N. Doc. A/RES/46/51 (Dec. 9, 1991).
13. U.N.S.C. Res. 1269, U.N. Doc. S/RES/1269 (Oct. 19, 1999).
14. *Measures To Eliminate International Terrorism*, G.A. Res. 49/60, U.N. Doc. A/49/60 (1994). Retrieved from the University of Minnesota Human Rights Library, <http://hrlibrary.umn.edu/resolutions/49/60GA1994.html>
15. U.N.S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sep. 28, 2001).
16. *International Convention For The Suppression Of The Financing Of Terrorism*, G.A. res. 54/109, U.N. Doc. A/RES/54/109 (2000)
17. G.A. Res. 49/60, U.N. Doc. A/49/60 (1994).
18. *United Nations Global Counter-Terrorism Strategy*, G.A. res. 60/288, U.N. doc A/RES/60/288 (2006)
19. “State Sponsors of Terrorism.” United States Department of State, Accessed May 2024, www.state.gov/state-sponsors-of-terrorism/.
20. Previous entries that have since been removed from the US list of State Sponsors of Terrorism include South Yemen (dissolved 1990), Iraq (removed 2004), Libya (removed 2006), and Sudan (removed 2020). In 2022, the process to add the Russian

- Federation to the list was initiated following the invasion of Ukraine, but was never finalized.
21. As this list is developed by the US Department of State, it follows the foreign policy stances of the US and thus may not be inclusive or reflective of alternative viewpoints. For this reason, the list is non-exhaustive and should be understood as exemplary to the role of state-sponsored terrorism in international relations, rather than a definitive record of states which have engaged in support of terrorist activity.
 22. United Nations, *Charter of the United Nations*, 1945, 1 UNTS XVI
 23. *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations UNA(01)/R3*, U.N. Doc. A/RES/2625 (1970)
 24. Hannum, Hurst. "Legal Aspects of Self-Determination | The Princeton Encyclopedia of Self-Determination." Princeton University, The Trustees of Princeton University, [pesd.princeton.edu/node/511](https://www.princeton.edu/node/511)
 25. G.A. Res. 32/14, Art. 2, U.N. Doc. A/RES/32/14 (Nov. 7, 1977).
 26. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)*, OHCHR (1977),
<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>
 27. Petrov-Yoo, Adelaide, "Explaining America's Proxy War in Afghanistan: U.S. Relations with Pakistan and Saudi Arabia 1979–1989." *Clark University Department of History*. (2019).
 28. "Mujahideen." In *The SAGE Encyclopedia of Terrorism*, 2nd ed. edited by Martin, Gus, 405-405. Thousand Oaks, CA: SAGE Publications, Inc., 2011.
<https://doi.org/10.4135/9781412980173>.
 29. For the purposes of this paper, "officially-designated terrorist organizations" will exclusively include entities that have been designated as such by a passed resolution of the UN Security Council. That list ("United Nations Security Council Consolidated List") can be found here:
<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>
 30. Goertz, Stefan, and Streitparth, Alexander E. *The New Terrorism : Actors, Strategies and Tactics; Chapter 5: Strategy and Tactics of New Terrorism*. Cham: Springer International Publishing AG, 2019. ProQuest Ebook Central.
 31. Luft, Gal. *The Palestinian H-Bomb: Terror's Winning Strategy*. *Foreign Affairs* 81, no. 4 (2002): 2–7. <https://doi.org/10.2307/20033234>.
 32. Moghadam, Assaf. *Palestinian Suicide Terrorism in the Second Intifada: Motivations and Organizational Aspects*. *Studies in Conflict and Terrorism*, 26:2, 65-92, (2003) DOI: 10.1080/10576100390145215
 33. Byman, Daniel, et al. *Hamas's October 7 Attack: Visualizing the Data*, Center for Strategic and International Studies, 19 Dec. 2023,
www.csis.org/analysis/hamass-october-7-attack-visualizing-data.
 34. Ibid.
 35. Seurat, Leila. *The Foreign Policy of Hamas : Ideology, Decision Making and Political Supremacy*. London: I. B. Tauris & Company, Limited, 2022. ProQuest Ebook Central.

-
36. By “strikingly similar,” I mean to say that the quick, precise targeting of key opposition strongholds and sudden victory between both events resembles each other. In 1967, Israel took only six days to “get in and get out” in their successful offensive against Palestinian Arabs and neighboring Arab countries as a result of extensive planning and strategizing. Likewise, Hamas in 2023 only took one day to successfully carry out their offensive against Israeli citizens.
 37. Lehrke, Jesse Paul, and Schomaker, Rahel. *Kill, Capture, or Defend? The Effectiveness of Specific and General Counterterrorism Tactics Against the Global Threats of the Post-9/11 Era*. *Security Studies* 25, no. 4, 2016: pg. 729–62. doi:10.1080/09636412.2016.1220199.
 38. Habeck, Mary. *Al-Qa`ida and Hamas*. Combating Terrorism Center at West Point, CTC Sentinel vol. 3 iss. 2. February 2010.
 39. The issue of Palestinian statehood is ever-changing and highly dependent on political perspectives. For the purposes of this paper, Palestine is not considered a fully-fledged “state” due to limited diplomatic relations with other states and a lack of full member status at the UN; however, it is very important to note that Palestine plays an extensive role in the proceedings of the UN as an observer state, and arguably could meet the standards laid out in the Montevideo Convention on the Rights and Duties of States (1933) that determine legitimate statehood.
 40. G.A. Res. 67/19, 1-2, U.N. Doc. A/RES/67/19 (Nov. 29, 2012).
 41. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Summary of the Advisory Opinion of 9 July 2004), I.C.J. Reports 9 July 2004, p. 7-21
 42. G.A. Res. 3237 (XXIX), U.N. Doc. A/RES/3237(XXIX) (Nov. 22, 1974).
 43. *Declaration of Principles on Interim Self-Government Arrangements (“Oslo Agreement”)*, Peace Agreements & Related, 13 September 1993, <https://www.refworld.org/legal/resolution/par/1993/en/13889>
 44. “The Constitution of Israel.” compiled by Kohn, Leo.
 45. *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Written Statement of Israel), I.C.J. Reports 24 July 2023
 46. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Letter dated 29 January 2004 from the Deputy Director General and Legal Advisor of the Ministry of Foreign Affairs, together with the Written Statement of the Government of Israel), I.C.J.
 47. G.A. Res. ES-10/14, pg. 2, U.N. Doc. A/RES/ES-10/14 (Dec. 8, 2003).
 48. *Do Palestinians Have The Right To Resist, And What Are The Limits?*, Law for Palestine, 8 October 2023. <https://law4palestine.org/do-palestinians-have-the-right-to-resist-and-what-are-the-limits-short-article/>
 49. *Palestinian Right to Resistance*, Law for Palestine (2023)
-

**Excluded and Overlooked: An Examination of Asian American
Identity, Immigration, and In/equality in the United States
(19th Century - Present Day)**

Stephanie Lee

Abstract

This paper examines the persistence of Asian American racism in the United States, from the Chinese Exclusion Act (1882) to the present day. Despite the contributions of Asian Americans to US society, this community continues to face exclusion and stereotyping. This research argues that Asian American racism is a deeply ingrained issue in the United States, perpetuated by historical law and present social attitudes, and it explores the ways in which law has allowed for Asian American racism to persist in the United States, as well as the ways in which we can work towards a more equitable future.

Through a critical analysis of historical and contemporary legal cases, and advocacy groups, this paper examines the complex relationships between law and Asian American experiences, incorporating research from a variety of academic, legal, and community-based sources. Key cases examined include the Chinese Exclusion Act (1882), *Chae Chan Ping v. United States* (1889), the Geary Act (1892), *Wong Kim Ark v. United States* (1898), *Ozawa v. United States* (1922) and *United States v. Thind* (1923). The paper also analyzes contemporary developments, such as advocacy groups like the Organization of Chinese Americans (OCA) and *Students for Fair Admissions (SFFA) v. Harvard University* (2022).

Dedicated to my family, this research is inspired by their immigration story and commitment to education. As the daughter and granddaughter of immigrants, my experiences have been shaped by the sacrifices of my family and their challenges with building a new life in America since 1986.

This paper contributes to the ongoing debates about racial justice, immigration, and equality, and offers insights for policymakers, scholars, and activists seeking to address the persistence of Asian American racism. Ultimately, this research demonstrates that understanding the history and contemporary manifestations of Asian American racism is crucial for building a more equitable future for all.

According to the National Library of Medicine (2022), citing the Anti-Asian Hate Crime Report (2021), hate crimes against Asian individuals in the 16 largest US cities (e.g. New York, San Francisco, Seattle, and Washington D.C.) increased by 145% in 2020 compared to the previous year. Moreover, a COVID-19 poll found that over 30% of respondents reported witnessing anti-Asian sentiment related to the pandemic specifically.

