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Editor's Preface to the Fall Edition

The Pi Sigma Alpha Journal of Undergraduate Politics would first and foremost like to acknowledge all those individuals and institutions which make the publication of this Journal possible semester after semester and year after year. The Journal has continued to grow in terms of submissions, quality, and prestige. Submissions to the Fall 2018 edition were both vast in number and constituted a diverse array of topics. We greatly appreciate all those who have submitted their work to the Journal in hopes of being published. The articles published herein exemplify a high quality sample of the types of undergraduate research being conducted across the country.

Although the publication is a completely student-run endeavor, the efforts of the student Editorial Board are guided and supported by a number of individuals and institutions which we would like to thank. First, we would like to thank the Pi Sigma Alpha Executive Council and Executive Committee whose vision and financial support has maintained the quality and direction of the Journal. Second, we would like to thank the Faculty Advisory board: the thorough and constructive reviews provided by the members of this board have ensured the articles published herein meet a consistent standard of quality. Finally, we extend tremendous thanks to Editorial Board Faculty Advisor Terri Towner, who has clocked countless hours to ensure the integrity of the Journal continues to exceed the standards of excellence set by the editors of its previous editions.

The Editorial Board at Oakland University is proud to present the Fall Edition which contains a well-rounded set of articles with varied methodological approaches and topical matter. The publishing process for the Fall Edition followed a relatively smooth path from submission to publication, and the Nu Omega Chapter and Oakland University wish the readers of this edition a similarly enjoyable time.

Best,

The Editors

Submission of Manuscripts

The Journal accepts manuscripts from undergraduates of any class and major. Members of Pi Sigma Alpha are especially encouraged to enter their work. We strive to publish papers of the highest quality in all areas of political science.

Generally, selected manuscripts have been well-written works with a fully developed thesis and strong argumentation stemming from original analysis. Authors may be asked to revise their work before being accepted for publication.

Submission deadlines are October 1st for the Fall edition and February 1st for the Spring edition. Manuscripts are accepted on a rolling basis; therefore early submissions are strongly encouraged.

To submit your work, please email psajournalou@gmail.com with an attached Word document of the manuscript. Please include your name, university and contact details (mailing address, email address, and phone number). If possible, include how you heard about the Journal.

Submitted manuscripts must include a short abstract (approximately 150 words), citations and references that follow the APSA Style Manual for Political Science. Please do not exceed the maximum page length of 35 double-spaced pages.

The Journal is a student-run enterprise with editors and an Editorial Board that are undergraduate students and Pi Sigma Alpha members at Oakland University.

The Editorial Board relies heavily on the help of our Advisory Board consisting of political science faculty from across the nation, including members of the Pi Sigma Alpha Executive Council. Due to the time committed to the manuscript review process, we would like to remind students to submit only one manuscript at a time.

Please direct any questions about submissions or the Journal's upcoming editions to our editors at psajournalou@gmail.com.

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When Violence Makes You Rich: Ideology, Profit, and Peace in Colombia

Kellen Johansen, Linfield College

This study focuses on post-conflict environments in Colombia to explore what happens when rebel groups that profit from the illicit drug trade decide to implement peace agreements. Specifically, it looks at two examples: The Revolutionary Armed Forces of Colombia (FARC) and the United Self-Defense Forces of Colombia (AUC). Using a comparative approach, the study shows how the organizational structure of the FARC was more centralized than the AUC and argues that this difference encouraged militants from the AUC to participate in insurgent activities after the end of conflict more often than those from the FARC. The findings suggest that relative centralization did play a role in limiting the number of militants who rejected peace, although further analysis proposes that this same centralization may have enabled dissident groupings of FARC militants to organize more effectively after the end of a conflict.

INTRODUCTION

The *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and *Autodefensas Unidas de Colombia* (AUC) both belonged to a class of insurgency characterized by a convergence between criminal and political objectives (Cornell 2007; Makarenko 2004). The two balanced the desire to gain profit from illicit economies and devotion to ideological objectives. At the end of each insurgency, both also chose to implement a peace accord with the Colombian Government that mandated disarmament and reintegration of their members into society. But, the two groups differed greatly in their structure. The FARC was centralized and hierarchical, with leadership that encouraged specialization and redistribution of resources amongst the organization (Eccarius-Kelly 2012). The AUC, on the other hand, was a decentralized coalition of paramilitary groups, united under a degree of central coordination and a common political message (Saab and Taylor 2009). The leaders of these different structures relied on their members to generate funds from trafficking and taxing cocaine but ordered those same members to re-enter Colombian society once peace deals were negotiated. This prompts the following question: How does a convergence between criminal and political objectives in insurgent groups affect post-conflict dynamics after peace deals have been implemented? More specifically, did the *organizational structures* of FARC and AUC during conflict affect their *demobilization* after the conflict had ended?

This study analyzes post-conflict dynamics following the demobilization of both the FARC and AUC in order to draw a comparison between a structurally centralized and structurally decentralized insurgency. The research contrasts the percentage of militants from each organization that continued to participate in insurgent activities after the implementation of their group's peace accord. Drawing from

these percentages, as well as post-conflict homicide rates and annual cocaine statistics, the study hypothesizes that the degree of centralization in organizational structure was the most important variable differentiating the success of the two demobilizations.

The analysis argues that because the AUC existed as a decentralized confederation of local groups, and because many of these groups operated in the drug trade autonomously, it was easier for these groups to profit from the drug trade after their central organization was deconstructed. Thus, many AUC members opted to remain illegal criminals rather than reintegrate into society. Conversely, it argues that since the FARC had a more centralized structure, it was more difficult for the different component groups of its organization to operate in the drug trade independently. Thus, many FARC members decided to rejoin society rather than remain criminals after the war had ended.

Literature Review

To examine how group structure can affect post-conflict demobilization, it is important to understand the broader theories on civil war and literature on the crime-rebellion nexus. First, the Greed vs. Grievance debate will contextualize the competing theories of political and profit-based motivations for war and thus clarify the competing motivations within the FARC and AUC. Second, the evolving literature on the Crime-Conflict Nexus will provide background for the connection between crime and conflict, and the phenomenon of "motivational convergence."

Greed or Grievance?

Traditional explanations for war have focused on the idea of "grievance," which sees intra-state conflict as the product of movements of people who seek to correct injustices or who

experience fear (Brown 1993; Gurr 2000). Under this model, war is portrayed as the result of “informational failure.” The concept implies that since war is not good for anyone, it is an irrational choice to engage in conflict. Everyone involved would rationally seek to avoid it if they had access to enough adequate information to solve disputes peacefully. From this perspective, international relations is a game of “signaling,” by which different actors reveal or conceal their capabilities in order to attain their preferred outcomes and address their personal grievances. War happens when two actors misjudge each other’s capabilities and thus enter into conflict irrationally. Alternatively, under this model, if all actors knew exactly what all other actors’ capabilities and preferences were, then a conflict would never occur because all parties would know when their preferred outcomes conflicted with another group and what the outcome of a violent confrontation would be before it occurred. The “grievance” model aligns well with how policymakers have traditionally perceived the political interests of sub-state groups.

Alternatively, Collier and others have argued that many civil wars are caused by economic, not socio-political factors (Collier 1999; Collier and Hoeffler 2004). Under this model, motivations for war come from loot-seeking, not social justice (Collier 1999; Collier and Hoeffler 2004). Collier and Hoeffler (2004) note that their economic approach differs from traditional explanations for war in two ways. First, they focus on greed and not grievance as the motivation for war. To the politico-criminal actors of Colombia, this can be associated with instances where drug trafficking and other illegal activities are used for self-enrichment. Second, Collier and Hoeffler’s (2004) approach focuses on the unconventional economic opportunities and not unconventional political grievances as an explanation for the breakout of war. More broadly, this model focuses on the unique economic opportunities for illicit actors, such as insurgents, that arise from civil conflict. Under its assumptions, war is not just the breakdown of legal order and social organization but, as Keen (2000, 19–42) argues, “the emergence of an alternative system of profit, power, and even protection.” Simply put, some people are better situated to benefit from this alternative system of profit than others. With the insecurity and weakening of law associated with civil conflict comes disrupted markets, increased opportunities for criminality, and what Collier (1999, 9) calls “rent seeking predation.” This sort of environment is harmful to society as a whole but provides new benefits to an opportunist minority. Both the AUC and FARC benefited in various ways from conflict environments such as these.

Crime-Conflict Nexus

The “Crime-Conflict Nexus” is a body of literature that suggests a causal link between narcotics and enduring civil conflict. Although research on the phenomenon began in the early 1990s, and the link between transnational crime and conflict has been mentioned in United Nations Security

Council statements and by heads of state, the specific details of the connection remain poorly understood. The amount of evidence collected on the topic has been limited and the inherently secret nature of the phenomenon has made it difficult to research (Boer and Bosetti 2015). Still, studies have shed light on a number of important processes, including a link between narcotics and the duration of civil war, the challenges posed by criminal “spoilers” in conflict resolution, and the nature of relationships between political insurgent and organized crime groups (Boer and Bosetti 2015; Einsiedel 2014; Makarenko 2004).

Key to this study is a body of literature dedicated to the interaction and motivations of criminal and political groups. As stated previously, the two have traditionally been seen as forming opposing types of armed groupings (Makarenko 2004). Where political groups strive for a self-defined higher cause and are disinterested and even in some cases principally opposed to profit through organized crime, criminal groups are motivated purely by opportunities to gain profit and status. As Hoffman (1998, 43) notes:

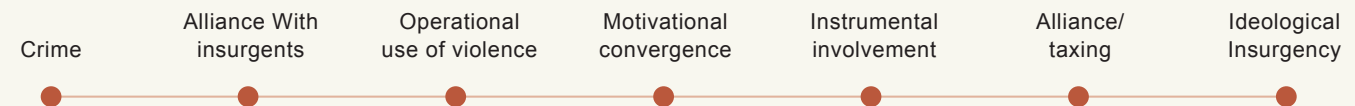
The terrorist is fundamentally an altruist: he believes he is serving a “good” cause designed to achieve a greater good for a wider constituency [whereas] the criminal serves no cause at all, just his own personal aggrandizement and material satiation.

While Hoffman (1998) refers to “the terrorist” in this quote, for the current purpose, this can be understood to apply to any politically motivated insurgency. (It is important to note that during the 1990s, the majority of studies on the crime-conflict nexus centered on terrorist groups. More recently, however, prior studies have been interpreted more broadly to apply to all kinds of ideological insurgencies).

There are two explanations for why these mutually exclusive definitions have broken down. The first explanation comes from a decrease in state funding for insurgency following the end of the bipolar competition of the Cold War, which forced political sub-state groups to look for other sources of funding (Boer and Bosetti 2015). The second comes from globalization and the resulting lower entry barriers to transnational crime (Boer and Bosetti 2015). In light of the decreased funding from superpowers and the increasingly easy access to international illicit economies, many sub-state actors began to involve themselves in organized crime, and the barriers between the two definitions gradually dissolved.

Makarenko (2004) noted how the new relationship could be modeled on a continuum, with “crime” existing on one end and “ideological insurgency” existing on the other. For example, see Figure 1. This model implies that criminal and ideological groups can interact with each other in different ways. Furthermore, Makarenko (2004) proposed that groups can slide up and down the continuum as their motivations and operations change over time.

Figure 1. Crime-Conflict Nexus



Note: Figure one is an adaptation of Tamera Makarenko's original visualization of the crime-conflict nexus (Makarenko 2004). The adaption was made by Svante E. Cornell (Cornell 2007).

Makarenko added to this model by proposing what is called the “convergence thesis.” Makarenko (2004, 135) argues that groups on opposing ends of the continuum could “converge into a single entity that initially displays characteristics of both groups simultaneously; but has the potential to transform itself into an entity situated on the opposite side of the continuum from which it began”. This can happen to such a degree that “the groups no longer retain the defining points that hitherto made them a political or criminal group” (Dishman 2001, 48; Makarenko 2004, 135). Cornell (2007) performed an analysis of all major drug producing countries, in which he categorized both the FARC and AUC near the point of “motivational convergence” on Makarenko’s continuum (Cornell 2007, 219-221).

Although, where Cornell (2007) and Makarenko (2004) have studied the implications of motivational and operational convergence of ideology and crime, and others have focused on the implications of their link during conflict, very few studies have explored how this relationship has manifested itself during transitions from conflict to post-conflict environments.

This study makes a unique contribution by examining the implications of the Greed vs. Grievance debate and the Crime-Conflict Nexus within the context of conflict demobilization. It applies both theoretical models to the practical question of whether former Colombian insurgents chose amnesty or lucrative crime. Most importantly, the study explores the relationship between group structure and demobilization in insurgencies with mixed ideological and criminal interests.

Method

This study evaluates its hypothesis through a comparative analysis between the FARC and AUC. It contrasts how members of these two organizations reacted to peace using statistics on demobilization, violence, and the Colombian cocaine trade after each agreement was implemented. Each of these trends is important alone, but when compounded they become a comprehensive means of comparison.

First, this study contrasts the demobilizations of the two groups. Demobilization is evaluated based on the percentage of militants who dissented from the peace deal according to research by Porch and Rasmussen (2008, 528) and reports by the Organization of American States, the United Nations, and

the Fundación Ideas para la Paz, a Colombian based think tank (Fundación Ideas para la Paz 2018, 37; Organization of American States 2007, 6-11; United Nations 2017, 7). By using a range of estimates for the size of each group’s pre-demobilization and post-demobilization membership, the study finds the highest and lowest possible percentage of militants who dissented from each group. The mean of the high and low possibilities offers an easy way to contrast the results of the two peace accords.

The second means of comparison is violence. Violence is measured through homicide rates after the end of demobilization. In particular, these rates are collected from municipalities that were affected by the two groups during the conflict (Fundación Paz y Reconciliación 2018, 26; Pena and Restrepo 2006).

Finally, the cocaine trade represents the third means of comparison between the two groups. This is measured through the tons of cocaine seized by Colombian authorities and through an estimation of the amount of cocaine produced during the years during which the two groups demobilized (Ministerio de Defensa Nacional de Colombia 2018, 42; United Nations Office on Drugs and Crime 2018, 4).

A comparative analysis is the best method to examine the ways that group structure affects post-conflict demobilization because of the limited and approximate nature of most data on organized crime. Insurgent groups and drug traffickers are inherently secretive, which makes it difficult to collect reliable data. This makes it harder to draw precise conclusions through purely quantitative methods. For example, it is very difficult to measure the exact number of ex-paramilitary members who are still active in organized crime. Through a two-case study comparative analysis, it is possible to avoid overreliance on imprecise data, but still, draw conclusions from the broader narratives of the two groups.

Argument

This study’s argument rests on one major inference: If former militants are able to easily access profit from the illicit drug trade, then the opportunity cost of laying down arms and joining the legitimate economy will be higher. This will, in turn, encourage more former militants to reject demobilization in favor of higher, although illegal, incomes.

This assumption comes directly out of the economic explanations for war described by Collier and others (Collier

1999). In their view, the militants would make decisions based on greed, not grievance, and thus when a militant had to choose between reintegrating into society or the opportunity of making a significantly higher income as a criminal, they would choose the latter.

In traditional conflicts, where each side has purely ideological motivations for war, this sort of decision would be very different. Instead of asking “Where can I make the most *money*: inside or outside of the legal economy?” when deciding whether or not to demobilize, the grievance concerned militant would ask “Where can I cause the most *change*: inside or outside of the legal political process?” Thus, the incentive bases for the two mindsets are theoretically very different.

If this perspective is applied to Makarenko’s (2004) concept of motivational convergence, one would expect groups on the “ideological insurgency” side of the scale to adopt the change-based motivation for demobilization, and groups on the “crime” side to adopt the profit-based one. Thus, purely ideological groups would have no reservations about giving up the chance to sell drugs in an international narcotics hub, while groups that are further to the “crime” side of the scale would have a harder time rejecting the opportunity to profit. Since motivational convergence falls close to the “crime” side of the continuum, one would expect the individuals in these groups to be more motivated by profit than those from groups that are ideological.

Both the AUC and the FARC were classified as very close to “motivationally convergent” groups; thus, their members may be more compelled to participate in the drug trade than members of a traditional, political, insurgency (Cornell 2007, 221; Makarenko 2004, 135-138). In sum, neither AUC nor FARC members are immune to the allure of massive drug trafficking income. Since they can access these incomes more easily, they will be more likely to reject demobilization.

Based on this reasoning, this study makes two propositions. First, the decentralized organization of the AUC made it easier for its members to access incomes from the drug trade, and thus easier for them to reject demobilization. Second, the centralized nature of the FARC made it more difficult for its members to access incomes from the drug trade, and thus more difficult for them to reject demobilization. Therefore, the basic hypothesis of this paper is, when sub-state armed groups are motivationally convergent and operate in narcotic producing countries, their demobilization levels will be inversely correlated with their level of centralization.

To show why this is true, it is important to expand on the organization of the FARC and AUC. The leadership of the two groups differed in the degree that they could control the units of their organization. This meant that to fulfill needs such as funding and defense, the organizations had to divide labor differently. The way that these groups delegated these tasks regulated how much experience each militant had working in the illegal drug trade, and by extension how much they had to lose from demobilization.

FARC Structure

FARC organization has frequently been conceptualized as a wheel, or a star, with a centralized command that makes decisions and delegates to a series of field commanders (Eccarius-Kelly 2012). While toward its later years the group had reportedly begun to transition into a more “hybridized and multidimensional” structure in order to experiment with international drug trafficking, the basic centralized command of the group never changed (Eccarius-Kelly 2012, 237; Otis 2014, 19).

This is important for two reasons. First, this structure meant that intelligence passed through a clearly defined chain of command, with the central “hub” of the wheel acting as the decision maker and passing information down to lower level members at its own discretion (Eccarius-Kelly 2012). The concentration of authority meant the FARC leaders could direct their subsidiary groups to do things that they would not otherwise have done, such as share their wealth with other branches of the organization.

Second, this centralization meant that the component groups of the FARC were specialized (Eccarius-Kelly 2012). Since authoritative leadership had the power to redistribute funds, much of the organization was able to focus on goals besides producing revenue. This specialization meant that amongst individual fronts there was a division of labor, with some focusing on fighting and others focused on fundraising efforts like taxing and selling cocaine. According to Otis (2014), the fronts most deeply involved in drug trafficking were considered the “ATMs” of the FARC, because they were expected to give their surplus revenue to other components of the organization (Otis 2014, 19).

Most importantly, this redistribution and specialization meant that fewer militants in the FARC knew how to participate in the drug trade. The centralized authority had the power to place the burden of fundraising on specific units, and the responsibility of non-money tasks on others. The result was that fewer FARC militants were incentivized to develop the abilities, personal connections, and knowledge that would allow them to participate in illegal economies after the end of war. This meant that the entry barriers to the drug trade and other illegal economies were high for the average FARC member, and the opportunity cost of demobilization was low.

AUC Structure

Where FARC was born from a coherent social movement, directed by a central “hub,” AUC was born from the disorganization resulting from fall of the Colombian drug cartels in the 1990s to bring “some degree of central coordination, funding and political organization to the numerous independent paramilitary groups in Colombia” (Saab and Taylor 2009, 461). The AUC was divided into three social groups: the old security services left over from the collapse of several large drug cartels, a class of small and medium-sized drug lords, and regional landowning elites (Saab

and Taylor 2009). The organization was also split into regional organizations that were local in their focus (Saab and Taylor 2009).

Importantly, the AUC leadership did not have as much power over its subsidiary groups as the FARC. Many of the paramilitary organizations that composed the AUC had existed as autonomous organizations beforehand and were accustomed to funding their own operations. Many of these groups were led by “drug barons” who had gained experience previously in the narcotics economy and used that experience to fund their operations once they became part of the AUC organization (Saab and Taylor 2009, 461-463). While these smaller paramilitaries sought political objectives in many cases, for example protecting local land-owning elites, their technical expertise in the drug trade allowed them to profit from illicit economies with or without the centralized leadership of the AUC.

Furthermore, because each of the paramilitary groups of the AUC were more autonomous than the specialized fronts of the FARC, more combatants had the experience, personal connections and technical knowledge that they needed to benefit from the drug trade after the end of war. Without redistribution and specialization, the AUC paramilitary groups took on more responsibility for funding their own operations. This meant that instead of concentrating the knowledge of the drug trade within specific branches of the organization, the ability to earn illegal revenue was more widespread. This led to lower entry barriers to the drug trade and other illegal economies for the average AUC member, and a higher opportunity cost of demobilization.

To conclude, since many of the subsidiary member groups of AUC already had the technical capability and autonomy to participate in the drug trade before the end of the conflict, the opportunity cost of demobilization was higher and thus more members ultimately choose to continue benefiting from criminal lifestyles. Conversely, since many of the subsidiary groups of the FARC relied on a central “hub” for information, and since these groups were specialized to perform niche functions in support of the larger organization and could not benefit from the drug trade autonomously, their opportunity cost of laying down arms was lower and thus they were more likely to reintegrate into Colombian society.

Analysis

The analysis begins by reviewing the results of the demobilizations and then draws from data on homicides and the cocaine trade to give a broader picture of how group structure may have influenced the post-conflict environments. The difference between the percentage of dissenting militants was statistically significant. The data on homicide rates and cocaine seizures indicated that the post-conflict environment after the end of the FARC was deadlier and more conducive to the drug trade than the environment after the end of the AUC. These results suggest that the relative centralization of FARC may have impacted how many militants rejected the peace deal.

Demobilization

The percentage of militants who rejected peace from each group was found using estimations of pre-demobilization membership and the number of dissenting militants reported after the end of demobilization. The first method for analyzing these statistics was through a range of possible scenarios, based on the highest and lowest estimations for each group. The lowest possible percentage of dissenting members was found by dividing the lowest estimates for the number of dissenting militants after demobilization by the highest estimates on pre-demobilization membership for each group. Alternatively, the highest possible percentage was found by dividing the largest estimated number of dissenting militants by the lowest pre-demobilization estimated membership. The result showed the range of potential rates of dissension, based on a variety of credible estimates. See Tables 1, 2, and 3.

As reported in Table 3, this method showed that the highest possible percentage of AUC members who stayed militarily active after peace was 23.62%, whereas the highest possible percentage for FARC was 12.05%. Alternatively, the lowest possible percentage of AUC members who rejected peace was 7.65%, whereas the lowest possible percentage for FARC members was 8.46% (Fundación Ideas para la Paz 2018, 37; Organization of American States 2007, 6-11; Porch and Rasmussen 2008, 528; United Nations 2017, 7).

The wide range of pre-demobilization AUC membership made it impossible to conclusively determine whether or not AUC members dissented more often than those from the

Table 1. Membership

Group	Estimated Pre-Demobilization Membership
AUC	10,900 to 20,000 ^a
FARC	12,451 ^b to 14,178 ^c

a. Source: (Porch and Rasmussen 2008, 528)

b. This number represents militants that the Colombian Government had approved as qualified to the entitlements of demobilization under the terms of the peace accord, as of December 27, 2017 (United Nations 2017, 7).

c. This number represents the militants that the FARC claims are affiliated with their organization and should be qualified for the benefits under the terms of demobilization (United Nations 2017, 7)

Table 2. Number of Dissenting Militants

Group	Dissenting Militants After Implementation	Mean Dissenting Militants After Implementation
AUC	1,530 to 2,575 ^a	2052
FARC	1,200 to 1,500 ^b	1350

a. Source: (Organization of American States 2007, 6-11)
b. Source: (Fundación Ideas para la Paz 2018, 41)

Table 3. Percentage of Dissenting Militants

Group	Possible Percentage of Dissenting Militants (%)	Mean Possible Percentage of Dissenting Militants (%)
AUC	7.65 to 23.62	15.64
FARC	8.46 to 12.05	10.26

FARC. The evidence showed that, based on the most credible estimates, the AUC might have dissented up to 15.16% more than the FARC. Alternatively, the same evidence showed that it was possible the FARC dissented up to 4.40% more than the AUC, so the impact of this analysis was limited.

The study did, however, use the midpoint between the upper and lower potential rates of dissension as a best estimate. The comparison of these means supported the hypothesis. The average number of dissenting militants after peace accord implementation for each group was used as the sample size. For the AUC, the mean of the upper and lower scenarios showed that 15.64% of militants dissented, whereas for the FARC the same process showed 10.26%. This revealed a key difference between the two insurgencies, with FARC members dissenting 5.38% less ($p < 0.01$) than those from the AUC. See Table 4.

This is important because while it is impossible to pinpoint the exact percentage of members who rejected peace from each group, the mean of the possible percentages of dissent is the best indicator of what that number could have been. The fact that this measurement showed that

AUC members dissented 5.38% more than FARC supports the original hypothesis that the centralized organizational structure would limit the allure of dissension, where a diffused organization would not.

It is important to note that this was not a perfect comparison. Since the AUC accord was implemented over the course of several years and all FARC militants disarmed during 2017, many AUC militants had several years to decide to reject integration, whereas the earliest FARC militants have had only one. It is conceivable that many more FARC militants will decide to join the dissidents in the coming months, closing this difference. Nevertheless, the data indicates thus far that a larger percentage of AUC members dissented than FARC members, supporting the original hypothesis. Suggestions for overcoming this problem will be visited in the "Implications for Future Research" section.

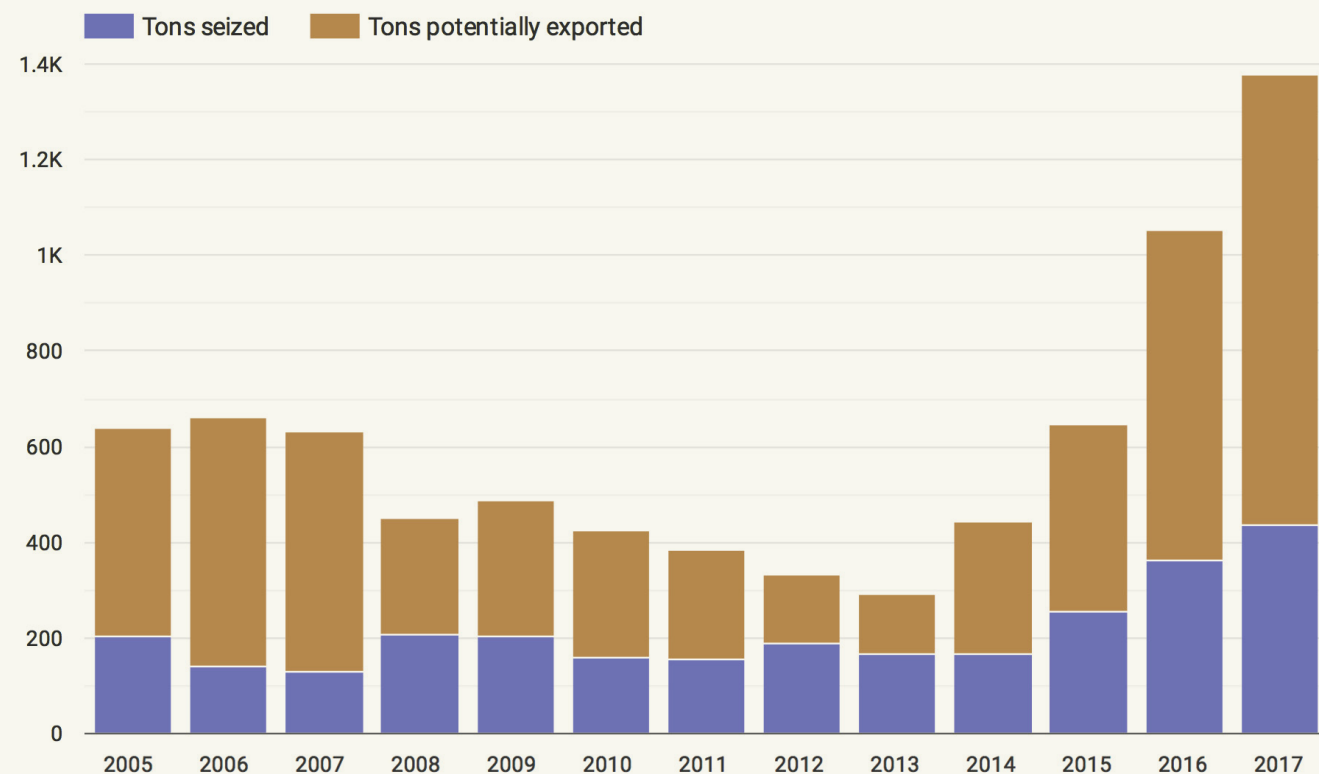
The dissidents of each group acted in a variety of ways. The Organization of American States reported in 2006 that former AUC were regrouping into criminal gangs that controlled specific communities and "illegal economic

Table 4. Measurement

Measurement of the Mean Possible Percentage of Dissenting Militants	Result
Difference	5.38%
95% CI	3.08% to 7.60%
Chi-squared	20.18*
DF	1

Note: The mean number of dissenting militants after implementation for each group was used as the sample size for these measurements. * $p < 0.05$.

Figure 2. Cocaine Seizure and Production in Colombia



Source: (Colombia Reports 2018)

Note: Data on cocaine seizure is produced by the Colombian Ministry of Defense (Ministerio de Defensa de Colombia 2018, 42). Estimated cocaine production is calculated by the United Nations Office on Drugs and Crime (United Nations Office on Drugs and Crime 2018, 4).

activities” (Organization of American States 2006, 8-12). A few paramilitaries did not demobilize at all (Organization of American States 2007, 6-11). Importantly, these new groups were disorganized. They lacked the central coordination of the AUC and did not try to expose any serious political ideology (Ávila 2018; Organization of American States 2007).

Instead of mixed regroupings, the FARC has shown a much more systemic form of dissent. InSight Crime reports that in the case of the “first front,” in the South West of the country, an entire division of the former FARC has formalized its criminal desertion in a letter expressing “dissatisfaction” at the organization’s “betrayal” (Insight Crime 2018a). This particular group has declared itself the “true FARC” in what appears to be an attempt to preserve the political aspect of the organization and has grown to 500 members this year (Insight Crime 2018a). Most important, this dissidence was reportedly started by members within the FARC organization who specialized in profiting from the drug trade, which means that these individuals’ incentive to pursue criminal profit was higher than the average militant (Insight Crime 2018a).