Hate crimes are defined as offenses motivated by prejudice based on factors like race, gender, and ethnicity. Unlike traditional crimes, hate crimes are rooted in hate, prejudice, and hostility towards a specific group. Legally, this prejudice can also be based on religion, disability, sexual orientation, and other characteristics.

The intersection of prejudice, hostility, and legal definitions creates a complex landscape for addressing hate crimes. The persistence of these stereotypes and biases is a symptom of a broader systemic issue, one that has been perpetuated and reinforced by laws and policies throughout US history. What role do historical stereotypes and biases play in perpetuating hate crimes against Asian Americans today? How do contemporary hate crimes reflect the ongoing legacy of exclusionary laws and policies, such as the Chinese Exclusion Act of 1882?

A complex history of exclusion, marginalization, and stereotyping has profoundly impacted the lives of Asian Americans, influencing their opportunities, challenges, and sense of belonging. These experiences of Asian Americans highlight the need for a critical examination of the ways in which law and societal attitudes have contributed to ongoing racism and inequality. This paper argues that Asian American racism is a deeply ingrained issue in the United States, one that continues to affect this community today. Through an examination of the historical and contemporary interactions of law and Asian American racism, including the impact of legal acts and cases like the Chinese Exclusion Act (1882), *Chae Chan Ping v. United States* (1889), the Geary Act (1892), *Wong Kim Ark v. United States* (1898), *Ozawa v. United States* (1922) and *United States v. Thind* (1923), as well as efforts to challenge this inequality through organizations like Organization of Chinese Americans (OCA), and connections to contemporary issues and activism such as *Students for Fair Admissions (SFFA) v. Harvard University*, this paper will explore the ways in which law has allowed for Asian American racism to persist in the United States, as well as the ways in which we can work towards a more equitable future.

To understand the persistence of Asian American racism in the United States today, it is essential to examine the historical context in which it emerged, beginning with the Chinese Exclusion Act of 1882, “the first federal law to explicitly restrict immigration on the basis of race and ethnicity”. Signed into law by President Chester A. Arthur, the act barred Chinese laborers from immigrating to the United States through a 10-year ban, citing threats to local communities. This act also imposed stringent requirements on Chinese individuals who already resided in the country. When the Chinese Exclusion Act expired in 1892,

Congress expanded it for another decade through the Geary Act, introducing additional restrictions. These included mandatory registration and certification for Chinese residents, with deportation at risk for those without proper documentation. Chinese immigration continued to be regulated into the 20th century, with quotas such as a yearly limit of 105 Chinese immigrants emerging.

The Chinese Exclusion Act's constitutionality was tested in the case of *Chae Chan Ping v. United States* (1888). Chae Chan Ping, a Chinese laborer, had resided in the US from 1875 to 1887. When he departed for China in 1887, he received a certificate permitting his return to the US. However, upon his attempted re-entry in 1888, the collector of customs in San Francisco, California denied him entry, mentioning the passage of the Scott Act on October 1, 1888. This legislation abrogated certificates like Ping's, thereby restricting Chinese laborers from re-entering the US. Ping was then detained on the steamship *Belgic*, prompting his lawyers to petition for habeas corpus relief, arguing his unlawful detention.

Chae Chan Ping v. United States ultimately reached the Supreme Court as part of the Chinese Exclusion Case. At its core, the case questioned Congress's authority to enact immigration laws. The Supreme Court ruled that Congress indeed possesses this power as part of its foreign affairs authority. Moreover, the government has the right to exclude foreigners if deemed necessary for public interests, a power inherent to national sovereignty. In essence, the court affirmed Congress's authority to regulate immigration, deeming it essential to the country's independence and security.

The Supreme Court's ruling in *Chae Chan Ping v. United States*, which upheld the government's authority to exclude foreigners deemed detrimental to public interests, legitimized the discriminatory principles underlying the Chinese Exclusion Act. The Chinese Exclusion Act and its subsequent extensions and reinforcements not only entrenched anti-Chinese sentiment in the United States but also established a precedent for the federal regulation of immigration based on race and ethnicity. This confluence of these legislative and judicial actions has had enduring consequences for Asian American communities, perpetuating cycles of exclusion, marginalization, and racism that persist to this day.

All exclusion acts were eventually repealed in 1943. However, this repeal marked only the beginning of a long and ongoing struggle for Asian Americans to achieve equal rights and recognition in the United States. As the *Wong Kim Ark v. United States* case demonstrated in 1898, during the era of the Chinese Exclusion Act, the fight for citizenship, belonging, and equal rights would continue to be a defining feature of the Asian American experience. In this case, Wong Kim Ark, born in San Francisco to Chinese immigrant parents in 1873, was denied reentry to the US after visiting China. In the end, the Court ruled 6-2 that Wong was a US citizen by birth, citing the 14th Amendment's birthright citizenship clause,

claiming “a child born in the US to parents of foreign descent is a US citizen.” While Wong Kim Ark had won full rights of citizenship for both himself and all future American children of immigrants, this case also remained problematic. Although Wong Kim Ark was a Chinese American, the court's decision did not explicitly challenge the racist and exclusionary immigration laws of the time. In fact, the decision reinforced the idea that citizenship was tied to racial identity. The court's emphasis on the importance of birthplace and parental nationality could be used to justify the exclusion of other immigrant groups, in other words. This case would later serve as precedent for other various groups, including Japanese Americans and Latin American immigrants.

The landmark case of *Wong Kim Ark v. The United States* not only marked a significant moment in Asian American history, but also showcased the strategic use of litigation in challenging discriminatory practices. Building on this, it is essential to examine the specific reasoning behind the court's decision: in *Wong Kim Ark v. United States*, the Supreme Court interpreted the Citizenship Clause of the Fourteenth Amendment, which guarantees citizenship to all persons born or naturalized in the United States. The Court defined "born in the United States" as birth within U.S. territorial boundaries, including territories under U.S. jurisdiction. It also interpreted "subject to the jurisdiction thereof" as meaning that a person born in the U.S. is subject to its laws and jurisdiction, regardless of their parents' nationality or immigration status. The Court rejected the argument that Wong Kim Ark's Chinese parents disqualified him from citizenship, instead holding that the Citizenship Clause does not require parental citizenship for birthright citizenship, and applied the principle that a person born within a sovereign's dominion is a natural-born subject to the U.S. context, concluding that Wong Kim Ark was a U.S. citizen under the Citizenship Clause.

The *Wong Kim Ark* case (1898) was a decision that also established the principle of “*ius soli*,” or birthright citizenship, for children born in the United States to immigrant parents (Lyon, 4). This ruling addressed a critical issue in immigration law, clarifying the citizenship status of individuals born in the United States. Although this case marked a significant milestone in the fight for Asian American citizenship, it did not resolve the complexities of racial identity in regards to naturalization, a separate process by which immigrants could become U.S. citizens, as previously mentioned and later seen in the later cases of *Ozawa v. United States* as well as *United States v. Thind*.

Takao Ozawa, a Japanese immigrant, applied for naturalization as a US citizen in 1914. Despite having resided in the US for 20 years, attending UC Berkeley, educating his children in American schools, attending American churches, and speaking English fluently, Ozawa's petition was denied by the US District Court for the territory of Hawaii due to his race.

The case eventually reached the Supreme Court, which considered whether Ozawa was eligible for naturalization under section 2169 of the Revised Statutes. This section restricts naturalization to "free white persons" and people of African nativity or descent. The Supreme Court ultimately ruled that Ozawa was not eligible for naturalization because he was not a "free white person."

In reaching its decision, the Supreme Court relied on previous court decisions that had established "white person" as referring to individuals of the Caucasian race. The court acknowledged that this interpretation might lead to difficulties in "borderline cases" where racial identity was ambiguous, but ultimately concluded that Ozawa, as a non-Caucasian, did not qualify for naturalization. The court emphasized that its decision was based solely on the interpretation of the law, without implying any judgment on Ozawa's individual worthiness or that of the Japanese people.

Ozawa argued that his skin tone was lighter than many Caucasians, but the Supreme Court unanimously rejected his claim, citing established precedent and the prevailing 'scientific' understanding of racial differences at the time: "The language of the Naturalization Laws from 1790 to 1870 had been uniformly such as to deny the privilege of naturalization to an alien unless he came within the description 'free white person'... the Federal and state courts, in an almost unbroken line, have held that the words 'white person' were meant to indicate a person of what is popularly known as the Caucasian race . . . The appellant in the case now under consideration, however, is clearly of a race which is not Caucasian... [This determination] is sustained by numerous scientific authorities . . ."