Several similar groups of ex-FARC dissidents have formed across the organization’s former territory. Not surprisingly, these

groups tend to fight to control territory that is strategically key for the drug trade, such as border zones with access to Ecuador, Panama, and Venezuela, jungle trafficking routes and coca fields (Alsema 2018; Fundación Ideas para la Paz 2018, 41). This suggests that the opportunity to access and profit from these areas may have had an influence on these individuals’ decisions to reject the peace deal.

The Cocaine Trade and Homicide Rates

In a broader view, these differences in the organization between the dissident groups of the FARC and AUC may be related to differences in homicide rates and the cocaine trade. Figure 2 shows the United Nations Office on Drugs and Crime estimate for the amount of cocaine produced in a given year, with the tons of cocaine seized shown in blue and the amount potentially exported shown in red (Colombia Reports 2018; Ministerio de Defensa Nacional de Colombia 2018, 42; United Nations Office on Drugs and Crime 2018, 4). In 2017, the year that the FARC disarmed, there was a record level of cocaine confiscation and production, but 2006 and 2007, the equivalent years for AUC, estimated cocaine production stayed relatively consistent and the amount of cocaine seized

Table 5. Post-Demobilization Homicide Rates

Group	Change in Homicide Rate (%)
AUC	(13.04) ^a
FARC	7.47 ^b

a. Source: (Pena and Restrepo 2006)
b. Source: (Fundación Paz y Reconciliación 2018, 26)
Note: The measurement of homicide rates after FARC demobilization includes 39 municipalities under the control of the Ejército de Liberación Nacional, a remaining rebel group. The other 242 municipalities were formerly occupied by the FARC.

declined. Similarly, Table 5 shows how homicide rates across municipalities affected by conflict spiked after the FARC's demobilization, but for the AUC they declined sharply.

In the case of cocaine, organized networks, like the hierarchies of the dissident FARC fronts that had previously specialized in profiting from drugs, should be more efficient at trafficking cocaine and defending coca fields, since they already have an institutionalized chain of command and division of labor. Disorganized dissidents of the AUC may have initially had a more difficult time integrating themselves into the narcotics business after the other paramilitaries had demobilized. This may indicate why cocaine seizure and production continued to increase after the FARC disbanded in 2017, while both saw a slight drop the year after the end of AUC demobilization in 2007.

This inherited structure of the dissident FARC may have also contributed to increasing homicide rates. In 2017 the United Nations cited the Colombian Office of the Attorney General, which observed increased homicides in "11 areas, across nine departments located in former conflict zones that are particularly affected by illegal economies" (United Nations 2017, 5). In the 281 municipalities most affected by the conflict, homicide rates in the first nine months of 2017 rose 7.47% from the year before, and 14.56% when only rural areas were considered (Fundación Paz y Reconciliación 2018).

Post-conflict AUC communities tell a different story. During demobilization, homicide rates fell drastically in many communities that had been occupied by the AUC (Organization of American States 2005, 9-10). In 2006, a joint study by the *National University of Colombia* and the *Center for Resources for the Analysis of the Conflict* found a 13.04% decrease in homicides across communities that had been occupied by paramilitary groups, and these drops were statistically significant with the implementation of the demobilization process (Pena and Restrepo 2006).

This suggests that something has made the 2017 post-conflict environment deadlier than 2006. Many reports have attributed the 2017 increase in violence to clashes between competing drug gangs looking to capitalize on the vacuum left by the demobilizing FARC. Insight Crime has reported that dissident FARC members have been "principal supporters of the violence" in some of the recent criminal conflicts, and

especially in the key narcotics hub of Nariño on the border of Ecuador (Insight Crime 2018b). For one, this adds evidence that FARC dissidents were influenced by the cocaine trade since they are grouping and committing homicides in areas where it is cultivated and shipped. But it also suggests that the relatively more organized structures of the FARC dissidents may have been a contributing factor to the rise in homicides in the areas where the original organization used to control.

To conclude, the data on demobilization showed a statistically significant difference between the AUC and the FARC when the ranges of the high and low possible percentages of dissent were averaged for each group, which supported the original hypothesis. Some of these dissident groups have reportedly been founded by militants within the FARC who specialized in gaining revenue from narcotics and have operated in areas that are key for success in the drug trade. While not definitive, this finding does suggest that a relationship between insurgent group centralization and the rate of demobilization is likely in countries with readily accessible illicit economies, such as Colombia. Also, the organizational hierarchy of the FARC appears to have extended to its dissidents, contrasting with the disorganization of the AUC. This may be contributing to the contrast between the growing 2017 cocaine economy and the shrinkage in 2007 and to the higher rate of homicides in former FARC controlled territories and those formerly controlled by the AUC.

Alternative Explanations

There are several other variables that could have influenced demobilizing militants apart from the structures of their insurgent groups. Two notable alternative explanations are differences in founding origins of the two insurgencies and differences in the peace deals themselves.

Regarding founding origins, many of the AUC militants worked in defense forces or as drug barons in the Colombian drug trade before becoming paramilitaries, whereas the FARC movement was originally based in the grievances of rural farmers. Viewed this way, it makes sense that AUC paramilitaries dissented more than the FARC, because many of the AUC members had experiences and personal connections from their time previously working in the drug trade that encouraged them to reject a legal lifestyle, and the FARC only

participated in the drug trade as a means to support their social movement.

It is important to emphasize here that the FARC formed in 1965 and has seen a generational shift in leadership from ideological to more drug profit-oriented leaders (Otis 2014). With the death of ideological standard-bearers within the group's leadership and the major shift in coca cultivation from Peru and Bolivia to Colombia, the FARC political agenda transitioned from a defining purpose into more of a convenient method for attracting recruits and justification for committing criminal acts (Makarenko 2004; Otis 2014). Referring to both the FARC and a similar Colombian insurgent group named the *Ejército de Liberación Nacional*, Wilkinson (2000, 15) summed up this transition when he concluded that the groups' involvement in organized crime had made them,

...decadent guerrillas rather than genuine revolutionaries, irredeemably corrupted by their intimate involvement with narco-traffickers and their cynical pursuits of huge profits from kidnapping and from their 'protection' of coca and opium production, processing and shipping facilities.

The ideology that the FARC originally espoused in 1965 had clearly changed. Any relevant experience or personal connections that the members of the AUC may have acquired before they joined the organization, members of the FARC organization could have acquired as well through their own participation in the drug trade. Thus, although the FARC and AUC began from different origins, their organizations experienced similar profit-ideology contradictions at the time in which they demobilized.

Regarding the differences between peace deals, the Colombian Government learned lessons from its experience with the AUC that resulted in tweaks to the content of the 2016 FARC agreement. The FARC reintegration program gives monthly stipends rather than a one-time payment, establishes bank accounts for ex-militants and registers them in the national healthcare system (United Nations 2018). One could argue that these differences made reintegration more enticing for the FARC militant than it was for the AUC paramilitary, and thus the statistics on dissension were skewed.

However, more important than the differences are the commonalities between the two deals. Both peace accords offered amnesty and a stipend for the average rebel to transition into legal life. Members of both groups knew that a person could make much more money working in the illicit drug economy than they could as a former insurgent in a resentful society. The most meaningful principles of each deal were virtually the same, and the smaller differences are too minor to change a militant's mind about whether or not to participate in a peace process.

Furthermore, neither of these explanations address the opportunity cost of demobilization for those who have built

their lives around the economic opportunities of violence. If one considers war as an alternative system of profit rather than just the degradation of law and society, then the militant's decision to acquire the skills necessary to succeed the drug trade should be considered akin to a career choice (Keen 2000). Viewed from this perspective, rebels who have spent their lives defending or trafficking cocaine are not just deciding between peace and war; they are choosing whether or not to walk away from the abilities and personal connections that they use to make a living. This was an important consideration for the militants who had developed an expertise in the drug trade.

Implications for Future Research

These findings carry several important implications for future research. First, they show that, according to the average of the range of possible scenarios for each group, AUC militants likely dissented more often than FARC militants, supporting a logical case that difference in organizational structure is the explanatory variable. This inference should be studied further in comparable cases, especially those which have more precise estimates of insurgent group membership.

If there is a correlation between centralization and the success of demobilization when insurgent groups are influenced by illegal profit, then policymakers will be able to predict more accurately how these types of insurgencies will react to peace. For example, policymakers could look at groups like the Taliban with access to opium in Afghanistan or paramilitaries with access to gold and diamonds in the Central African Republic and predict whether or not their militants will be more likely to reject or accept demobilization if a peace agreement could be negotiated. In this way, the manner in which an insurgent group interacts with illegal economies could determine whether or not that group practically capable adhering to a peace agreement.

Second, future research should explore the ways that the organizational structures of insurgent groups can be transferred to dissident groups. This study suggested that the structures of FARC and AUC affected the way that ex-members influenced the drug trade. If this observation is generalizable, then it could have important implications for predicting what post-conflict environments will look like in places like the Central African Republic, Afghanistan, and other regions where illicit economies are profitable.

Third, future studies within Colombia should replicate this study's comparison between the AUC and FARC, but with a longer duration in order to see how dissension between the two groups differs over time. Many reports suggest that AUC members re-armed in the years following the disbandment of the official organization. It is worthwhile to explore whether or not this phenomenon is repeated in the case of the FARC. If there are meaningful differences between centralized and decentralized insurgency groups in major drug producing countries, then it is likely that these differences will become more evident over time, as ex-militants are forced to face

discouraging realities of reintegration, such as the sunset of demobilization stipends and societal resentment from war. With more time and larger sample sizes of dissidents for comparison, a future study may be able to find more conclusive evidence to determine the link between insurgency centralization and successful demobilization.

Conclusion

Both the *Fuerzas Armadas Revolucionarias de Colombia* and the *Autodefensas Unidas de Colombia* were part of a new class of insurgent groups who balance profit and ideological goals. They also both signed peace agreements and ordered their members to disarm and rejoin Colombian society. Where they differed significantly was in their organizational structure. FARC had relative specialization amongst its forces, and thus some members had much more exposure to the cocaine trade than others. The forces of AUC were more autonomous, and each component part was more exposed to money from the drug trade. After each had demobilized, the mean of the possible rates of dissension for each group suggested that more AUC militants had decided to reject peace in favor of criminal profit than FARC. These findings support the hypothesis that differences such as the one found in this study exist because centralized organizations such as the FARC limit the opportunity costs of demobilizing members, while more diffused organizations such as the AUC give their members the skills that they needed to profit from violence after their insurgencies have disbanded. Future research must explore this link between organizational structure and dissidence in other narcotics producing countries around the world. Given the increasing number of insurgent groups who draw on illegal economies to fund their politics, understanding the conditions that influence demobilizing militants will become key to changing environments where violence is more profitable than peace. ■

ABOUT THE AUTHOR

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The Effect of Oral Argument on Public Perceptions of Supreme Court Legitimacy

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ABSTRACT

The existing literature on Supreme Court legitimacy suggests that factors such as ideology, political sophistication, judicial symbols, and majority size alter public perception of institutional legitimacy. The Court's most observable component of the decision-making process, oral argument, has never been broadcasted to the public by the media. Considering the possibility of this process is made more accessible with cameras in the courtroom, the effect this exposure has on public perceptions of Supreme Court legitimacy must be considered. Without institutional legitimacy, the Court cannot rely on the reservoir of goodwill to see its decisions implemented (Easton 1965). My main conclusion is that exposure to oral argument of aggressive rhetoric is damaging to public perceptions of legitimacy. I find that the effect of various rhetoric used in oral argument is moderated by two factors: gender and political sophistication. First, the public is susceptible to gender bias in the Court, as females portraying gender congruent rhetoric resulted in higher legitimacy ratings compared to females portraying gender incongruent rhetoric. Second, the politically unsophisticated experienced greater changes in legitimacy ratings and were more susceptible to gender bias compared to the politically sophisticated.

INTRODUCTION

Supreme Court oral argument is the most visible element of the Court's decision-making process (Johnson, Wahlbeck, and Spriggs 2006). Although oral argument is the most observable, the public's exposure to the Court's actions is largely limited to its decisional outcomes. The public has access to oral argument via audio recordings, but they are not broadcasted by the media. Scholars have not yet linked the most observable component of judicial decision making to public perceptions of legitimacy. Studying public reception to oral argument is important when deciding whether or not the process should be made observable to the public by way of cameras in the courtroom. I propose that aside from oral argument having an effect on judicial decision making, it will also have an effect on public perceptions of Supreme Court legitimacy. The effect of oral argument on the listener is more complicated than it is first seen, as the characteristics of both the listener and those making the argument must be considered. In this respect, dynamics such as gender and political knowledge come into play. I have carried out this study in order to examine these effects and fill a gap in Supreme Court legitimacy literature.

Supreme Court Legitimacy Theory

The classic argument of political and social theorists has been that for authorities to perform effectively, those in power must convince everyone else that they "deserve" to rule and make decisions that influence the quality of the lives of the

people (Tyler 2006). Thus, a political institution must cultivate a belief in its legitimacy. According to Suchman (1995, 574), "Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions." In other words, legitimacy is a psychological property of an institution that leads people to believe that it is appropriate, proper, and just. When an entity is deemed to be legitimate, it has a "reservoir of goodwill" that leads people to defer to its decisions and rules even when they do not agree with those decisions (Easton 1965). Legitimacy is important to the Supreme Court as the judicial branch lacks the power of both the purse and sword and must rely on the goodwill that stems from legitimacy to enforce its decisions. The Court's independence is compromised if it cannot depend on legitimacy to protect its unpopular decisions (Gibson and Nelson 2016).

The Supreme Court is viewed primarily as a legal institution before it is a political institution. If the Court is seen as being politically motivated, it has a negative effect on legitimacy. Justices with concerns about legitimacy may shape their votes in highly salient cases to protect the institution (Gibson and Nelson 2016). Without the reservoir of goodwill, the Court cannot rely on legitimacy to see its decisions implemented. When this occurs, the Court is vulnerable to acting strategically. When it is assumed that the judges are making decisions based off of their own political preferences, the Court loses its reputation as an institution with the purpose

of implementing the Constitution. When it is perceived that the Court is not doing its job, it is deemed illegitimate.

Specific Support vs. Diffuse Support

Scholars advance two main explanations to account for public perceptions of Supreme Court legitimacy: one based on satisfaction with individual decisions and the other based on support for the institution of the Court. The former is often referred to as specific support and the latter as diffuse support. Specific support asserts that perceptions of Court legitimacy are based on the ideological preferences of the people. Diffuse support focuses on institutional support, such as democratic values leading to the reservoir of goodwill (Gibson and Nelson 2016). Proponents of the diffuse support theory assert that the public's perception of the Court is resilient enough to withstand single decisions made against their ideological preferences.

Specific Support

Johnston, Hillygus, and Bartels (2014) expand on the theory that Supreme Court legitimacy is based on ideological congruence with specific outcomes. They look specifically at the passing of the Affordable Care Act (ACA) and its effect on Supreme Court legitimacy by examining three factors: political sophistication, ACA knowledge, and ideology. Examining public perception of the ACA decision is well-suited for testing Court legitimacy for three reasons: it is highly salient, it revolved around a polarized national policy issue, and it exposed the public to the fact that the Court can be strategic and motivated by non-legal factors (Christenson and Glick 2015). Drawing on Bartels and Johnston's (2013) theory of ideological congruence coinciding with higher perceptions of legitimacy, they provide support for the idea that citizen ideology influences perceptions of legitimacy. When the Court is perceived as being too political based on individual case outcomes, legitimacy is reduced.

Christenson and Glick (2015) also found a strong relationship between ideology and legitimacy in their study of public perception of the Court after the passing of the ACA. The Court's decision on the ACA served as an agent for the public to form a new opinion of the Court's ideology (Christenson and Glick 2015). This comports with Bartels and Johnston (2013), challenging previous claims that ideology has little effect on diffuse support, as their research points that dissatisfaction with a decision can be damaging to institutional support.

Diffuse Support

Scholars who focus on performance satisfaction assert that ideological congruence-or lack thereof with the Court makes up only a small component of the public's view of its legitimacy. Gibson and Nelson (2015) criticize the work of Bartels and Johnston (2013), claiming that they overestimated the effects of ideology on legitimacy. Proponents of diffuse

support, they assert that the institutional legitimacy of the Court is more resilient than they claim, and insist that influencing factors go beyond policy outcomes. They conclude that the legitimacy of the Court is not dependent on the Court making decisions that please the American people, as a divided Court is unlikely to consistently disappoint either the left or the right.

Perceived legitimacy is highly dependent on the public's perception of the Court's performance as an institution, rather than on individual decisions. There is a limited relationship between evaluations of performance and loyalty to the Supreme Court. Gibson, Caldeira, and Spence (2003) conclude that institutional loyalty to the Court is weakly related to actions the Court takes at the moment, and commitments to the Court are not a function of whether one is pleased with how it is doing its job. Gibson and Nelson (2015) agree, as their research found that those who support the Court are stronger supporters of the democratic rule of law, are more tolerant of the institution, and are more likely to favor liberty over order when the two are in conflict. Gibson and Caldeira (2009) also reject specific support, asserting legitimacy is not significantly sensitive to the public's dissatisfaction with individual decisions. Their findings also support the idea of positivity theory, the idea that among those in high support, disappointment in a single decision will not have a significant negative effect on legitimacy.

Symbols

The technicalities and symbols of an institution articulate the legitimacy of political systems. For the Supreme Court, its symbols serve as a paradigm for justice. According to Gibson and Caldeira's (2009) positivity theory, the Supreme Court is protected from its constituents' disapproval of its decisions. They found that that exposure to symbols of the Court (e.g. robed justices, gavels) increase institutional support. Symbols act to mitigate the negative consequences for the Court of a decision that runs counter to citizens' policy preferences (Gibson and Nelson 2017). It is inferred that judicial symbols reestablish institutional support of the Supreme Court.

Gibson, Lodge, and Woodson (2014) examine the link between disappointment with a decision and the willingness to challenge that decision. In their experiment, participants were presented with three legal issues and were told to rank them from most important to least important. Participants were told that the Supreme Court made a ruling on the issue most important to them contrary to their preferred decision. Gibson et al. (2014) presented participants with the Court's decision in a false newspaper headline accompanied by judicial symbols as opposed to the control group, who were shown abstract symbols. They found that the presence of judicial symbols strengthened institutional support for low sophisticates, as well as increased resistance to the Court's decision for those with low support in the first place. Gibson et al. (2014) find that exposure to symbols accelerates the influence of support

on acquiescence only for those with high institutional support from the beginning. They decide that the presence of judicial symbols activate the perception of judicial fairness. Gibson et al. (2014) conclude that positivity theory does not provide a primary outcome with exposure to symbols.

Diffuse support is not as impervious as some have thought. In their investigation of the effect of judicial symbols, Gibson and Nelson (2016) find that when disappointment is high, symbols have little to no effect, and when disappointment is low, exposure to symbols reduces disappointment. The presence of symbols lessens the conversion of disappointment with a decision into a loss of institutional support.

Decision Attributes

Gibson and Nelson (2015) assert that performance satisfaction is not exclusive to decisional outcomes. Aside from decisional outcomes, the ways in which justices reach those decisions are also important to legitimacy. Majority size and treatment of precedent affect perceptions of Court legitimacy (Zink, Spriggs, and Scott 2009). Presenting participants with four decisional outcomes: unanimous and follow precedent, unanimous and overrule precedent, divided and follow precedent, and divided and overrule precedent, there is a significant difference in support for the decision between the unanimous and follow precedent category and the divided and overrule precedent category, with the former having higher levels of support. Zink et al. conclude that people are more likely to agree with and accept a position that is decided unanimously and following precedent, even if they disagree with the decision.

Salamone (2014) investigates how Court majority size and judicial dissent affect public opinion. The study examines public reaction to Supreme Court majority size through a series of survey experiments asking questions based on the passing of same-sex marriage. The experiment offers evidence that majority size does have an impact on public attitudes toward court decisions, and these results vary based on the salience of the issue involved, with the public being unmoved by majority size in highly salient cases (Salamone 2014). Gibson and Nelson (2015) investigate other institutional factors affecting perceptions of Court legitimacy, including the way decisions are made, the speed in which they are made, how litigants are treated, how the opinion is written, and overall context of the institution.

Christenson and Glick (2015) acknowledge an underlying cause of their results in their study of the ACA ruling. They found that Justice Roberts' reversal in his decision in the ACA ruling led to reduced feelings of legitimacy, thus giving individuals the impression that justices act strategically, rather than serving as implementers of the law. The perceived notion that justices act based on judicial-decision making strategies is damaging to diffuse support. Baird and Gangl (2006) found that citizens react more positively to decisions

reached counter to their ideological preference if they are convinced that the decision was legally motivated rather than strategically motivated. Strategic decisions are interpreted as the product of a politically motivated Court.¹

Political Sophistication and Ideology

Politically sophisticated citizens have dense, preexisting knowledge regarding the judicial system. Thus, new information regarding the judicial process is unlikely to have much of an effect on overall beliefs and attitudes, as sophisticates possess greater "inertial resistance" (Johnston, Hillygus, and Bartels 2014). Compared to the durable attitudes of sophisticates, the unsophisticated, with weaker prior knowledge, are more susceptible to belief change. Sophistication can also condition the effect of other characteristics, including political ideology, on legitimacy.

Individuals who feel ideologically congruent with the Court are more likely to have higher legitimacy ratings, and this is especially true for low to moderate sophisticates (Christenson and Glick 2015). This is echoed in a study of the ACA decision that found the case influenced opinions of Supreme Court legitimacy for low and moderate sophisticates, such that conservatism was consistent with lower levels of legitimacy. In contrast, for the highly sophisticated, conservatism was associated with higher levels of legitimacy (Johnston, Hillygus, and Bartels 2014). It can be assumed that those questioned who held richer knowledge of the Supreme Court hold a higher respect for the intricacies of the institution and its functions. Therefore, the highly sophisticated are less likely to regard the institution as less legitimate, simply based on a decision outside one's political ideology.

Diversity on the Bench

Several studies have documented that African Americans exhibit less support for the Supreme Court than whites (e.g., Gibson and Caldeira 1992). As a reservoir of goodwill, legitimacy is shaken over the long haul; the repeated failure of an institution to meet policy expectations can weaken that institution's legitimacy in the eyes of disaffected groups (Gibson 2007). When the voices of a minority group are not engaged in an institution's decision-making process, that institution may be perceived by those excluded as illegitimate (Scherer 2011).

Descriptive representation in political institutions has long been a public concern. Systemic discrimination against minorities in the legal profession has been endemic throughout U.S. history (Hurwitz and Lanier 2003). If an institution were truly descriptive, it would match the demographics of the nation. The perceived legitimacy of government is enhanced when officeholders have similar characteristics to those they represent. Due to the direct impact that judicial decisions have on the lives of the American public, this is especially true of the Supreme Court.

THEORY AND HYPOTHESES

Rhetoric and Oral Argument

The oral argument process exists to allow the council to publically deliver their best argument to the justices. Although traditionally thought of as a process used by attorneys to influence the justices, oral argument serves as an opportunity for the justices to bargain over one another's opinion. Johnson, Wahlbeck, and Spriggs (2006) argue that oral argument is more of a dialogue among the justices than a discussion between the court and counsel. It enables justices to argue their issues – perhaps in an adversarial manner – through the attorneys to try to convince the other justices of their point of view. For instance, justices seek to articulate their points in a limited amount of time, often interrupting one another and denying other justices the opportunity to speak. To an untrained Court observer, this type of rhetoric may give one the perception that the Court is politically motivated, thus damaging the institution's legitimacy (e.g., Gibson and Caldeira 2011). Oral argument also serves as a pre-conference: justices have the opportunity to ask questions for the attorneys and communicate their preferences to the Court. During this process, the justices' thoughts or theories can be shared to gauge reactions of other justices without committing to a viewpoint (Johnson, Wahlbeck, and Spriggs 2006).

Considering the above, I theorize that various rhetoric, particularly aggressive versus congenial arguments, used by the justices during oral argument will affect the public's perception of the Supreme Court, particularly its legitimacy. Upon being presented with the text of oral argument between a judge and an attorney that is aggressive and argumentative in nature, people will view the Court as being politically motivated. Those who are left with this impression are likely to view the Court as an entity that should not be trusted to decide controversial issues for our country, thus reducing perceptions of legitimacy. On the other hand, I assert that upon being presented with the text of oral argument between a judge and an attorney conducted in an orderly, agreeable fashion with little to no interruption, people will not have a significantly altered perception of Supreme Court legitimacy.

H1: Those who are presented with the text of oral argument of an aggressive nature will perceive the Court as being less legitimate than those who are presented with the text of a congenial nature.

Gender and Oral Argument

In a democratic government, the voices of the majority can easily drown out those of the minority. The "different voice debate" centers around the question of whether women and people of color "speak in a different voice" than other scholars, as well as how jurisprudence should alter itself if a "different voice" does exist (Gilligan 1982). Different voice scholars argue that traditional scholarly standards reflect a white male

voice, and therefore undervalue the work of women and people of color.² One way justices may speak with a different voice is through the gendering of the language used during oral argument. Gendered language refers to words and syntax used differently by males and females (Hancock and Rubin 2014). Masculine language style is aggressive, competitive, structured, and includes little intimacy, while feminine language is emotional, cooperative, and intimate (Helweg-Larsen, Cunningham, Carrico, and Pergram 2004). Women use about three times as many pronouns involving the other speaker as men (Hirschman 1994), and approximately six times more intensifiers, which are thought to emphasize the emotional, rather than the cognitive meaning of the message (McMillan, Clifton, McGrath, and Gale 1977).

Dominance theory explains both verbal and nonverbal productions as reflections of social status (Helweg-Larsen et al. 2004). In gender congruent behavior, language is used to either gain dominance by men or to demonstrate submission by women (Hancock and Rubin 2014). Hancock and Rubin (2014) studied forty participants (twenty male and twenty female) having conversations with trained male and female communication partners. They found that male participants interrupted females an average of 2.1 times, while female participants interrupted males an average of one time (Hancock and Rubin 2014).

The language used to gain dominance includes interruption, which is a major component of aggressive rhetoric in the Court. The Supreme Court is not immune to gender effects (Patton and Smith 2017). Automated content analysis to the transcripts of 3,588 oral arguments found that female lawyers are interrupted earlier, are allowed to speak for less time between interruptions, and are subject to more frequent and longer speeches from the justices. This suggests that gender attitudes held by Supreme Court justices may contribute to female lawyers being interrupted more than male lawyers.

The justices and attorneys involved in Supreme Court oral arguments have sought entry into a competitive and masculine profession (Haynes 2012). Male judges routinely receive higher American Bar Association (ABA) qualification ratings than female judges (Fix and Johnson 2017). Despite strict rules stating that advocates must stop speaking when a judge begins to speak, male advocates made approximately 10% of all interruptions that occurred in Court, while female advocates accounted for almost no proportion of interruptions (Jacobi and Schweers 2017). Jacobi and Schweers (2017) discovered that male justices interrupt female justices approximately three times as much as they interrupt each other. In this kind of environment, women do not have equal opportunity to be heard. Males assert an asymmetrical right to control topics and do so without evident repercussions (Zimmerman and West 1975). When a woman interrupts someone, particularly a man, she is displaying gender incongruent behavior.

The gender of the justice in the presented text will condition the effect of aggressive argument in relation to perceptions of Supreme Court legitimacy. I expect citizens to react more harshly to female aggressors than males due to society's constructed gender norms. I predict that an aggressive male judge would not induce significant negative reactions, as this is gender congruent behavior. Since the assertive act of interrupting is considered to be a masculine act (Jacobi and Schweers 2017), the assertive female justice is deviating from traditional constructions of feminine behavior. I expect participants to be taken aback by the aggressive female, thus reducing court legitimacy.

H2: The gender of the justice will moderate the effect of an aggressive argument for perceptions of Supreme Court legitimacy.

Political Sophistication and Oral Argument

Drawing on Johnston, Hillygus, and Bartels' (2014) theory of political sophistication, I anticipate that participants who are more knowledgeable of the Supreme Court will have views of legitimacy that will withstand exposure to aggressive rhetoric. Sophisticates have preexisting knowledge regarding the institution of the Court, while the unsophisticated do not, and are more susceptible to change in belief (Johnston, Hillygus, and Bartels 2014). I expect the unsophisticated to have a greater change in perceptions of legitimacy after reading the text of aggressive rhetoric, as they are less likely to be aware of Court oral argument being an adversarial process. In addition, I expect the unsophisticated to react more harshly to aggressive female justices, as they are likely unaware of the

active role of women in the Court and will respond to the gender incongruent behavior. On the other hand, I predict that the highly sophisticated participants who are given texts of aggressive rhetoric will be more supportive of the Court and less susceptible to gendered expectations of behavior.

H3: The political sophistication of the participant will moderate the effect of an aggressive argument for perceptions of Supreme Court legitimacy.

RESEARCH DESIGN

To test my hypotheses, I implemented a survey experiment in which research participants were randomly presented one of four text treatments: a male congenial justice, a male aggressive justice, a female congenial justice, or a female aggressive justice (Table 1).³ To assess H1, I compare the effects of congenial and aggressive arguments. I included identical texts for male and female justices for both types of rhetoric so that I can examine gender as a moderator for aggressive rhetoric (H2).

After being presented with text, participants were asked a battery of questions about perceptions of legitimacy (e.g., Gibson and Nelson 2015; Gibson, Caldeira, and Spence 2003). Respondents answered legitimacy questions on a Likert scale with an index later constructed by averaging the numerical ranking of each response. Lastly, participants responded to political knowledge questions so that I can examine political sophistication as a moderator for aggressive rhetoric (H3). The survey questions are available in the Appendix.