In the *US v. Thind* case (1923), Bhagat Singh Thind, a Sikh immigrant from India, made history as the first turbaned Sikh man to serve with American soldiers in World War I and complete his PhD at UC Berkeley. He then applied for citizenship in Oregon. While Thind's application was initially granted, it was later revoked due to his "non-white status." Thind took his case to the Supreme Court, presenting "scientific" evidence that South Asians were of Aryan descent and therefore Caucasian, but the court rejected his argument. These two cases highlight the intertwined yet distinct trajectories of immigration and naturalization law, demonstrating how the rights and privileges of Asian American citizenship have been shaped by intersecting factors of race, identity, and belonging.

The persistence of Asian American racism in the United States today is rooted in intricate history, as seen in the examples (Chinese Exclusion Act (1882), *Chae Chan Ping v. United States* (1889), the Geary Act (1892), *Wong Kim Ark v. United States* (1898), *Ozawa v. United States* (1922) and *United States v. Thind* (1923)) above. The Chinese Exclusion Act of 1882 as well as the Geary Act (1892) marked the beginning of a long era of exclusionary laws and policies that targeted Asian immigrants. The *Chae Chan Ping v. United States* (1889) decision legitimized the federal government's power to exclude immigrants deemed

'undesirable,' paving the way for future exclusionary laws. Despite the landmark *Wong Kim Ark v. US* case, which established the principle of birthright citizenship, the struggle for Asian American citizenship and belonging continued. Takao Ozawa's failed naturalization passage in *Ozawa v. United States* (1922) underscored the racialized nature of citizenship, as the Supreme Court deemed him ineligible due to his non-Caucasian status. The *US v. Thind* case, which denied citizenship to a Sikh immigrant from India due to his "non-white status," further entrenched racial barriers to citizenship, contributing to this inequality. The Supreme Court's rejection of Thind's argument that South Asians were Caucasian highlighted the arbitrary and discriminatory nature of racial classification in the US. The legacy of these cases continues to shape the experiences of Asian Americans today, who still face challenges in their fight for equal rights, recognition, and belonging in the United States.

Continuing the legacy of *Wong Kim Ark's* landmark case, advocacy organizations such as the Organization of Chinese Americans (OCA), established in 1973, have pushed for the rights of immigrant communities to citizenship and equal protection under the law, claiming they "advocate on behalf of all Asian Americans, Native Hawaiians, and Pacific Islanders". Throughout the 1970s-1980s, OCA advocated for the establishment of Asian American Studies programs in universities across the United States, promoting greater understanding and representation of Asian American experiences.

Even today, through grassroot organizing and community engagement, OCA's chapters and affiliates across the United States work to educate, mobilize, and empower AAPI communities to advocate for their rights and interests. Currently, OCA is leading initiatives to address the growing issue of anti-Asian hate crimes, promote greater diversity and inclusion in education and employment, and advocate for comprehensive immigration reform that protects the rights of immigrant families. They do so through programs, such as the AAPI Women's Initiative. This program convinced with AAPI women from various regions and trains AAPI women in professional development throughout the country to help them reach their highest potential, as well as B3: Build, Breakthrough and Believe, which offers professional and leadership opportunities to AAPI men and women. Through these initiatives and programs, OCA remains committed to creating a more just and equitable society for all AAPI individuals and families, and will vow to continue to advocate for their rights and interests until meaningful and lasting change is achieved.

While organizations such as OCA have made significant strides in promoting AAPI rights and interests, their efforts are not without limitations however. Some might argue that OCA's initiatives, such as the AAPI Women's Initiative and B3, may inadvertently perpetuate a middle-class bias, catering primarily to the needs and concerns of more affluent AAPI individuals while neglecting those of working-class or low-income communities. Furthermore, some might question whether OCA's efforts to promote

diversity and inclusion could, inadvertently, contribute to the erasure of AAPI cultural identities and traditions, as individuals become more assimilated into mainstream American culture.

From the Chinese Exclusion Act to now, the fight for Asian American justice persists: in 2014, Edward Blum, a prominent opponent of race-conscious admissions, founded Students for Fair Admissions (SFFA) and filed a lawsuit against Harvard University. The lawsuit alleged that Harvard discriminates against Asian Americans and sought to dismantle the university's admissions process. This effort was part of a broader campaign by Blum to challenge the consideration of race in college admissions. He noted that Harvard's student body has become significantly more diverse, with record proportions of Black, Latino, and Asian American students. However, Blum highlighted a particularly striking increase in Asian American admissions at Harvard, which rose by 60% after he filed a lawsuit and won against the university in 2014. Blum stated in his interview, "In 2014, the year we sued Harvard, the Asian admissions rate was, I think, around 18, maybe 19 percent...but then when Harvard gets sued, all of a sudden the number of Asians go up by 60 percent. Well, I think the numbers speak for themselves." However, this increase in Asian American admissions has not translated to equal representation in other areas.

A closer examination of the Harvard admissions process reveals a more nuanced and troubling reality; According to the New York Times, an internal review of Harvard's admissions data, conducted as part of the lawsuit, found that while Asian American applicants scored higher than applicants of any other racial or ethnic group on admissions measures like test scores, grades and extracurricular activities, Asian American students' personal ratings significantly dragged down their chances of being admitted, in which they consistently received lower ratings on subjective personal qualities assessments, such as "likability, courage, and kindness." In other words, the analysis found that Asian American students' personal ratings, which were based on staff members' personal impressions, substantially lowered their admission prospects, resulting in many qualified applicants being denied admission.

Harvard strongly refuted the allegations, citing its own expert analysis that found no evidence of discrimination, arguing that pursuing diversity is a crucial aspect of its student selection process. The university emphasized that its admissions process is comprehensive and fair, stating "Thorough analysis of the data makes clear that Harvard College does not discriminate against any group, including Asian-Americans, whose admission rate has increased by 29% over the past decade." Harvard further criticized Blum, denouncing his analysis, claiming it "omitted critical data and information factors" (Garcia-Navarro, Lulu. NY Times). This disparity has led some to argue that Harvard's admissions process perpetuates a form of "racial stereotyping," in which Asian American applicants are held to unfair and culturally-biased standards.

The Harvard case is further complicated by the motivations and actions of Edward Blum, a wealthy white conservative with a long history of challenging affirmative action policies. Critics argue that Blum's sudden interest in Asian American rights is opportunistic, as he has previously used white plaintiffs to challenge affirmative action. Some also point out that Blum's tactics have driven a wedge between different Asian American groups, even communities of color overall, with some siding with his efforts to dismantle affirmative action, while others have come out in support of preserving these policies, which they argue can benefit certain segments of the Asian American community, according to National Public Radio. "This myth of affirmative action being harmful to Asian Americans is creating a deliberate racial wedge between communities of color" says Sally Chen, a member of Chinese for Affirmative Action. Chen's statement highlights how the *SFFA v. Harvard* case has, as previously mentioned, become a battleground for competing narratives about racial justice, affirmative action, and the complexities of Asian American identity, underscoring the need for nuanced understanding and solidarity.

Ultimately, in the landmark case of *SFFA v. Harvard*, the Supreme Court delivered a contentious decision, striking down Harvard's race-conscious admissions policies as unconstitutional. The Court acknowledged the policies' good intentions, but ultimately concluded that they failed to meet the stringent standards of strict scrutiny, according to Legal Defense Fund. Specifically, the Court held that the policies were not narrowly tailored to achieve a compelling government interest, thereby rendering them unconstitutional. This decision marked a significant departure from nearly five decades of established precedent, as the Court applied a far more stringent version of strict scrutiny than it had in previous cases.

Comparing the past effort with the present, the *Wong Kim Ark v. US* case and the *SFFA v. Harvard* case may seem like different efforts, but they are connected by a common thread - the struggle for Asian American rights and representation. While *Wong Kim Ark's* case fought for the inclusion of Asian Americans in the US polity, the *SFFA v. Harvard* case highlights the ongoing challenges of navigating the complexities of racial identity and equality in education. Paradoxically, the latter case, depending on an individual's viewpoint on affirmative action, has been criticized for potentially undermining the very same rights and protections that *Wong Kim Ark's* case helped establish. This juxtaposition underscores the precarious nature of Asian American rights and the need for continued vigilance in the face of evolving challenges and complexities. Regardless, as demonstrated by both cases, there is still much work to be done to address the complex issues facing Asian American communities. Organizations like OCA remain committed to advocating for the rights and interests of Asian American communities, from addressing anti-Asian hate crimes to promoting diversity and inclusion in education and employment. As we reflect on the legacy of *Wong Kim Ark v. United States* and the ongoing efforts of Asian American advocacy like *SFFA v. Harvard*, it is clear that continued activism and advocacy are necessary.

The struggle for Asian American justice is an ongoing and multifaceted one. As we continue to navigate this complex landscape, we must confront critical questions about identity, belonging, and the politics of representation. What does it mean to be Asian American in an era of rising anti-Asian racism and xenophobia? How can we further weave together diverse perspectives and inspire the resilience of Asian American communities to build a more just and equitable society? Through this paper, we have seen how law has played a dual role in both perpetuating and addressing inequality, from the Chinese Exclusion Act to the present day.