The survey was implemented with Survey Sampling International (SSI) between 3/27/2018 – 3/30/2018. SSI provides an online opt-in panel of respondents with samples

Table 1: Treatment Conditions

Gender	Congenial	Aggressive
Male Justice	Group 1	Group 2
Female Justice	Group 3	Group 4

Table 2: Effect of Aggressive Argument on Legitimacy

	(1) Measure 1	(2) Measure 2	(3) Measure 3	(4) Measure 4	(5) Index
Aggressive	0.0710 (0.130)	0.107 (0.129)	0.0601 (0.118)	0.0440 (0.128)	0.0716 (0.0959)
Constant	2.623*** (0.092)	3.110*** (0.091)	3.383*** (0.083)	2.962*** (0.091)	3.021*** (0.068)
Observations	366	362	366	364	361
R-squared	0.001	0.002	0.001	0.000	0.002

Standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1

Table 3: Gender as a Moderator for Aggressive Rhetoric

	(1) Measure 1	(2) Measure 2	(3) Measure 3	(4) Measure 4	(5) Index
Aggressive Male	0.168 (0.184)	-0.013 (0.182)	-0.027 (0.167)	-0.286 (0.180)	-0.039 (0.136)
Congenial Female	0.212 (0.184)	-0.134 (0.182)	-0.157 (0.167)	-0.428** (0.180)	-0.130 (0.135)
Aggressive Female	0.187 (0.184)	0.092 (0.183)	-0.011 (0.167)	-0.056 (0.181)	0.053 (0.137)
Constant	2.516*** (0.130)	3.178*** (0.129)	3.462*** (0.118)	3.178*** (0.128)	3.086*** (0.096)
Observations	366	362	366	364	361
R-squared	0.004	0.004	0.003	0.020	0.005

Standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1

drawn using a matching algorithm designed to yield a sample representative of the U.S. adult population. This particular sample was matched based on race, gender, and partisanship. The survey was conducted with a sample of 1,092 respondents. Respondents were randomly assigned to participate in different studies. Approximately one-third (366 respondents) participated. Of the 366 respondents, 48.09% were female, with the mean age being 47.09 years. The median education category was an Associate's Degree, and 25.68% of respondents held a Bachelor's Degree. The median income category was 50-59k. 75.55% of respondents were white and 12.91% were black. 38.52% of respondents identified as liberal and 35.52% as conservative.

ANALYSIS

To empirically test Hypotheses 1, 2, and 3, I implemented an ordinary least squares regression model. To evaluate H1, I regressed perceptions legitimacy on argumentativeness (i.e., aggressive vs. congenial rhetoric); not accounting for the gender of the justice. As shown in Table 2, relative to congenial communications (the baseline), the aggressive treatment shifts attitudes in a positive direction; this is heightening perceptions of illegitimacy. However, these effects are not statistically significant. While it is not significant, the direction of the effect is consistent across all the measures (legitimacy questions). Based on this trend, I conclude that the presentation of

Figure 1: Gender as Moderator in Q4 (Congenial Female)

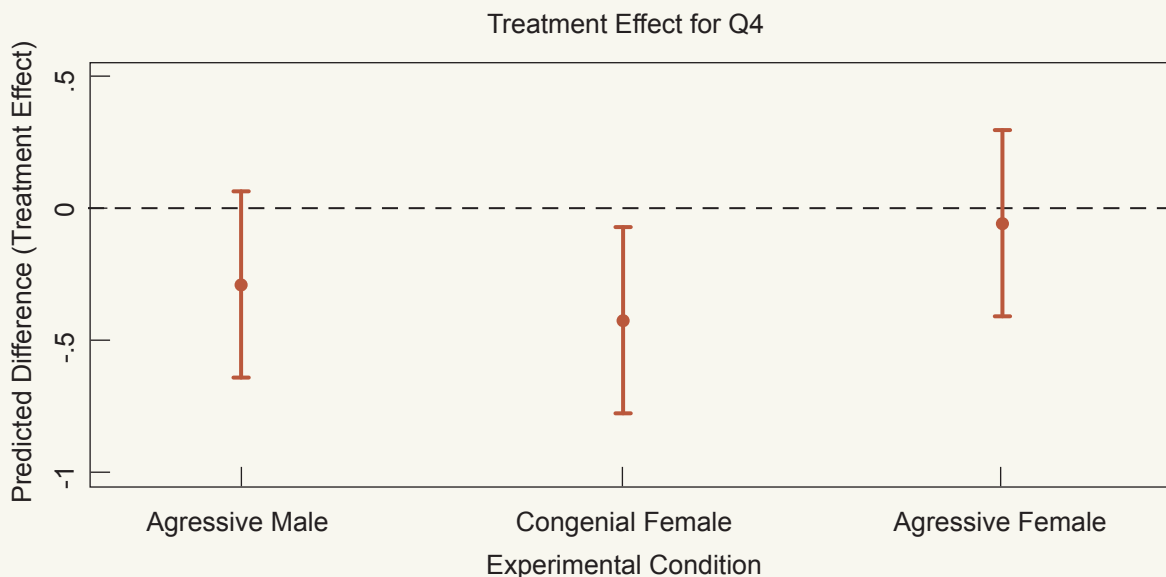


Table 4: Political Sophistication as a Moderator on the Effect of Argument

	(1) Measure 1	(2) Measure 2	(3) Measure 3	(4) Measure 4	(5) Index
Aggressive Male	0.243 (0.341)	-0.140 (0.352)	-0.107 (0.323)	-0.269 (0.331)	-0.062 (0.257)
Congenial Female	0.427 (0.320)	-0.090 (0.328)	-0.288 (0.304)	-0.958*** (0.312)	-0.243 (0.240)
Aggressive Female	0.718** (0.341)	0.059 (0.351)	-0.016 (0.324)	-0.231 (0.335)	0.146 (0.259)
Effect of Sophistication on Male Congenial	-0.192 (0.125)	-0.208 (0.128)	-0.056 (0.119)	-0.456*** (0.122)	-0.235** (0.094)
Effect of Sophistication on Male Aggressor	-0.057 (0.178)	0.079 (0.183)	0.036 (0.169)	-0.066 (0.173)	-0.006 (0.134)
Effect of Sophistication on Female Congenial	-0.160 (0.164)	-0.053 (0.167)	0.080 (0.156)	0.293* (0.159)	0.047 (0.122)
Effect of Sophistication on Female Aggressor	-0.300* (0.171)	0.017 (0.174)	2.910 (0.162)	0.103 (0.166)	-0.049 (0.128)
Constant	2.841*** (0.246)	3.533*** (0.254)	3.556*** (0.233)	3.959*** (0.241)	3.488*** (0.186)
Observations	364	360	364	362	359
R-squared	0.094	0.037	0.005	0.130	0.081
Standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1					

aggressive oral argument slightly reduces perceptions of Supreme Court legitimacy.

To evaluate H2, I regressed legitimacy on each of the four experimental conditions. The baseline for comparison in these models is the congenial male rhetoric. Table 3 reveals that relative to congenial male communications, aggressive female rhetoric often resulted in an index score higher than the baseline and congenial female conditions. Although not statistically significant, these results align with H2, providing some evidence that aggressive rhetoric from a female justice attenuates perceptions of legitimacy.

The results of the congenial female rhetoric for Q4 are statistically significant. In Figure 1, the treatment effect of a congenial female in Q4 significantly shifts attitudes in a negative direction; this is increasing perceptions of legitimacy. Upon reading a text of congenial female communications, participants experienced a heightened perception of legitimacy. It can be assumed that the congenial female is fulfilling gender roles, as congenial rhetoric demonstrates submission (Hancock and Rubin 2014).

To test H3, I regressed legitimacy on experimental condition while accounting for the political sophistication of the participant. In Table 4, find the results for political sophistication acting as a moderator for reading argument texts. I will elaborate on its effect as a moderator on perceptions of legitimacy, in reference to Figure 2.

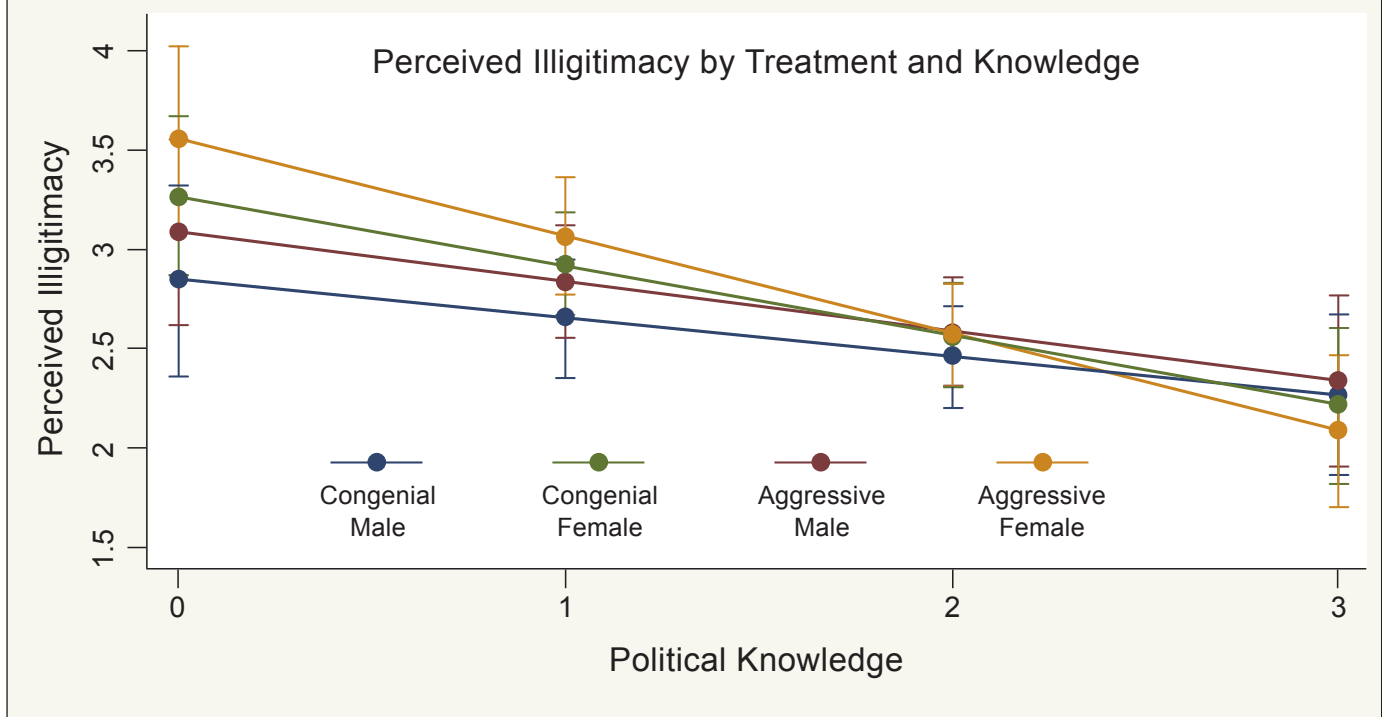
Figure 2 shows that the politically unsophisticated experienced the greatest shift in perceptions of legitimacy,

supporting H3. On the x-axis, 0 represents participants who were unable to answer any political knowledge questions correctly, while 3 represents those who responded correctly to all three questions. The numbers on the y-axis represent the deviation from legitimacy ratings prior to treatment; higher ratings are in accordance with higher perceptions of illegitimacy. The politically unsophisticated reported lower legitimacy ratings for congenial females than aggressive males. It can be gathered that the politically unsophisticated are prejudiced towards female justices, no matter the rhetoric of their argument. As proposed, the politically sophisticated experienced the smallest shift in perceptions of legitimacy, as it can be assumed that they hold a greater awareness of the adversarial nature of oral argument.

CONCLUSION AND DISCUSSION

The most important finding of this study is its simplest discovery: exposing the public to Supreme Court oral argument is potentially damaging to perceptions of Supreme Court legitimacy. This raises the question of whether or not the general public should have greater accessibility to the most observable part of the Court's decision-making process: oral argument. Currently, the public has access to the inner workings of Congress via televised meetings, but that privilege is unavailable of the highest Court. As expected, the effect of decreased feelings of legitimacy is more severe for those with little knowledge of the Court's workings. Given that

Figure 2: Perceived Illegitimacy by Argument and Sophistication



the average American is unaware of the adversarial nature of oral argument, exposure to the process would be damaging to public perception of Supreme Court legitimacy.

Another notable finding is the effect of gender congruent and incongruent behavior by female justices on participants' altered perceptions of Court legitimacy. As expected, participants generally reacted negatively towards female aggressors and positively towards female congenials. These trends were strongly correlated with Court knowledge. In fact, the politically unsophisticated appear to hold prejudiced feelings toward females in the Court in general. As shown in Figure 1, the unsophisticated held warmer feelings towards aggressive males than congenial females. If Supreme Court oral argument became accessible to the general public, it could possibly result in negative consequences for the future of increased female representation in the Court. Of course, the politically unsophisticated cannot be prohibited from access to oral argument, so the perception of various audiences must be taken into consideration before granting public access.

The findings suggest that exposure of oral argument to an uninformed citizenry poses a threat to the legitimacy of the Supreme Court. In a democratic system, transparency is an essential component of the democratic process. Unfortunately, political ignorance is a major shortcoming of American democracy. Rather than the encouragement of concealed processes, we must move towards increased knowledge of these processes. One institution that may possess the ability to increase public political knowledge is direct democracy,

whose proponents believe it can empower citizens to develop a greater knowledge of politics (Smith and Tolbert 2004). Direct democracy heightens political participation, which aids in the ability of citizens to effectively take part in democratic processes. Political sophistication is largely related to the ability to assimilate knowledge, motivation to follow matters of politics, and availability of relevant information (Luskin 1990), three issues which direct democracy address (Biggers 2012). In addition, enhanced exposure to political information via the media reduces the cost of political knowledge, as it allows for easy access to information. In order to increase knowledge of political processes and institutions such as the Supreme Court, the public must enjoy greater accessibility to websites where explanations to these processes are given in layman's terms.

A future experiment should consider the use of audio clips of oral argument instead of textual dialogue. The text provides for a cleaner test, but the audio recordings would allow for participants to have a better comprehension of rhetoric used. Another alteration to consider would be providing participants with background information before being presented with text. Ensuring basic knowledge of the process of oral argument would allow for a better test of the effect of various rhetoric, but would no longer allow one to test political sophistication as a moderator, as it would be tainted.

Based on these findings, one could conclude that it is best for the sanctity of the Supreme Court to continue to keep the process of oral argument concealed from the public. Exposure of oral argument would be damaging to public perceptions of

the legitimacy of the institution. If the Court cannot depend on legitimacy to see its decisions implemented, it is vulnerable to shaping its decisions in order to protect the institution. If justices are deprived of their free ability to make decisions they see best implement the Constitution, then the Supreme Court is no longer serving its function. ■

ABOUT THE AUTHOR

Mallory Block graduated cum laude from Appalachian State University in the spring of 2018 with a B.S. in Political Science- International and Comparative Politics and a minor in Sustainable Development. She participated in Appalachian State's Government and Justice Studies Departmental Honors program where she conducted empirical research for her honors thesis which later became this manuscript. Mallory spent the fall semester of her Junior year studying at Keele University in England, which she considers to be one of her most formative experiences. Taking courses in politics from the European perspective opened her eyes to various views and enhanced her understanding of comparative politics. Mallory is currently studying at the University of North Carolina at Chapel Hill as part of the TransAtlantic Masters (TAM) Program. TAM is a two-year political science M.A. program focused on contemporary Europe and the transatlantic relationship. As of fall of 2019, she is studying at VU Amsterdam for a year, where she will earn dual-degrees.