Asian American communities have consistently faced challenges in their pursuit of equality and justice, from citizenship rights to educational opportunities. Despite these struggles, the Asian American community remains committed to advocating for their rights and interests. As we move forward, it is essential that policymakers, educators, and community leaders continue to support and amplify the voices of Asian American communities, recognizing the intersections between their struggles and the broader pursuit of social justice, and to do so we must acknowledge the ongoing legacies of inequality. Advocacy may be achieved by also engaging with organizations like the Organization of Chinese Americans (OCA), listening to and respecting Asian American experiences, and advocating for policies that address the specific needs and concerns of these communities. Ultimately, this paper asserts that the pursuit of Asian American justice requires a nuanced understanding of the complex intersections between law, identity, and power, and encourages readers to take action by engaging in advocacy and promoting inclusive practices in their personal and professional lives.

References

- Lu, Alexander. 2010. "LITIGATION and SUBTERFUGE: CHINESE IMMIGRANT MOBILIZATION during the CHINESE EXCLUSION ERA." *Sociological Spectrum* 30 (4): 403–32. <https://doi.org/10.1080/02732171003641024>.
- US v. Thind.
https://drive.google.com/file/d/18_Xjiuk1N44OSN8n8vbaCEE4dsILkavz/view?usp=sharing
- "Immigration, Naturalization, and Citizenship": Inequality through Exclusion and Restriction by Professor Elizabeth Beaumont of University of California, Santa Cruz.
<https://docs.google.com/presentation/d/1nIfxeM35Q2tTQSTqg6HMD8uy2nE3LpNQyAKIDQZLja0/edit?usp=sharing>
- US V. Wong Kim Ark
https://docs.google.com/document/d/1_IHf9js3HjqtCTkN_oiYuzTG5UKHmNhm/edit#heading=h.gjdgxs
- National Archives. 2021. "Chinese Exclusion Act (1882)." National Archives. September 8, 2021.
<https://www.archives.gov/milestone-documents/chinese-exclusion-act>.
- OCA. 2014. "OCA National Center." OCA National Center. 2014.
<https://www.oceanational.org/b3-leadership-summit>.
- Chakraborti, Neil. 2018. "Responding to Hate Crime: Escalating Problems, Continued Failings." *Criminology & Criminal Justice* 18 (4): 387–404.
<https://doi.org/10.1177/1748895817736096>.
- "CHAE CHAN PING v. UNITED STATES." 2019. LII / Legal Information Institute. 2019. <https://www.law.cornell.edu/supremecourt/text/130/581>.
- "Chinese Exclusion Case—Chae Chan Ping v. United States | the National Constitution Center." 2022. National Constitution Center – Constitutioncenter.org. 2022.
<https://constitutioncenter.org/the-constitution/supreme-court-case-library/chinese-exclusion-casechae-chan-ping-v-united-states>.
- "TAKAO OZAWA v. UNITED STATES." 2019. LII / Legal Information Institute. 2019. <https://www.law.cornell.edu/supremecourt/text/260/178>.
- Garcia-Navarro, Lulu. 2023. "He Worked for Years to Overturn Affirmative Action and Finally Won. He's Not Done." *The New York Times*, July 8, 2023, sec. U.S. <https://www.nytimes.com/2023/07/08/us/edward-blum-affirmative-action-race.html>.
- Harvard. n.d. "https://www.harvard.edu/Admissionscase/Lawsuit/." Harvard Admissions Lawsuit. <https://www.harvard.edu/admissionscase/lawsuit/>.
- Anemona Hartocollis. 2018. "Harvard Rated Asian-American Applicants Lower on Personality Traits, Suit Says." *The New York Times*, June 15, 2018.
<https://www.nytimes.com/2018/06/15/us/harvard-asian-enrollment-applicants.html>.
-

Dirks, Sandhya. 2023. "Affirmative Action Divided Asian Americans and Other People of Color. Here's How." NPR. July 2, 2023.

<https://www.npr.org/2023/07/02/1183981097/affirmative-action-asian-americans-poc>.

Legal Defense Fund. n.d. "Affirmative Action Cases: SFFA v. Harvard and SFFA v. UNC."

Legal Defense Fund. <https://www.naacpldf.org/case-issue/sffa-v-harvard-faq/>.

**New York Times Company v. Sullivan: An Analysis Regarding the
First Amendment and a Landmark Libel Decision**

Jacob Khang Nguyen

Abstract

This research paper analyzes the landmark case of *New York Times Co. v. Sullivan* and explores the protections afforded to the press under the First Amendment. The paper begins with a historical background on the case's inception, followed by an analysis of the constitutional principles that influenced the court's decision. It raises critical questions regarding the justifications presented by Justices Gorsuch and Thomas for potentially overturning the original ruling. The paper will then introduce the standards of the malice doctrine and discuss the circumstances under which it should be applied to public officials. Additionally, it will evaluate the long-term effects of overturning the ruling, including a counterargument. Finally, the paper will consider whether the case should be revisited and articulate the reasons why the original ruling was appropriately applied.

Historical Background

New York Times Co. v. Sullivan was a landmark decision of the *United States Supreme Court* in 1964. The case originated when 35 students from Alabama State College, an all-Black institution, requested to be served at a snack bar in the basement of the Montgomery County Courthouse, defying the laws and customs of the segregated South at the time, which enforced racial separation under a system known as "Jim Crow." All 35 students were arrested and faced the likelihood of expulsion by Governor John Patterson. Following Patterson's expulsion order, 800 students from Alabama State College marched in protest over the issue. The protest confronted both Montgomery law enforcement and members of the Ku Klux Klan, attracting national attention to the cause. In response, supporters of the civil rights movement began raising money for legal expenses. To do so, the students placed a full-page advertisement in the *New York Times* asking readers to raise funds as a means to end racial segregation. The advertisement detailed the civil rights movement and the protests that had occurred in Montgomery, Alabama.

The advertisement described the events surrounding the protest but contained several errors. It alleged, for instance, that students had sung the National Anthem during the protest and claimed that police had encircled the campus and locked the dining hall. However, the students had sung "My Country 'Tis of Thee" and though police had responded forcefully and the dining hall had been closed, the campus was never literally "ringed", nor was the hall "padlocked". Furthermore, the advertisement asserted that Martin Luther King, who was helping organize and oversee the demonstrations, had been arrested seven times by Southern police forces, whereas he had been arrested four times.

Montgomery Police Commissioner L.B. Sullivan filed a lawsuit against the *New York Times* in 1963. He cited the errors in the ad, claiming the *New York Times* publication damaged his reputation and reflected poorly on his subordinates. An all-white jury of Alabama citizens ruled in his favor and awarded him \$500,000 in damages. The case went on to be heard by the *Supreme Court of Alabama*, where the outcome resulted in favor of the plaintiff *Sullivan*; the *New York Times*' motion for a mistrial was denied.

During the 1964 case of *New York Times Co. v. Sullivan* before the *United States Supreme Court*, a unanimous (9-0) decision in favor of the *New York Times* was made. The decision was based on the reasoning that an offending statement must be proven to have been published with "actual malice," a new standard established by the court. The court defined this as publishing either with the knowledge that the statement was false or recklessly failing to determine its validity. As *Britannica* noted, one consequence of the decision was that it made it very difficult for public officials to prevail in libel cases. Therefore, the case created a broad historical precedent that has influenced the interpretation of the First

Amendment by public officials and the media, particularly regarding false statements made by the press.

Justices Thomas and Gorsuch

In 2021, Justices Clarence Thomas and Neil M. Gorsuch broke from the rest of their colleagues in suggesting that the *Supreme Court* reconsider the landmark decision, proposing the court make it easier for public officials who hope to win libel lawsuits. Justice Thomas has voiced that opinion on a few occasions. For instance, in 2019, during President Trump's time in office, Justice Thomas said that "the states are perfectly capable of striking an acceptable balance between encouraging robust public discourse and providing a meaningful remedy for reputational harm."

On the 2020 campaign trail, Trump repeatedly called for reconsideration of *New York Times Co. v. Sullivan*, arguing that it provided too much protection for the press and not enough power to public officials about whom false and defamatory statements were published. Although he has not persuaded a majority of the court to join him, Justice Thomas continues to establish this belief. He wrote in an opinion alongside the case *McKee v. Cosby*, that the *New York Times* and the court's ruling to extend "policy-driven" decisions were masqueraded as constitutional law. In addition, his opinion on *McKee v. Cosby* further emphasizes that there is no requirement in the Constitution to establish a malice standard for public officials to overcome, so the court shouldn't rule in that direction as well. The *McKee v. Cosby* opinion for not requiring a standard to be met before filing suit is echoed by Justice Thomas in his latest proposal to reconsider *New York Times Co. v. Sullivan*.