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NOTES

- 1 Easton (1965) uses diffuse support as a synonym for legitimacy.
- 2 Others argue that scholars should move away from discussions of difference, and towards one of democratic participation. They contend the different voice debate potentially leads to further marginalization of women and minorities in the legal profession, as the assumption that men are the baseline and women are the deviation from that baseline reinforces the normality of a male judiciary (e.g., Kenney 2012).
- 3 This experiment underwent human subjects review at Appalachian State University's Institutional Review Board. Project number: 18-0217

APPENDIX: SURVEY INSTRUMENT

Legitimacy Questions:

Q1: If the Supreme Court started making a lot of decisions that most people disagree with, it might be better to do away with the Supreme Court all together.

- Strongly disagree (1)
- Somewhat disagree (2)
- Neither agree nor disagree (3)
- Somewhat agree (4)
- Strongly agree (5)

Q2: The Supreme Court may have its ideas about what the Constitution means, but more important is what the majority of people think the Constitution means.

- Strongly disagree (1)
- Somewhat disagree (2)
- Neither agree nor disagree (3)
- Somewhat agree (4)
- Strongly agree (5)

Q3: The Supreme Court gets too mixed up in politics.

- Strongly disagree (1)
- Somewhat disagree (2)
- Neither agree nor disagree (3)
- Somewhat agree (4)
- Strongly agree (5)

Q4: The right of the Supreme Court to decide certain types of controversial issues should be reduced.

- Strongly disagree (1)
- Somewhat disagree (2)
- Neither agree nor disagree (3)
- Somewhat agree (4)
- Strongly agree (5)

Political Knowledge Questions:

How much of a majority is required for the U.S. Senate and House to override a presidential veto?

- One half plus one vote (1)
- Three-fifths (2)
- Two-thirds (3)
- Three-fourths (4)

Who is the current Senate majority leader?

- Nancy Pelosi (1)
- Paul Ryan (2)
- Mitch McConnell (3)
- Kevin McCarthy (4)

Who is the Chief Justice of the U.S. Supreme Court?

- Clarence Thomas (1)
- John Roberts (2)
- Anthony Kennedy (3)
- Ruth Bader Ginsberg (4)

Who Rules the Rulings? Disputant Strength and Legal Preparedness in World Trade Organization Dispute Settlement Proceedings

Taylor Todd, Oklahoma State University

ABSTRACT

The World Trade Organization's Dispute Settlement Body (DSB) offers member states a legal mechanism by which they can arbitrate trade disputes. The DSB has the potential to promote equality and justice in the international trade system, yet critics have raised concerns about potential biases that may undermine the legitimacy of this institution. I argue that while the relative power of each member state may shape the early stages of the proceedings, the actual World Trade Organization (WTO) rulings are determined by the cohesiveness of the legal argument presented by the complainant. In particular, I hypothesize that cases involving more wealthy countries are more likely to fail mediation attempts and move on to the panel stage of proceedings, but the WTO panel will ultimately rule against member states that present overly elaborate legal arguments. Using the WTO Dispute Settlement Data Set (Hoekman et al. 2016), I construct a dyadic dataset of all WTO consultations (cases) from 1995-2012 and analyze the factors that determine which cases reach the panel stage of settlement proceedings and, once at this stage, what determines whether the DSB rules in favor of the primary complainant or the respondent.¹

INTRODUCTION

Over the last several years, the credibility of the World Trade Organization (WTO) has been called into question. Its meetings have experienced diminished productivity, leading at least one trade expert to lament the “vanishing WTO” and its relegation to becoming a “talking shop” for international trade (Levinson 2009; Milner 2005). Given its other criticisms, being labeled as ineffective is almost an improvement for the organization; anti-globalization forces have long accused the body of being a tool used by wealthy countries to dominate developing countries. This view was well summarized in Stiglitz's (2002) book, *Globalization and Its Discontents*, where he accuses the three major international financial institutions - the International Monetary Fund (IMF), WTO, and World Bank - of pursuing an unsound economic strategy with the consequence of detrimental to economic growth in developing countries. Other authors have gone so far as to accuse the organization of being an instrument of neocolonialist policymaking (Khan 2007).

On the other side of the political spectrum, the WTO has faced recent criticism by U.S. President Donald Trump, who has asserted that the WTO has “been a disaster for” and has been “very unfair” towards the United States (Isidore 2018). The U.S. administration has even blocked judicial

appointments to the organization's appellate body (Chandran and Soong 2018), and has unilaterally instituted “retaliatory” tariffs against China. This is a clear reversal of long-standing norms in global and U.S. politics to first adjudicate trade disputes through the WTO's Dispute Settlement Body. While criticisms around the policies advocated by the WTO are long established, President Trump's criticisms revolve around the dispute settlement mechanism of the WTO, a process that most international trade experts - even those critical of the institution - have generally viewed as an important tool allowing countries to peacefully resolve trade disputes (Goodman 2018). Academics and former government officials worry that the departure from traditional trade policy and the potential of these actions to damage multilateral trade relations, which could usher in a new era of protectionism (Paletta and Swanson 2017).

Foreign policy experts have noted the declining relevance of the organization in recent years (Levinson 2009). As shown in Figure 1, the number of requests for WTO consultations in trade disputes has declined since the 1990s, as countries are increasingly turning to regional trade organizations, bilateral agreements, or small group meetings to resolve disputes (Levinson 2009). While the rise in competing trade organizations to help settle more local disputes is not

necessarily negative as a whole, the decision to bypass the organization undermines the WTO's ability to serve as a legal and normative promoter of international trade and economic integration. Given past criticisms, and in light of the recent shift in U.S. trade policy, it is important to examine whether there is justification for these accusations of an institutional power bias in the WTO. In particular, the credibility and continued relevance of the WTO's Dispute Settlement Body (DSB), the organization's main instrument of member state mediation and adjudication, rests on an international acceptance that this organization addresses disputes in a fair, unbiased manner.

Beyond its practical policy importance, I would also contend that this research is also an important theoretical expansion of the existing conflict mediation literature. Previous research on adjudication by international organizations examines military rather than economic disputes. While these types of conflicts are fairly analogous, little work has been done on actually analyzing the rulings made and the decision-making calculation of binding dispute settlement bodies, such as the WTO's DSB or the European Union's Court of Justice. Previous work on adjudication by international courts has focused on why some states choose to accept the jurisdiction of an international court (Johns 2012; Mitchell and Powell 2011), the conditions that lead member states to choose to use an international organization for arbitration (Simmons 2002), and whether or not the involvement of an international organization leads to a more successful mediation (Hensel et al. 2008).

Some of the few studies specific to adjudication in international organizations have either overviewed broad trends (Tridimas and Gair 2010) or only offered the most basic comparisons of adjudication winners and losers (Malawer

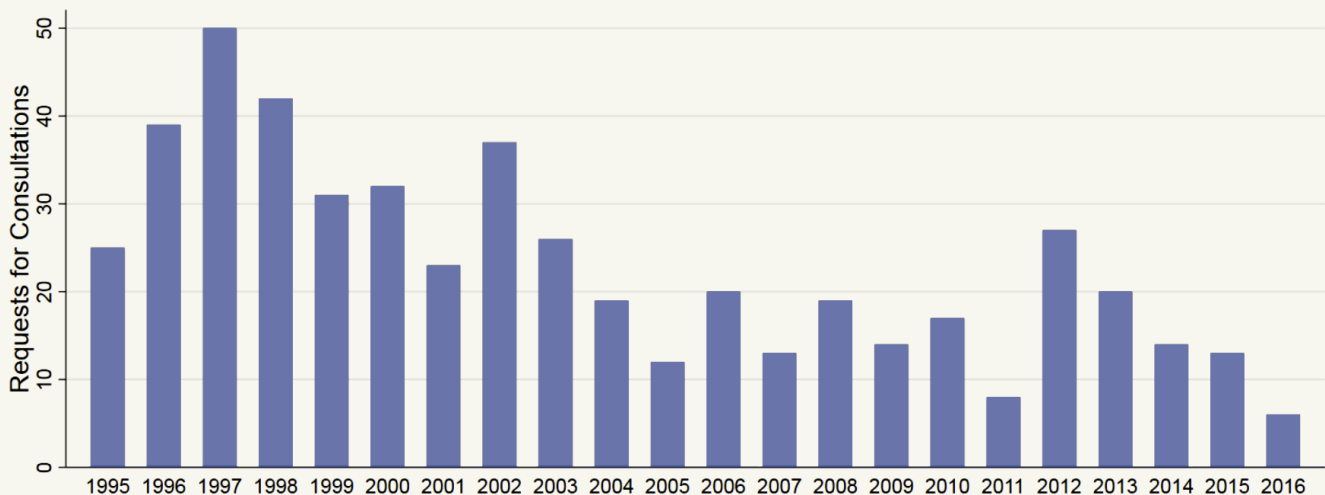
2014). In this paper, I propose to examine the WTO dispute process from the time a country files a complaint to the initial ruling by the dispute settlement panel.

Explaining Success and Failure in IO Conflict Mediation

Building on a basic bargaining model of war (Fearon 1995; Reiter 2003), a conflict between two states is best thought as a negotiation between two rational states competing over scarce resources. To secure the best deal possible for themselves, countries have incentives to exaggerate and misrepresent their preferences, effectively backfiring and narrowing the range of acceptable bargains into non-existence. Uncertainty, commitment problems, and the indivisibility of the resource at stake can escalate disputes into full-scale conflicts (Fearon 1995), particularly when the issue is highly salient to one or both of the states in the dispute (Diehl 1992). Considerable work has traced how international organizations can benefit state negotiations by reducing uncertainty and resolving commitment issues. Beyond the classic work by Keohane (1984) and Abbott and Snidal (1998), an example of more recent research includes Best (2012).

A number of factors, however, may impact the ability of an international organization to successfully bridge the bargaining gap between countries. Previous literature on international third-party conflict management often groups those factors into supply-side and demand-side factors. Supply-side explanations examine the availability and characteristics of mediators or the terms of the negotiation proceedings that may impact their effectiveness (Crescenzi et al. 2011; Simmons 2002). Demand-side explanations, in contrast, examine the conditions leading disputants to seek out mediators, including the conditions that make it more

Figure 1: Requests for World Trade Organization Consultations Per Year



difficult for disputants to reach agreements by themselves, such as perceived bias, mediator credibility, joint democracy, and whether or not there is repeated play by the mediator. The conflict's nature and severity may also create demand for mediation, with more severe conflicts less able to be resolved bilaterally (Keohane 1984). Yet, some scholars argue that states are more likely to enter into mediation or arbitration if a conflict is non-vital, contentious, and temporary in nature (Bilder 1983; Bercovitch 1986; Crescenzi et al. 2011). Bilder (1983) suggests that states only enter non-vital conflicts into adjudication as a sign of goodwill and openness to resolution, in essence, signaling that they are suffering from the continuation of conflict and need the issue resolved (Fearon 1995). An issue is considered to have tangible salience if it is related to security and wealth, and an issue is considered to have intangible salience if it involves factors such as justice or influence (Daniels and Mitchell 2017; Hensel et al. 2008). In many ways, WTO cases are highly salient and tangible to their member states, meaning that there is likely to be high demand for a conflict mediator to help resolve this difficult dispute.

However, even if two sides in a conflict have a demand for resolution, the behavior of states once in negotiations may still prevent an international mediator like the WTO from successfully bridging the conflict gap. States still have an incentive to misrepresent their ideal points in order to gain a negotiation advantage (Fearon 1995), and more powerful states may have greater leverage to force their viewpoints on their opponents (Beardsley 2008). These factors can undermine the mediation attempt and prevent the settlement of disputes.

More specific to the WTO's history, the conflict mediation process under General Agreement on Tariffs and Trade (GATT) was especially prone to abuse by powerful member states (Busch and Reinhardt 2003, 721). Wealthier states could use their influence to delay or block the creation of panel proceedings, thereby pushing weaker states into a longer timeline that delayed settlements or forced the smaller states to drop their complaints against powerful ones, leading to the institutional bias that was the frequent complaint of critics. Reforming this system and addressing these power abuses, ineffectiveness, and inefficiencies were a major goal of the 1994 Uruguay Round of Negotiations (Busch and Reinhardt 2003). In the following section, I will overview what changes were made, and how these changes might still allow power abuse during the initial negotiations but have "leveled the playing field" during the adjudication stage of the WTO settlement.

The Uruguay Reforms: The DSB's Shift from Power Politics to Legal Coherence

The WTO's Dispute Settlement Body (DSB) originates in Article XXIII of the 1994 General Agreement on Tariffs and Trade Treaty, with the process of dispute settlement in the WTO was further developed in what is casually known as the Dispute Settlement Understanding (WTO 2019). The first major change of the 1994 Uruguay Round of Negotiations was

to impose a timeline on the DSB (see Table 1), so that more powerful states could not indefinitely drag another through litigation, taking away time, resources, and damaging trade flows in the process. The DSB process begins when one WTO member state (the complainant) files a request for the WTO to consider possible violations committed by another member state (the respondent).² This is a two-stage process, excluding the appeals process. In the first stage, the WTO purely acts as a mediator between the disputants. This period lasts 60 days. At this stage, any WTO member can request to join the case as an "interested third party." If this request is approved, these new states join in the informal discussions. These states are allowed to file briefs, and receive information about the (otherwise closed) proceedings, but are not official parties to the disputes, meaning that the DSB process still largely reflects a dyadic interaction between the complainant and the respondent.

If an agreement cannot be reached in mediation, the complainant(s) initiate a request to continue on to the panel

Table 1: A Simplified Timeline of the Dispute Settlement Process

Phases of Dispute Settlement	Time Allotted
Consultation and Mediation	60 Days
Establishment of Panel	45 Days
Panel Deliberations and Report to Parties	6 Months
Adoption or Denial of Panel Report and/or Filing of Appeal	21 Days
Appeals	Total Without Appeal 1yr
Appeal Report Given	60-90 Days
DSB Adoption of the Appeals Report	30 Days
	Total with Appeal 1yr 3 Months
Note: This table was acquired from the World Trade Organization (2018a)	

stage where the WTO enters its adjudication role. It is important to note that, whether or not a case settles in this stage, there is not a winner. Very little settlement information is made public, and the settlements generally represent some sort of middle ground. In fact, the DSB process is largely confidential from the beginning to the end of the process, which the Dispute Settlement Understanding has argued is important in ensuring the confidentiality of negotiations to help maintain the integrity of proceedings (WTO 1996).