Alongside Justice Thomas is Justice Gorsuch, who also wishes to overturn the ruling of *New York Times Co. v. Sullivan*. Although Gorsuch had not argued that *New York Times v. Sullivan* was wrongly decided, he dissented from the court's denial of review in *Berisha v. Lawson*, No. 20-1063. Specifically, he commented that the "momentous changes in the nation's media landscape since 1964 require the court to revisit *New York Times Co. v. Sullivan*". Despite the changes in our present-day media and reporting, holding public officials in high positions of authority accountable for their actions is the priority. Justices Thomas and Gorsuch offered their views of *New York Times Co. v. Sullivan* as dissents from the *Supreme Court's* rejection of the case *Berisha v. Lawson* review.¹⁴ The particular case was brought by the son of Albania's former prime minister, who sued an author for publishing a book that inaccurately associated him with an illegal arms deal. The *United States Court of Appeals for the Eleventh Circuit* ruled that Mr. Berisha was a public official and thus was required, by the rule established in *New York Times Co. v. Sullivan*, to

demonstrate that the author and publisher acted with malice.

Should *New York Times Co. v. Sullivan* be overturned?

Justices Thomas and Gorsuch have suggested revisiting or overturning the over-half-century-old ruling. Justice Thomas had written opinions in similar cases recently, such as *McKee v. Cosby*, where he urged the court to reevaluate the actual malice standard, as it is not based on the Constitution. He holds onto this belief in the court's decision "not to take up the case of a woman who accused Bill Cosby of sexual misconduct in 2014". Although these were serious allegations, he found that public figures like Bill Cosby should not have to take accountability for themselves. Instead, Justice Thomas argues that the 1964 *Sullivan* ruling was wrong. As highlighted in the CNN article, he says, "We did not begin meddling in this area until 1964, nearly 175 years after the First Amendment was ratified. The States are perfectly capable of striking an acceptable balance between encouraging robust public discourse and providing a meaningful remedy for reputational harm". This demonstrates Justice Thomas' argument, where he stands firm on the belief that the standard of actual malice should be discarded in favor of one that safeguards truthful statements but does grant the benefit of the doubt on false statements. Essentially, it should be up to the individual states to decide on what constitutes actual malice rather than the court.

Justice Gorsuch aligns himself closely with the reasoning of Justice Thomas in the opinion of the case *Edward v. Vannoy*, where he wrote that "the *New York Times* standard is something else entirely and almost certainly has no basis in the original understanding of the First Amendment." The opinions of both justices lean toward the consideration of *New York Times Co. v. Sullivan* not remaining consistent with the initial intent of the First Amendment. Thus, revisiting the decision would be the right direction to take. However, it is noteworthy to consider that these opinions heavily rely on the context of the case, which would make their arguments flawed when discussing the libel landmark decision.

By its plain language, the First Amendment broadly protects freedom of speech and the press; however, it does not provide absolute immunity for errors in reporting, particularly in cases of defamation where false statements are made with actual malice. "Congress," the Amendment states, "shall make no law..." This has the potential to protect journalists who make errors in their reporting since any law punishing such errors would run afoul of that language. Moreover, the First Amendment protects against errors in reporting, would also foster debates concerning government and public

affairs. *New York Times Co. v. Sullivan* recognizes this reasoning and should actively protect the press from retaliation. The exception to protecting errors would be applied if the mistakes are deemed malicious. Another integral part of the First Amendment in *New York Times Co. v. Sullivan* is the ability to place a check on government power. In a democracy, the people must remain updated on current events in American society. Mass communication is an essential part of our everyday lives as it keeps us informed and vigilant. The media is a line of communication between citizens and elected officials in government. The First Amendment also ensures that the press is free of governmental censorship. Political advertising is generally within the protection of the First Amendment (except when it comes to narrow considerations of libel), therefore, a case like *New York Times Co. v. Sullivan* is applicable under that protection.

Limiting the press's capabilities and restricting protections only open up the possibility of greater corruption among our government officials. For this reason, the *Supreme Court* offered significant protection to the media and other outlets by increasing the required burden of proof on the plaintiffs' end. Many libel cases are heavily reliant on the First Amendment and follow the precedent of previous rulings. As a result, the First Amendment must be upheld due to the conduct exhibited by elected officials holding greater weight in the lives of Americans.

Malice Doctrine

The concept of the malice doctrine is meant to protect open disclosure. Evidence of genuine ill intent or malice within false and defamatory information must be exhibited in publications. Media networks have a right to be wrong when confronted with information as long as they do not know the matter is false initially or by ignorance of the truth. The actual malice standard is a concept that would be applied to different types of individuals in our society. Public officials and all-purpose public figures must prove actual malice as a way to prevail in libel cases, a deliberately high burden in recognition of the protections of the First Amendment. There must be proof that the statement made was defamatory against the subject as well.

Trump has argued against the *Sullivan* precedent on Twitter, laying out his arguments, albeit in truncated form, against the malice standard: "Isn't it a shame that someone can write an article or book, totally make up stories and form a picture of a person that is the exact opposite of the fact, and get away with it without retribution or cost". Trump continues to direct his frustration on the *New York Times* in this area: "The failing @nytimes has disgraced the media world. It got me wrong for two solid years. Change libel

laws?” It is for this exact reason that the standards of our nation’s libel laws are so high. The malice doctrine shields news organizations from libel judgments brought by public figures unless malice can be proven, empowering them to hold corrupt politicians accountable.

Effects of overturning *New York Times Co. v. Sullivan*

Overturning one of our nation's most prominent and precedent-setting libel decisions endangers our constitutional rights as U.S. citizens. Not only would it pave the way for corrupt public officials to sue those who challenge their competence, but it could also overturn the outcomes of several libel cases. A variety of defamation lawsuits rely greatly on the *Supreme Court’s* decision in favor of the *New York Times*. An example would be the lawsuits heard at the *Supreme Court*, the 13 *Court of Appeals*, and the 94 *District Courts*. They might be reheard without the malice standard and would be more than likely to be decided in favor of the plaintiffs. The press’s responsibility is to report the truth; it is undoubtedly challenging to do so when they cannot recognize the line drawn on what the public could find offensive. Taking offense is inherently subjective, and overturning the landmark decision could encourage individuals to act based on emotion rather than sound judgment.

The practical effects on reporters would be immediate and significant. Reporters attempt to foster equal and intense debate surrounding the United States Government. This pursuit often places them at odds with public officials. In the same vein, the press should have the right to protect what are called libelous words or statements about a public official as a means of generating governmental debates. Skewed reporting of events is a possibility that may occur as a result of the case being reversed. Essentially, if the landmark decision of *New York Times Co. v. Sullivan* is overturned, many independent U.S. citizens will feel its impact, not just the media outlets reporting information. Furthermore, establishing a society where journalists can safeguard the rights of Americans to question figures of authority is crucial.

Counterargument

Some argue that overturning *New York Times Co. v. Sullivan* would benefit the public by holding the press accountable for false statements. They believe that stricter consequences would prevent misinformation from spreading and compel journalists to uphold higher standards by thoroughly fact-checking claims about public officials. Supporters of this view

might also argue that the advertisement at the center of *New York Times Co. v. Sullivan* did not explicitly mention L.B. Sullivan by name, making the libel claim weak and undeserving of success.

Titled “Heed Their Rising Voices,” the advertisement highlighted the challenges faced by student protesters, describing an “unprecedented wave of terror” and calling for public donations to support both their cause and Martin Luther King Jr.’s legal defense. It reported that student protesters sang “My Country ‘Tis of Thee” before being expelled from their colleges for demonstrating at the Alabama State Capitol. Additionally, the advertisement described “truckloads” of police disturbing the Alabama State campus and alleged that authorities had “padlocked” dining halls to starve students into submission. Finally, it emphasized the urgent need for public support, noting that King had been arrested seven times.

Journalists should acknowledge that, while the statements above contained serious inaccuracies, they did not undermine the overall message of the advertisement. Regardless, as we begin to uncover the alleged events, students did not sing “My Country ‘Tis” but they did sing the National Anthem.²⁶ Secondly, the students were expelled, but it wasn’t because of the State Capitol Protest. They were expelled for a protest at a lunch counter located at the Montgomery County Courthouse on a different day. Also, the dining hall was closed, but it was not “padlocked” as the advertisement had indicated. The campus was not surrounded by law enforcement either. Martin Luther King Jr. was arrested only four times and not seven, as stated in the advertisement.²⁷

Government officials argue that overturning the decision would be good for the public since the press should be punished for false statements, yet the reasons behind these claims are flawed. For instance, media outlets have fact-checkers to revise specific claims that are proven false. Journalists are only human, so an error in publishing or reporting will occur sooner or later. Similarly, the tedious effort it would take to comb through every claim or opinion piece previously made by a media outlet takes up valuable time. Media outlets would be swamped with countless lawsuits, leading to bankruptcy. Sustaining the decision has allowed journalists to effectively execute their duties to serve the American public by being a direct line of communication. Journalism is the foundation of our democratic process, and it is the tool that brings ideas to the public’s consciousness. However, the press’s significant impact on our Democracy is dependent on the public’s trust.