Within 45 days, a panel of three judges is assigned to the case (WTO 2018a). The parties in the dispute may appoint their own panel through mutual agreement, but if

they fail to do so within 20 days, the WTO Director-General may appoint the panel members. The panel primarily serves as an adjudicator, as they are expected to deliver an objective assessment on whether the respondent violated a relevant trade agreement. The panel deliberations are confidential, as is the drafting of the final report. The panel rules separately on each issue either in favor of the complainant(s), in favor of the respondent, or refusing to decide on a claim with a decision of “judicial economy³.” The DSB determines whether to officially adopt the panel’s decision on the matters in the case; if it is adopted and the parties do not see the decision as agreeable, they do have the option to pursue an appeal. Decisions are circulated to the WTO members if an appeal is not filed.

Kim (2008) criticizes these reforms, claiming that they discourage small states from initiating disputes. Furthermore, there are good reasons to think that relative power may continue to shape the initial consultation stage. While international organization mediators might reduce information asymmetries and participation costs for members (Fearon 1995; Guzman 2005), the “good offices” process of consultation is largely unable to provide these benefit given that the WTO is playing a completely passive role as a location of negotiations rather than providing an actual mediation actor. That means that states that enter into a negotiation with power advantages, including information advantages, will be able to maintain them during the negotiations.

In other words, I argue that states that are more powerful than their opponent may be more likely to be able to control the flow of information over a dispute, especially when an international organization mediator takes a more passive role such as they would in a “good offices” mediation. Power asymmetry has been linked to information asymmetry issues, thereby reducing the chance of successful mediation (Daniels and Mitchell 2017; Rauchhaus 2006). Applying this to the DSB setting, I expect that power asymmetries may lead to greater information asymmetries during the initial request for consultations, leading to or prediction that:

Hypothesis 1a: WTO trade disputes are more likely to move on to the panel stage in situations of power asymmetry.

In particular, I assert that this power advantage is especially likely if the U.S. is involved in the case. The U.S. represents a perfect storm of factors: it is very powerful from both a Gross Domestic Product (GDP) and Composite Indicator of National Capacity (CINC) standpoint; it is a democracy; it has many international organization memberships. And finally, the U.S. also has access to specialized legal counsel at law firms in the U.S., who train just to litigate these trade cases. These resources include the legal counsel working in the Office of the United States Trade Representative (USTR 2018) and specialized private law firms (Baker McKenzie 2018; White & Case 2018). These legal

resources give the US a major power advantage in economic legalistic negotiations. For these reasons, I hypothesize that the U.S. is far less likely to settle than other countries, leading to the hypothesis that:

Hypothesis 1b: WTO trade disputes are more likely to move to the panel stage when the US is the respondent.

While Kim (2008) may be correct that the earlier stage of the DSB process maintains an advantage for powerful states, I believe his criticisms against the actual panel stage show a fundamental misunderstanding of certain aspects of the new DSB system. Most relevant to this study, while procedures are complex, there are provisions that allow for smaller states to obtain legal counsel, helping to balance the resource difference between small states and wealthy nations. Most importantly, the Uruguay reforms put an end to the tendency of these proceedings to drag on indefinitely, a trend that disproportionately hurt less powerful states. For this reason, I contend that the relative power of the complainant versus the respondent plays little role in the actual decision reached by the panel.

When moving from mediation to adjudication in the panel stage, there are good reasons to suspect that the strength of the legal argument will prove even more significant than disputant characteristics in determining panel rulings (Busch and Reinhardt 2003). When referring to WTO panel cases, legalistic strength might be built on the “depth” of the case, meaning that a complainant’s legal team has built up considerable evidence supporting a particular complaint against the respondent. Alternatively, the legal team might hope to build up “breadth” by filing multiple complaints and essentially hoping that at least one of these complaints holds up to scrutiny. The confidential nature of the DSB proceeding, unfortunately, prevents me from examining the depth of a complainant’s legal argument; however, I can examine the breadth of that argument by looking at the number of issues cited in the complainant’s filing for consultations and filing for panel proceedings. A stronger “breadth” of a legal argument is likely to build up a country’s confidence in their case, meaning that a complainant may be less likely to compromise during the consultation stage. Because of their confidence, the complainant is more willing to take their case to the panel stage, even when facing a more powerful opponent. For this reason, I predict:

Hypothesis 2a: WTO trade disputes are more likely to move on to the panel stage when the complainant files a longer list of trade violations.

However, there is a trend in legal arguments that if they pass a certain point of being strong, they tend to both become weaker and discourage settlement on account of the reaction of a defendant to a myriad of charges, not all of which may have merit. This effective “bluff” is likely to backfire for two reasons

in international relations: it greatly reduces the visibility of state preferences in negotiations and rational actors will not settle over violations that are unfounded. For this reason, I expect that once a dispute reaches the panel stage:

Hypothesis 2b: Panel members are less likely to rule in favor of the complainant when the panel request includes a longer list of trade violations.

Methodology

I examine all WTO DSB consultations from 1995 (when the organization transitioned from the GATT to the WTO) until 2012. I begin at the consultation stage - when a WTO member state files their first official complaint that another member has violated trade laws - through the process until the official panel (adjudication) stage and the panel's final ruling.

The basis for my dataset is the WTO Dispute Settlement Database (WTO-DSB) from the Global Governance Programme (Johannesson and Mavroidis 2016). This database includes information on the full 507 requests for consultation put before the WTO's DSB between January 1995 and May 2016. This dataset summarizes data on each consultation request as it moves from the consultation stage to the panel stage, to the appellate body, and finally to implementation and suspension of concessions for each complaint. In my research, I only focus on the first two stages in the DSB process: consultation (e.g., whether or not a panel is established) and panel ruling. My unit of analysis is the individual consultation, as identified by a separate Dispute Settlement number (henceforth, DSno.) or also referred to as the case number.⁴

Dependent Variables

Using the WTO-DSB, I create two dependent variables. Beginning with the consultation stage, I first code each case as a simple dichotomous variable, with the case receiving a 1 if a consultation *request moves on to the panel stage* and a 0 if the case was settled by the complainant(s) and respondent

during the "good offices" stage of the consultation. I treat each WTO consultation as if it is a dyadic relationship, even though there are two main features of WTO Dispute Settlements proceedings that may undermine that logic. First, the European Union operates as one entity within the WTO, meaning that the entire EU and not the individual EU member states, serve as complainants and respondents in cases involving this organization. Second, while an overwhelming majority of cases include only one respondent, there are a few cases that include multiple complainants (see Table 2).

Taken together, this may suggest that some WTO Dispute Settlement proceedings may better reflect a more multilateral relationship than the current analysis. Poast (2016) provides an excellent summary of the troubles of using dyadic logic when describing relationships are a more multilateral. However, I still maintain there are good reasons to treat WTO cases as if they are dyadic conflicts. First, I conducted a robustness check using alternative measures of state power for the European Union (EU), and fail to find any significant difference in the findings presented in this paper. For both power measures discussed below, I follow a very realist logic and treat the EU as being equivalent in power to its most powerful member, which is Germany. And, given that 98.8% of the WTO cases I analyze are dyadic, I do not believe I am introducing any noticeable bias by treating this as a dyadic analysis.

The second dependent variable measures whether the panel ruled in favor of the complainant(s) or the respondent. Some prior research has coded the rulings as a dichotomous variable, which essentially treats each case as if it is a clear victory or loss for either side (Malawer 2014; Turk 2011). However, WTO panels rule separately on each trade issue, meaning that the WTO rulings are more nuanced than would be captured by a dichotomous coding. For this reason, I calculate the variable of *rulings favor complainant* by measuring the percent of trade violations cited in the creation of the panel in which the judges rule in favor of the complainant.

Table 2: Complainants per DSNumber

	Consultation Stage	Panel Stage
with only 1 complainant	501	246
with 4 complainants	2	1
with 5 complainants	2	1
with 6 complainants	1	1
with 9 complainants	1	0
Total Number of Cases	507	249

Note: Table adapted from WTO Dispute Settlement Database (Johannesson and Mavroidis 2016)

Independent Variables

To capture the role of power in shaping WTO case decisions, I include two different measures of state power and capabilities. The first is based on a classic realist definition of power, the Correlates of War Project's *Composite Indicator of National Capability (CINC)* score (Singer et al. 1972). This measure, which captures each state's demographic, industrial, and military strength,⁵ is based on the percentage that a state controls of the globe's total power capabilities. The second measure of power is each state's Gross Domestic Product (GDP). The latter economic measure is drawn from Gleditsch (2002). I code each country based on their matching score during the year the request for consultations began. Notably, these variables do set an upward time limit for the dataset; while the WTO-DSB codes cases up to 2016, the CINC data are only available to 2012 and Gleditsch's (2002) trade data currently ends in 2011.

To create the *relative CINC power* and *relative GDP power* measures, I follow the norm of dyadic research and take the larger state's share of power divided by the sum of the dyadic total. Given past work highlighting the possible difficulties of state cooperation and risk of conflict in situations of power parity (Daniels and Mitchell 2017; Lemke and Werner 1996; Kim 2002), I also include a simple dichotomous *power parity* measure, coded as 1 if the two states are within 80% of one another on these scores and 0 if not.

Given that the U.S. holds extraordinary power and influence in the workings of the WTO, I include a dichotomous variable measuring if the respondent is the United States (1 = *U.S. respondent*) or not.⁶ The U.S. has extensive legal resources for the WTO's system that other states do not have. The U.S. has legal counsel working in the Office of the United States Trade Representative that specialize in WTO representation and has used the system numerous times (USTR 2018). Additionally, large U.S.-based law firms with thousands of lawyers, such as Baker McKenzie and White and Case, market specialized counsel in the areas of international trade and the WTO (Baker McKenzie 2018; White and Case 2018). This allows a test, when controlling for other relevant factors, whether the WTO really has a pro- or anti-U.S. stance.

To measure the role of legal preparedness, I create a *cited issues* variable, which is a count on the number of issues cited in each complainant filing. In their requests for consultation and panel formation, the complainants cite specific treaty articles and/or subsections as "issue" in the trade dispute. I contend that complainants that include more treaty issues in their original filing are creating a stronger legal argument based on the "breadth" of a legal case, but that this argument represents a stronger legal "bluff" to try to appear as the hard bargainer. As theorized earlier, this strategy may actually work against complainants, as it both increases the likelihood that consultations fail and the case goes on to the panel, and increases the chance that judges in the panel stage will call the

complainant's bluff and rule against the weaker cited violations, bringing the overall favorability of the ruling down. To calculate this measure, I recode the WTO-DSB (Johannesson and Mavroidis 2016) listings of the specific issues cited into a count of the number of issues cited at both the *consultation* and the *panel* stages.

Control Variables

When analyzing the consultation stage in WTO disputes, it is important to consider other factors that may increase or decrease the likelihood that consultation bargaining will be a success. To account for the classic democratic bargaining advantage (Dixon 1994; Ellis et al. 2010), I create a *joint democracy* variable using the *Polity2* measure from the Polity IV dataset (Marshall et al. 2014). Following the norm in the field, I code countries as democratic if they score 6 or above in this measure. After classifying the complainant and respondent as a democracy or not, I then create a simple dichotomous variable, with a 1 representing a case where both disputants are democracies and 0 representing any other regime pairing.

Given that DSB cases represent a legal negotiation, I might extend the joint democracy logic and suspect that countries who share similar legal traditions will be more likely to overcome the information problems typical of dispute bargaining and successfully negotiate an agreement during the initial consultation phase. For this reason, I use Mitchell and Powell's (2011) classification of country legal traditions to create a simple dichotomous variable, a *shared legal tradition*, coded as 1 if the disputants share a common legal system background.

At the same time, the consultation phase is not completely a dyadic interaction. As mentioned earlier when describing WTO dispute proceedings, other countries are allowed to join in consultations. While they do not "choose a side" in the dispute, their participation is likely to influence mediation attempts between the disputants. More specifically, I expect that the more third-parties who join the consultation proceedings are likely to complicate the bargaining game, making an agreement less likely between the complainant and respondent. For this reason, I include a variable measuring the *number of WTO members joining consultations*.

I also include two control variables to help account for some potential cultural barriers countries may face when operating within the WTO dispute settlement system. First, based on its reliance on panels of judges and strict legal interpretations, I may best classify the WTO Dispute Settlement Body as operating under the norms of a civil law tradition. For this reason, I would expect that legal teams from countries that follow Common, Islamic, or Hybrid legal traditions may require more efforts to adapt their procedures than countries who are "native" civil law practitioners. Using the legal system classification used by Mitchell and Powell (2011), I create two dichotomous variables - *complainant civil*

law and *respondent civil law* - which is coded as 1 if the state operates under a civil law legal system domestically and 0 if they do not.

For *language barrier*, I use the CIA World Factbook (2018) to code a simple dichotomous variable on whether the country's official languages: English, French, or Spanish (WTO 2018b). Countries receive a 0 if they share an official language with the WTO, while a 1 means the state's official language(s) differs from the WTO, and thus legal team members representing that country may face the added challenge of a language barrier when arguing their cases. Again, I create two versions of this variable, *complainant language barrier* and *respondent language barrier*.

To account for potential differences in how the panel was created, I create a simple dichotomous variable, *Director-General appointed panel*, coded as 1 if two or more of the panel members were appointed by the WTO's Director-General, and 0 if the disputants themselves decided on two more of the panel members.⁷ Rather than run these dependent variables in separate analyses - a logistic regression for the panel creation and a linear regression for the panel rulings - I instead employ a Heckman selection model in the analysis. This is because rather than assume that these mediation stages as completely distinct and unrelated to each other, I argue that the DSB process includes two interconnected conflict management tactics. During the consultation stage, the WTO offers good offices, where states are encouraged to work on settling the issue. Only when this light mediation fails does the dispute enter into panel adjudication. This means that the process that leads to a panel decision represents two separate failures of international cooperation - the failure of countries to resolve the issue bilaterally, and the failure of the two sides to reach an agreement in a situation where a third party is serving as an additional information provider and enforcement coordinator (Johns 2012; Johns and Rosendorff 2009).

In other words, the cases that go to the panel are not determined randomly, but instead, reflect the difficulties in negotiation that was part of the mediation (consultation) process. For instance, I hypothesize that cases with extreme power asymmetries and ones that have a long list of legal complaints are more likely to reach a panel stage. If I do not account for the initial stage of a process, I may incorrectly estimate the actual relationship between the independent and dependent variables during the second stage (Reiter and Stam 1998). For instance, Reed (2000), in his examination of democracy's role in conflict onset and escalation, finds that one may over or underestimate the factors that lead to conflict escalation if the model fails to examine how those factors impact onset first. Specifically, he finds that with properly modeling the two phases as related processes, joint democracy reduces conflict onset and power parity increases it; however, neither plays a significant role in shaping conflict escalation. However, if escalation is examined in absence of the onset stage, researchers would find an *incorrect* relationship between

joint democracy/power parity and conflict escalation. In my study, if I want to test the role of legal preparedness on the final panel ruling, I can only be confident that I have the direction of this relationship correct if I properly model how that legal preparedness (or lack thereof) may have led some of the complainants to accept an "out of court" settlement or agree to drop their case before a panel was ever convened.

For this reason, I use a two-stage Heckman model to account for these nonrandom selection process (Heckman 1979). A Heckman model is one of several statistical options to help account for situations when the selection into a behavior (in my analysis, a selection into a panel creation) was non-random, and therefore exhibits bias.⁸ The Heckman analysis proceeds in two stages: the first is a stage determining the selection of cases into the second stage, while the second includes the parameters of the first model as additional explanatory variables when modeling the second stage. In other words, this model allows me to consider the role of power asymmetries and/or legal preparedness on the panel rulings, controlling for how those same variables may have determined whether the case even reached the panel stage in the first place. This, I contend, allows a better examination regarding whether there is any evidence of powerful state bias (including evidence of bias for or against the United States) in shaping panel decisions, or whether the strength of a legal argument plays a larger role in determining the rulings of the WTO's Dispute Settlement Body.

RESULTS

I present the results of the Heckman analysis in Table 3. Model 1 uses the GDP measure for country economic power, while Model 2 presents the same analysis but with CINC as the power measure score as a robustness check. Starting with the consultation phase (the selection stage) in both models, I fail to find any support for Hypothesis 1a, but do find some tentative support for Hypothesis 1b. While I do not find that power asymmetry between most countries plays a role in shaping DSB panel creation or rulings, having the U.S. as a respondent does significantly change the bargaining game. Cases that include the U.S. as a respondent are significantly more likely to "fail" mediation and move on to the panel stage than ones with any other respondent. This may suggest that the U.S. is either an especially hard bargainer in mediation (effectively shrinking the bilateral bargaining range) or the U.S. as the effective WTO founder is especially acceptant of the DSB option. Regardless of the cause, this does suggest that countries who seek to challenge the U.S. on trade issues before the WTO are likely to have a long, drawn-out legal battle before them. It is worth further exploring whether this departure from the broader mediation literature suggests that bilateral negotiations in trade disputes operate under different principles than other forms of conflicts.

Table 2: WTO Consultations Outcome and Panel Decisions

	Model 1 (GDP as power)		Model 2 (CINC as power)	
	Selection (Panel Created)	Ruling favors Complainant	Selection (Panel Created)	Ruling favors Complainant
Cited Issues	.017* (.008)	-.002** (.001)	.014* (.008)	-.003** (.001)
Relative power	1.43 (.977)	-.087 (.387)	.656 (.938)	.291 (.372)
Power parity	.415 (.265)	-.160 (.108)	.366 (.258)	-.010 (.108)
Joint democracy	-.250 (.195)	--	-.290 (.188)	--
Director-General appointed panel	--	.006 (.051)	--	-.007 (.054)
Number of WTO members joining consultation	.085** (.031)	--	.062** (.027)	--
Shared legal system	-.001 (.138)	--	.063 (.134)	--
Complainant civil law	--	.011 (.047)	--	.023 (.050)
Complainant language barrier	--	-.048 (.056)	--	-.053 (.060)
Respondent civil law	--	-.011 (.063)	--	.005 (.063)
Respondent language barrier	--	-.0003 (.067)	--	-.009 (.068)
US Respondent	.606*** (.159)	-.145 (.096)	.642*** (.156)	-.122 (.101)
Constant	-1.653* (.887)	.969** (.449)	-1.010 (.851)	.601 (.427)
N	423		423	
Wald Chi-squared	13.36		9.83	
Mills Lambda	-.026 (.146)		-.018 (.166)	

* p < .10, ** p < .05, *** p < .01

Note: Numbers in parentheses are standard errors. This analysis is a Heckman Selection Model, Two-Step Estimates.

I do find support for Hypothesis 2a, indicating that the cases that are more likely to move on to the panel stage are the cases in which the complainant cites more issues in their initial filing. It is difficult to disentangle whether this is because more *cited issues* correspond to greater dispute issue salience for the complainant, or whether this is an indicator of the complainant seeking to misrepresent their true bargaining area in order to gain more concessions from the respondent. Given the findings in the second stage, I suspect that this finding actually suggests the latter.

Turning to the control variables, I find that consultations that are joined by more WTO members as parties to the

dispute are more likely to move on to the panel stage. This supports the idea that the presence of more third-party actors in the “good offices” stage of consultation complicates the bargaining game and makes a bilateral settlement less likely. *Shared legal system* and *joint democracy*, however, does not reach significance, suggesting that having common democratic governance and shared legal traditions to anchor negotiations may matter less in regards to trade disputes.

Interestingly, as I turn to the actual ruling stage, I find little evidence that power plays any role in DSB rulings, including no evidence that the U.S. is more likely to win or lose their cases than any other state. If I combine this

with the lack of significance in our power measures, I note a general pattern that “power” - whether economic, military, or U.S. hegemony - seems to play little role in determining DSB rulings. While some past critics (Kim 2008) may have argued that the WTO advantages wealthy and powerful states at the expense of poorer ones, I find no evidence of this claim. Instead, the findings suggest that the WTO is indeed serving as a neutral arbitrator and offering a “level playing field” for disputants regardless of wealth or influence.

In fact, the only variable that does reach significance is the *cited issues* variable, and in the direction predicted in Hypothesis 2b. The negative and significant coefficient indicates that judges are less likely to completely support complainants who file a longer list of issues in their request for a panel. This does support the argument that complainants are using the initial filing request as a form of a legal bluff to try to win concessions from respondents; however, as I predict, this strategy backfires. These “harder bargainers” are less likely to be able to settle out of court in the consultation stage and see less success in winning their cases at the panel stage.

As for the controls relating to panel rulings, I find no significant relationship between any control variables and the final direction of the rulings. The findings do suggest that while the nature of the original complaint play a role in determining how the panel rules, factors such as who decided on the panel judges, which legal system is practiced by the complainant or the respondent, and what the complainant or respondent native language is (and whether it differs from the official WTO languages) plays little role in shaping the judge’s final opinion.

CONCLUSION

Overall, I see an indication that states that bargain harder are more likely to need assistance from a panel; those states that bargain hardest, however, are less likely to attain their desired outcome once they reach arbitration. This deserves further exploration, but may occur due to the incentive to cloud their true preferences during the mediation stage with overly complicated legalistic arguments. I also find that more complex legal arguments, measured as the number of issues cited in the initial complaint, are more difficult to settle as well. In response to these findings, I recommend that states looking to utilize the WTO’s DSB that states come prepared with only strong legal allegations as well as an idea of acceptable settlements. This more precise preparedness would increase the likelihood that the case will settle, and would thus take less time and financial resources to resolve, potentially making the process more efficient and accessible. If the issue is salient, more time and resources should be put into the case, and preference overlap may be reduced as a result of a narrowing range of acceptable outcomes.

Given the results of the Heckman model reported in Table 2, I have three major findings: that power plays little role

in the settlement of WTO disputes, there is little evidence of bias towards or against the US, and that the DSB may fit the expectations of the bargaining game. Following from these conclusions, I believe that the prognosis for the usefulness of the WTO is positive; the institution is serving as the unbiased arbitrator it was meant to be as part of the Bretton-Woods system for the promotion of economic interdependence and peace-building. It is successfully pursuing the promotion of international trade and the resolution of trade disputes in an unbiased manner — at least in regards to member power and wealth. It has the potential to serve as a great equalizer between developed and developing states. This mechanism should still be utilized by states when possible. The ushering in of protectionist policies in response to alleged inconsistencies and unfair in the execution of WTO’s policy are not grounded or justified by an empirical study of the dyadic disputes.

Stiglitz’s (2002) and Khan’s (2007) view of the Bretton-Woods system as an exploitative and neocolonialist tool of developed nations used against developing nations seems to be largely irrelevant in modern trade disputes, as I find that there is no evidence of a power advantage in the WTO. Interestingly, while power plays little role in determining the outcome of disputes, the number of initial complaints filed is highly significant in the consultation and ruling stage. I find that cases with an extensive list of trade violations are more likely to go to a panel, but are less likely to be ruled in the complainant’s favor, which would be consistent with a sloppy legal argument or subpar preparedness, as I postulate. However, these phenomena may also be explained by bargaining theory, which postulates that if states bargain too hard, they will cloud the other party’s view of their preferences, making an agreement harder to reach.

While member states may be turning away from the “vanishing WTO” to pursue other conflict mediators, these findings suggest that the WTO remains a neutral arbitrator and a viable option for countries who do continue to work within the system. Regional organizations and bilateral agreements may have their advantages as mediators; as organizations characterized by a tighter range of norms and preferences (Hensel et al. 2008), they may help construct a simpler bargaining area for states looking to resolve trade disputes. However, this preference for a simpler venue does not undermine the legitimacy of the WTO as an international mediator and arbitrator. The Trump administration’s rhetoric regarding the WTO being “a disaster” for the U.S. is entirely unfounded; there is no bias for or against the U.S. presence in the WTO. The only significant finding for the U.S. is that it goes to panel more often than others. I contend that this is likely a result of the U.S. having a “perfect storm” of factors: it has the ability to prepare lengthy legal arguments, access to some of the only legal counsel in the world specializing in the WTO, is a democracy, has massive influence on the formation of international organizations, and bargains hard in the international arena. ■

ABOUT THE AUTHOR

Taylor Todd is a recent graduate of Oklahoma State University, having finished her degree in December of 2018. She graduated Summa Cum Laude with an Honors Degree in Political Science and a minor in Economics. During her time at OSU, Taylor received the Wentz Research Grant, was a panelist at the International Studies Association Conference in San Francisco, led the Pre-Law Organization at OSU (Phi Alpha Delta), and interned in Foreign Trade at a Fortune-500 Company. She also traveled abroad to Australia, volunteering with endangered species, learning about climate change and sustainable development, and petting some kangaroos during her time there. Taylor will be attending a Top-14 law school Illinois beginning in Fall of 2019.

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NOTES

- 1 This research was completed with support from the Wentz Undergraduate Research Grant, sponsored by the Lew Wentz Foundation and the Office of Scholar Development at Oklahoma State University.
- 2 It is important to note that the WTO consultation proceedings are solely the purview of states; corporations are increasingly involved in cases, but states act as gatekeepers.
- 3 “Judicial Economy” denotes the decision to not rule on a certain issue if that issue does not affect the outcome of the case or is not necessary to consider in light of the previous decisions; it is called judicial economy on account that many legal systems are overloaded, thus resources are scarce in a legal system.
- 4 The WTO Dispute Settlement Body *can* examine and rule on multiple consultations in one panel, and does, in fact, join 99 of the consultations into panel groupings. However, I believe that I am justified as treating these as separate observations since it is possible for the panel to give different rulings for each consultation, even when the respondents are the same country and the issues raised in each consultation are identical.
- 5 The official six components included in the CINC score are: total population, urban population, iron, and steel production, energy consumption, military personnel, and military expenditures per state.
- 6 I also included a similar dichotomous *EU respondent* control variable, but this variable did not significantly change the analysis. Due to its lack of significance and lack of theoretical interest, I decided to simplify the model and controlled for the U.S. as respondent.
- 7 DSB panels include 3 members who act as judges, and while most panels are selected using the same process for all judges, there are a few cases who deviate from that pattern.
- 8 Heckman’s original 1979 example involved calculating worker wages, the causes of which, Heckman argued, could not be properly predicted unless we first account for the probability the person would be working.

Cognitive Dislocations on the Korean Peninsula

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In early 2016, the South Korean government announced that the Terminal High Altitude Area Defense system (THAAD) missile system would be deployed in the country by the United States to deter North Korean aggression, and this proposal was fulfilled on April 26, 2017. This paper examines the dynamic of perception and misperception of the THAAD deployment and discusses its impact on the balance of power in the region. I argue that the ongoing security dilemma within this Peninsula is not solely caused by the accumulating of military presences, but also by the cognitive dislocations, that both parties, including China and the United States, misinterpret the other's true intention. The security dilemma can not only be initiated by the increase of physical forces, but also accumulating cognitive dislocations. The false definition of the situation can only make the originally false conception come true, and the security dilemma becomes a self-fulfilling prophecy in such a context.

INTRODUCTION

When studying state behavior within an anarchical international system, realists typically focus on examining aggregate national power, geographic proximity, polarity, and other relatively quantifiable variables. However, the role of perception and misperception is often overlooked in determining states' behavior through the realist lens. Although structural realists deal with dynamic variables, such as uncertainty and aggressive intention, they tend to treat these intangible and unquantifiable variables as mere political existences that can be examined alongside other variables to determine states' behaviors. This research takes the analysis a step further by examining the psychological processes and the political implications of "aggressive intentions," a dynamic variable identified by Stephen Walt (1990) as a determinant of state behavior within defensive realism. As a product of a psychological process, defined in part by Robert Jervis (1976), the *perception* of aggressive intention may distort states' calculations in other areas – such as the salience of geographic proximity, or an opponent's offensive capabilities – and lead to false conclusions based on these misperceptions. Failure to recognize the difference between the objectivity and subjectivity of the aggressive intention may result in making states to aggressively pursue their securities, which lead to the spiral model called the security dilemma. These unintended and undesired consequences of actions meant to be defensive make the security dilemma a self-fulfilling prophecy (Jervis 1976, 66).

Utilizing the United States' deployment of the Terminal High Altitude Area Defense system (THAAD) in South Korea as a case study, this research further argues that aggressive intention should be analyzed in two ways: through the objectively stated intention of a state, and the

subjective interpretations of it by other states. In doing both, the emerging security dilemma between the United States and China in this area can be better understood as a product of perception and misperception that can be alleviated, rather than an inevitable outcome of immutable variables.

Realism

Realism, as one of the prominent international relation theories, examines the dynamics of interaction between states via power politics and the balance of power. Developed from the context of World War II, modern realists contribute to academia and policymaking based on analyses of power and national interest. However, realism is not a unified international relations theory. This theory has been challenged and modified and can be categorized into four sub-types: classical realism, neo-realism, offensive realism, and defensive realism. While all four types of realism heavily emphasize the state as the main actor in an anarchical international system, they differ primarily on levels of analysis and their critical assumptions for power politics.

Classical Realism

Classical realism, as the foundation of modern realist theories, has an irreplaceable contribution to academia in terms of studying power politics and further introducing the notion of the balance of power. Morgenthau (1967, 25), founder of classical realism, concisely defined international politics as a struggle for power. "Whatever the ultimate aims of international politics, power is always the immediate aim." For Morgenthau (1967) and other classical realists, self-interested human nature residing in the "state of nature" that is anarchical has constantly led to conflicts among nations. He further contends that "[a]ll history shows that nations active in

international politics are continuously preparing for, actively involved in, or recovering from organized violence in the form of war” (Morgenthau 1967, 35). The stability among states can only be achieved through a balance of power mechanism. States make alliances in the face of power imbalances, such as an emerging hegemon, to create stability and balance in the international system.

However, as academia turned its back on political philosophy and welcomed “science” into the study of politics, classical realism lost its explanatory power due to the untestable assumption about human nature that underpinned the theory. Although there is a lack of falsifiability within this hypothesis, it is undeniable that classical realism has constructed a strong theoretical foundation for the study of power balance and distribution in the international arena.

Neo-realism

Neo-realism evolved out of frustrations with the ambiguities and lack of falsifiability of classical realism, and focuses on a common international structure, rather than human nature. Kenneth Waltz (1979) developed three predominant principles of neo-realism that built on