Should the decision be revisited?

Revisiting the landmark decision, *New York Times Co. v. Sullivan*, would be a grave mistake. It could prove detrimental to the free circulation of information through the press and the American people. If *New York Times Co. v. Sullivan* no longer protects the press against lawsuits arising from false statements, innocently made, then the public would lose access to vital information regarding elected officials. They are in a position of power to ensure our interests are prioritized and eventually met. Self-censorship is another large concern when journalists report, due to the press's abilities being inhibited when trying to perform its important role of investigating the facts behind a headline. An influx of defamation lawsuits could force media outlets to be silent in fear of the expensive costs of defending themselves in court. Stories might never be covered in complete truth or detail because of the controversial topics stemming from them, and anyone who disagrees with the public officials will be dealt with a defamation lawsuit. Information threatens power, and speech is a counter against that power.

The long-term damage could be even more profound, undermining public confidence in the work of journalism and destabilizing debate over important public policy matters. The principle of uncovering and reporting the truth would lose its value in the public eye. As an example, suppose journalists learned Florida Governor Ron DeSantis signed the "Don't Say Gay Bill" into law, this would interfere with their reporting because of the liability a lawsuit carries.²⁸ Such lawsuits could be brought against outlets if they made errors in their reporting, even unintentional ones, which breeds hesitation in the scope of reporting. This hesitation to condemn DeSantis' actions would represent a clear ethical violation of everything journalists stand for. In effect, that reluctance strengthens and emboldens political figures to feel a sense of immunity toward being held accountable to the public. DeSantis will be above the law if the landmark libel decision is overturned. Academia and federally funded institutions will be confronted with constant attacks from their hostile governor, aiming to reduce funding and completely ban diversity initiatives in schools.²⁹

Closely related issues could affect and undermine confidence in the coverage of political campaigns. Imagine, for instance, the effects that eliminating the protections of *Sullivan* might have had on the reporting of the 2020 Presidential Election. Journalists covering the election should be able to criticize both candidates on the ballot, regardless of their personal political views. To further elaborate, it was during the Presidential Debate that Trump established doubt regarding Biden's age and acuity. This, in turn, raised concerns about whether he was still qualified for the office of President.³⁰ Those were grave allegations, which CNN and others aired as part of a vigorous national discussion over who should lead the nation. In that debate, the two candidates and their affiliates from both parties freely expressed their opinions, sometimes even making allegations that turned out

to be false.³¹ As the conduit for those discussions, the media has a responsibility to give voice to opposing points of view and may sometimes, inadvertently, repeat false claims. *Sullivan* assures journalists that if they do their important work in good faith, recognizing that mistakes will occur, they will not face crippling economic consequences. Without those protections, the scope of debate would narrow, and the range of choices and ideas placed before the American people would be restricted. Therefore, the *Sullivan* decision is vital in protecting journalists who make honest errors when reporting on public officials.

Conclusion

The original ruling of *New York Times Co. v. Sullivan* was the appropriate approach for several reasons. Newspapers such as the *New York Times* can freely, without fear of retaliation, publish pieces that they know can corroborate the truth in one way or another. However, if they were to write an unintentionally “distasteful” piece about a public official, the individual can not respond with a libel lawsuit unless that official can meet a high burden. It is undoubtedly a good law in that it discourages corruption even at the highest levels of political office. The President cannot file suit for libel or defamation unless he can provide substantial evidence of there being ill intent or clear disregard for the truth. This case establishes an explicit and even playing field for both sides to respectfully communicate without matters escalating.

The *Supreme Court of the United States* must interpret the Constitution, which usually follows precedent. With the 1964 *New York Times* ruling, the freedom to report on public officials was established, and without safety laws for journalists, the world would be stripped of transparency. Ultimately, *New York Times Co. v. Sullivan* reshaped the First Amendment’s role in journalism, ensuring that the press remains free to expose the truth and hold those in power accountable.

References

- Conservative, The American, and Carson Holloway. "Overturn New York Times v. Sullivan." *The American Conservative*, September 9, 2022.
<https://www.theamericanconservative.com/overturn-new-york-times-v-sullivan/>.
- "From John Malcolm Patterson | The Martin Luther King, Jr. Research and Education Institute." Accessed October 11, 2024.
<https://kinginstitute.stanford.edu/king-papers/documents/john-malcolm-patterson-1>.
- Justia Law. "New York Times Co. v. Sullivan, 376 U.S. 254 (1964)." Accessed October 10, 2024. <https://supreme.justia.com/cases/federal/us/376/254/>.
- "Justice Clarence Thomas Calls for Reconsideration of Landmark Libel Case | CNN Politics." Accessed October 10, 2024.
<https://www.cnn.com/2019/02/19/politics/clarence-thomas-libel-first-amendment-new-york-times-sullivan-bill-cosby/index.html>.
- LII / Legal Information Institute. "New York Times v. Sullivan (1964)." Accessed October 10, 2024. [https://www.law.cornell.edu/wex/new_york_times_v_sullivan_\(1964\)](https://www.law.cornell.edu/wex/new_york_times_v_sullivan_(1964)).
- Liptak, Adam. "Justice Clarence Thomas Calls for Reconsideration of Landmark Libel Ruling." *The New York Times*, February 19, 2019, sec. U.S.
<https://www.nytimes.com/2019/02/19/us/politics/clarence-thomas-first-amendment-libel.html>.
- Liptak, Adam. "Two Justices Say Supreme Court Should Reconsider Landmark Libel Decision." *The New York Times*, July 2, 2021, sec. U.S.
<https://www.nytimes.com/2021/07/02/us/supreme-court-libel.html>.
- "New York Times Co. v. Sullivan | Defamation Law, First Amendment Rights | Britannica." Accessed October 10, 2024.
<https://www.britannica.com/event/New-York-Times-Co-v-Sullivan>.
- "The Dangerous Consequences of Florida's 'Don't Say Gay' Bill on LGBTQ+ Youth in Florida." Accessed October 11, 2024.
<https://www.law.georgetown.edu/gender-journal/online/volume-xxiii-online/the-dangerous-consequences-of-floridas-dont-say-gay-bill-on-lgbtq-youth-in-florida/>.
- Treisman, Rachel. "COVID Tests and Crosstalk: What Happened the Last Time Trump and Biden Debated." *NPR*, June 26, 2024, sec. Politics.
<https://www.npr.org/2024/06/25/nx-s1-5018602/trump-biden-debate-2020-recap>.
-

Beyond Bail: How Reform Can End Systemic Inequities

Jennifer Nungaray

Abstract

The cash bail system in the United States, originally intended to guarantee court appearances, has become a tool that disproportionately impacts low-income individuals and communities of color. This paper investigates the inequities of cash bail, tracing its historical development, legal ramifications, and social consequences. Through case studies, including the tragic story of Kalief Browder, a teenager from the Bronx who was arrested at 16 for an alleged backpack theft. Kalief's family was unable to pay bail, which resulted in him spending three years at Rikers Island without being convicted, including two years in solitary confinement where he suffered abuse. These inhumane conditions severely impacted Kalief's mental health, and in 2015, he died by suicide. This paper highlights the severe human cost of pretrial detention, where individuals are held not due to their threat to society, but because they lack the financial means to pay bail. The discussion also explores the legal repercussions, such as violations of the Eighth Amendment, and the exacerbation of racial disparities, while critiquing the current reliance on monetary bail. The paper further examines alternative reform strategies, including risk-based assessment tools and legislative measures like California's Senate Bill 10, designed to reduce dependence on cash bail and foster a more equitable justice system. In conclusion, the paper advocates for a comprehensive reform approach that combines judicial discretion, community investment, transparency in risk assessments, and judicial education to promote fairer outcomes. By shifting the focus from financial capacity to fairness, these reforms aim to dismantle the deep-rooted inequities in the criminal justice system.

Introduction to a Broken System: The Cash Bail Dilemma

Cash bail, originally intended to ensure defendants return to court, has evolved into a system that disproportionately incarcerates marginalized communities. By requiring monetary payment for pretrial release, it creates a two-tiered system where wealth, rather than justice, dictates outcomes. In the United States, nearly 500,000 people are detained pretrial on any given day—most not because they are dangerous but because they cannot afford bail.¹ The consequences of this system are profound, from overcrowded jails to coerced guilty pleas that undermine due process.

Kalief Browder's tragic story exemplifies the human cost of this system. Accused of stealing a backpack, he spent three years at Rikers Island—two in solitary confinement—because his family could not afford \$3,500 bail.² This paper explores the historical roots of cash bail, its legal and social implications, case studies like Browder's, and actionable policy recommendations to reform this inequitable system.

Tracing the Origins: The Historical Evolution of Cash Bail

Bail, traditionally money or property pledged to guarantee a defendant's appearance at trial, dates back to the Anglo-Saxon period in England, where it involved a third-party guaranteeing trial attendance and payment of any fines imposed after conviction. Over time, harsher penalties and trial delays led to the codification of bail rights, emphasizing the presumption of innocence. U.S. law adopted these principles, constitutionally protecting bail, except in capital cases, with a focus on court appearances rather than public safety. However, by the 1990s, the scope of bail expanded to incorporate public safety concerns, which contributed to a significant increase in pretrial detention. The number of individuals in pretrial detention grew from 275,000 in 1995 to 500,000 in 2008, with more unconvicted individuals in jail than convicted ones.³ By 2010, only 36% of federal defendants were released pretrial, and wealth-based detention disproportionately affected low-income individuals and minorities, as seen in the case of Kalief Browder, who spent three years in jail for failing to afford bail. This system forces defendants to choose between prolonged incarceration and pleading guilty, undermining their due process rights. Prolonged pretrial detention, inconsistent bail setting, and racial disparities have led to calls for reform, with people advocating for risk-based assessments over cash bail to reduce inequities.

The Cost of Inequity: Legal and Social Fallout of Cash Bail

The Eighth Amendment prohibits "excessive bail," protecting defendants from unfair financial conditions for both civil and criminal cases.⁵ In *ODonnell v. Harris County*, the court ruled that detaining individuals solely for inability to pay bail is "invidious discrimination," violating due process and equal protection. Referencing *Griffin v. Illinois*, which ensures equal protection for indigent defendants, the court condemned Harris County's rigid bail schedules favoring wealthier defendants. This decision stressed the need for individualized bail assessments and rejected oppressive practices.⁶ Cash bail exacerbates racial and economic disparities, disproportionately impacting minority defendants due to biased risk perceptions. Judges frequently perceive Black defendants as more dangerous than white defendants, even when they face the same charges, have comparable criminal backgrounds, or present similar risks of failing to appear in court. Pretrial detention imposes severe human costs, including job loss, housing instability, and family disruptions, with financial losses averaging \$30,000 per detained defendant due to lost income and related economic hardships. Unlike bail, which may be refunded if court obligations are met, these economic losses are irreversible, further destabilizing defendants and their families. These systemic issues perpetuate inequities and destabilize communities.

Rethinking Safety: The Role of Risk Assessment Tools in Justice

Risk-based assessment tools evaluate a defendant's likelihood of reoffending or missing court, existing as alternatives to cash bail. These algorithms analyze risk factors to promote equitable pretrial decisions but face criticism for biases rooted in historical criminal justice data, which reflect racial and socioeconomic inequities. As a result, these tools risk perpetuating discriminatory outcomes unless carefully monitored and adjusted to account for bias.⁸ Concerns about eliminating cash bail often involve fears of increased crime, but studies show mixed results. While some judges impose higher bail for perceived safety risks, this doesn't consistently correlate with reduced crime. Reforms for risk assessment tools aim to improve decision making without necessarily increasing crime, highlighting the nuanced relationship between bail reform and public safety.⁹

California's Bold Reform: Pioneering a New Era in Pretrial Justice with SB-10

In 2018, California enacted Senate Bill 10 (SB10) to abolish cash bail and implement a

risk-based system for determining pretrial release. Its goals included improving public safety, ensuring fairer treatment, and reducing reliance on monetary bail, which disproportionately affects low-income individuals. The bill suggested the establishment of Pretrial Assessment Services to evaluate defendants' risk levels while prioritizing non-monetary release options and ensuring that preventive detention hearings are conducted fairly to minimize potential biases against marginalized groups.

Opposition included the bail industry, which cited public safety risks, and civil rights groups that were concerned about systemic biases in risk assessments.¹⁰ The 2020 referendum reignited debates: supporters of cash bail highlighted its role in ensuring court appearances and public safety, while its opponents emphasized its disproportionate impact on low-income individuals and systemic inequalities. Growing awareness of racial disparities, fueled by protests against injustice, signals potential shifts toward equitable reforms prioritizing risk assessments over cash bail.¹¹

Blueprint for Change: Innovative Policy Recommendations for Pretrial Reform

Balanced pretrial justice reform requires a multifaceted approach that integrates hybrid models combining risk assessments with judicial discretion. This ensures that judges retain final authority in release decisions while utilizing data-driven insights to make more individualized and equitable determinations.¹² This approach can reduce racial disparities by balancing objective data, such as a defendant's prior court appearances, criminal history, and validated risk assessment scores—algorithmic evaluations that predict the likelihood of reoffending or failing to appear in court based on factors like age, prior arrests, and community ties.¹³

Investing in community services and pretrial support programs is essential to addressing the underlying factors contributing to criminal behavior, such as substance abuse and mental health issues.¹⁴ Funding these initiatives helps reduce reoffense risks, promotes public safety, and leads to safer communities with lower recidivism rates.¹⁵ Advocates also emphasize the need for such investments as an alternative to cash bail, such as supervised release programs, electronic monitoring, and pretrial service agencies that provide support to defendants in meeting their obligations.¹⁶

Transparency and accountability are paramount in the implementation of risk assessment tools. These tools must be free from bias, regularly validated, and open to public scrutiny to foster trust in the justice system and mitigate systemic discrimination.¹⁷ Ensuring transparency about the algorithms and factors used in these assessments strengthens

their credibility and reduces potential misuse.¹⁸

Judicial education is a key part of pretrial reform as it empowers judges with the knowledge to identify and counteract implicit bias.¹⁹ This training guarantees well-balanced decision-making, resulting in more well-balanced results for defendants and a fairer legal process. Implicit bias training has been officially added to the judiciary in California through Assembly Bill 242, signed into law in 2019, mandating implicit bias training for judges, court staff, and attorneys.²⁰ Also, according to Rule 10.465 of the California Rules of Court, all court officers are now required to complete continuing education on implicit bias and associated behavior at least every three-year cycle.²¹ Despite the continuing emerging comprehensive evaluation data, the reforms reflect a statewide commitment to reducing bias and enhancing fairness in judicial decision-making. The addition of these variables—hybrid models, community investment, transparency, and judicial training—equips a balanced and complete response to enhancing pretrial justice reform.

Conclusion: The Path Forward to an Equitable Justice System

The cash bail system disproportionately impacts low-income and marginalized communities, often detaining individuals solely because they cannot afford bail, regardless of their threat to public safety.²² This inequity not only undermines the presumption of innocence but also leads to negative consequences such as job loss, family disruption, and an increased likelihood of future criminal behavior. Over 60% of defendants are detained pretrial due to their inability to pay bail, highlighting the system's inherent injustice.²³ Studies further reveal that the median bail amount can represent several months of income for many defendants, disproportionately affecting the poorest in society. Reforming this system is complex, requiring a balance between public safety and equitable treatment of defendants.²⁴ Effective reform must include non-financial release conditions and individualized assessments rather than predetermined bail amounts, which perpetuate wealth-based detention.²⁵ In 2017, New Jersey enacted a groundbreaking bail reform aimed at reducing pretrial detention and addressing disparities in the justice system. In 2020, a few years after it went into effect, only 0.2% of individuals were held in pretrial detention, marking a dramatic decrease from the 12% recorded in 2012.²⁶

California stands out as a potential model for national reform. By implementing progressive policies such as risk assessments and alternative release methods, the state could set a precedent for eliminating systemic inequalities in the bail system.²⁷ As Shima Baughman asserts, the bail amount charged for release is typically much higher than most

defendants can afford, hence freedom becomes a matter of wealth.²⁸ Emphasizing release on recognizance and community supervision, California's approach showcases how local legislation can challenge and improve the existing framework, ultimately fostering a fairer justice system. Comprehensive reforms also require investments in community services and increased transparency to ensure that pretrial systems address public safety while eradicating inequality.

In conclusion, the cash bail system is fraught with inequities, disproportionately affecting low-income individuals and communities of color.²⁹ Cases like Kalief Browder's illustrate the dire consequences of pretrial detention, including coerced guilty pleas and prolonged incarceration.³⁰ California's initiatives can inspire broader reform efforts, demonstrating the importance of prioritizing equity and justice within pretrial practices.³¹

Notes

1. U.S. Commission on Civil Rights. "U.S. Commission on Civil Rights Releases Report: The Civil Rights Implications of Cash Bail." U.S. Commission on Civil Rights, January 20, 2022. <https://www.usccr.gov/news/2022/us-commission-civil-rights-releases-report-civil-rights-implications-cash-bail>.
 2. Michael Baughman. "The Bail Process: How Pretrial Release Operates and the Types of Release Before Trial." In *Bail Book*, 30. Cambridge: Cambridge University Press, 2017. Accessed December 20, 2024. <https://www.cambridge.org/core/books/abs/bail-book/bail-process-how-pretrial-release-operates-and-the-types-of-release-before-trial/48378E35361448F772FE5E91B2C1C81E>.
 3. California Courts. "Pretrial Detention Reform: Recommendations to the Chief Justice," October 23, 2017, 9. Accessed December 20, 2024. <https://courts.ca.gov/sites/default/files/courts/default/2024-08/pdrreport20171023.pdf>.
 4. Baughman, "The Bail Process," 21, 26.
 5. United States Supreme Court. *United States v. Salerno*, 481 U.S. 739 (1987), 743. Accessed December 20, 2024. <https://tile.loc.gov/storage/services/service/ll/usrep/usrep509/usrep509602/usrep509602.pdf>.
 6. "ODonnell v. Harris County, Texas, No. 17-20333 (5th Cir. 2018)," *Justia Law*, June 1, 2018, 4, 17-18. <https://law.justia.com/cases/federal/appellate-courts/ca5/17-20333/17-20333-2018-06-01.html>.
 7. "Racial Bias in Bail Decisions," *JSTOR*, n.d., 1885, 1888, 1889, 1929. https://www.jstor.org/stable/26864989?sid=primo&saml_data=eyJzYW1sVG9rZW4iOiIxMjU5ZTM0Zi04MTM3LTQ0NTQtYThkYS0xZWQzOGRIYTcxMDYiLCJpbmN0aXR1dGlvbklkcyI6WyIyMzNiYzgwNC1jODg3LTRmY2MtOWI1ZS0wNWMzYzhmYzIwMDEiXX0.
 8. Christine S. Scott-Hayward and Henry F. Fradella. *Punishing Poverty*, 83-84, 124, 128 (2019). <https://doi.org/10.1525/9780520970496>.
 9. "Transforming Criminal Justice: An Evidence-Based Agenda for Reform," *JSTOR*, 2022, 706, 714, 716. <https://www.jstor.org/stable/jj.8816141.7>.
 10. "Bill Text - SB-10 Pretrial Release or Detention: Pretrial Services," n.d., 1, 2, 21. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB10.
-

-
11. Public Policy Institute of California. *Reforming Pretrial Justice in California*. Public Policy Institute of California, December 2020, 3, 5, 6, 27.
<https://www.ppic.org/publication/reforming-pretrial-justice-in-california/>.
12. "Bill Text - SB-10 Pretrial Release or Detention: Pretrial Services," n.d., 4, 22, 26
13. "Racial Bias in Bail Decisions," *JSTOR*, n.d., 1887, 1929.
14. "Bill Text - SB-10 Pretrial Release or Detention: Pretrial Services," n.d., 18, 20, 21.
15. "Racial Bias in Bail Decisions," *JSTOR*, n.d., 1887-1888, 1890, 1929.
16. Baughman, "The Bail Process," 39, 48.
17. "Bill Text - SB-10 Pretrial Release or Detention: Pretrial Services," n.d., 2, 14, 19, 20.
18. Brian J. Back et al., "Pretrial Detention Reform," 50, 60, 64 (2017).
<https://courts.ca.gov/sites/default/files/courts/default/2024-08/pdrreport20171023.pdf>.
19. Kang, J., Bennett, M., Carbado, D., Casey, P., Dasgupta, N., Faigman, D., ... & Mnookin, J. (2012). *Implicit bias in the courtroom*. *UCLA Law Review*, 59(5), 1124–1186. <https://www.uclalawreview.org/implicit-bias-in-the-courtroom/>
20. Equal Justice Society. (2019, October 4). *Bills signed into law requiring implicit bias training for judges, court personnel, and healthcare professionals*.
<https://equaljusticesociety.org/2019/10/04/bills-signed-into-law-requiring-implicit-bias-training-for-judges-court-personnel-and-healthcare-professionals/>
21. Judicial Council of California. (2025). *Rule 10.465. Continuing education for justices, judges, and subordinate judicial officers*. California Rules of Court.
https://www.courts.ca.gov/cms/rules/index/ten/rule10_465
22. "O'Donnell v. Harris County, Texas, No. 17-20333 (5th Cir. 2018)," June 1, 2018, 4, 6, 17-18.
23. Baughman, "The Bail Process," 39, 56.
24. "O'Donnell v. Harris County, Texas, No. 17-20333 (5th Cir. 2018)," June 1, 2018, 4, 20, 13.
25. "In Re Humphrey," *Justia Law*, n.d., 2, 16, 21.
<https://law.justia.com/cases/california/supreme-court/2021/s247278.html>.
26. Baughman, "The Bail Process," 45.
27. "In Re Humphrey," *Justia Law*, n.d., 2, 21.
-

28. Baughman, "The Bail Process," 44, 48.

29. Pranita Amatya et al., "Bail Reform in California," report by J.R. DeShazo et al., Master in Public Policy Degree in the Department of Public Policy at the University of California, Los Angeles, 2017, 2, 10, 12, 13, [https://static.prisonpolicy.org/scans/Bail Reform California.pdf](https://static.prisonpolicy.org/scans/Bail_Reform_California.pdf).

30. Baughman, "The Bail Process," 39, 42, 54.

31. Amatya et al., "Bail Reform in California," 12-13, 48.

Bibliography

- Amatya, Pranita, J.R. DeShazo, et al. *Bail Reform in California*. Report by the Master in Public Policy Program, University of California, Los Angeles, 2017.
https://static.prisonpolicy.org/scans/Bail_Reform_California.pdf
- Baughman, Michael. "The Bail Process: How Pretrial Release Operates and the Types of Release Before Trial." In *Bail Book*, 30–50. Cambridge: Cambridge University Press, 2017. Accessed December 20, 2024.
<https://www.cambridge.org/core/books/abs/bail-book/bail-process-how-pretrial-release-operates-and-the-types-of-release-before-trial/48378E35361448F772FE5E91B2C1C81E>.
- Back, Brian J., et al. "Pretrial Detention Reform." 50–60, 64. 2017.
<https://courts.ca.gov/sites/default/files/courts/default/2024-08/pdrreport-20171023.pdf>.
- California Courts. "Pretrial Detention Reform: Recommendations to the Chief Justice." October 23, 2017. 9. Accessed December 20, 2024.
<https://courts.ca.gov/sites/default/files/courts/default/2024-08/pdrreport-20171023.pdf>.
- "Bill Text - SB-10 Pretrial Release or Detention: Pretrial Services." California Legislative Information. Accessed December 20, 2024.
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB10&utm
- "O'Donnell v. Harris County, Texas, No. 17-20333 (5th Cir. 2018)." *Justia Law*. June 1, 2018.
<https://law.justia.com/cases/federal/appellate-courts/ca5/17-20333/17-20333-2018-06-01.html>.
- Public Policy Institute of California. *Reforming Pretrial Justice in California*. Public Policy Institute of California, December 2020. https://www.ppic.org/publication/reforming-pretrial-justice-in-california/?utm_source=chatgpt.com.
- "Racial Bias in Bail Decisions." *JSTOR*. Accessed December 20, 2024.
https://www.jstor.org/stable/26864989?sid=primo&saml_data=eyJzYW1sVG9rZW4iOiJlXmJlU5ZTM0Zi04MTM3LTQ0NTQtYThkYS0xZWQzOGRlYTcxMDYiLCJpbmN0aXR1dGlvbklkcyI6WVlYmZnYzgwNC1jODg3LTRmY2MtOWI1ZS0wNWMzYzhmYzIwMDIiXX0.
- United States Supreme Court. *United States v. Salerno*, 509 U.S. 602 (1993). Accessed December 20, 2024.
<https://tile.loc.gov/storage-services/service/l1/usrep/usrep509/usrep509602/usrep509602.pdf>.
-



THE
LOST
GERMAN
SLAVE
GIRL



BAILEY



THE
Microsoft
CASE

Page
Lopatka



MEN
AND
BOOKS
FAMOUS
IN THE
LAW
HICKS



THE
NATURE
AND
SOURCES
OF THE
LAW

JOHN
CHIPMAN
GRAY



LAW
OF RUSSIA

KOVALEVSKY



Of the
Vocation
of Our
Age for
Legislation
and
Juris-
prudence
von Savigny



Sources
of Our
Liberties



PERRY
COOPER



The
Assassination
of
President
Lincoln
and the
Trial
of the
Conspirators



DOCTOR
AND
STUDENT

Christopher
Saint
Germain

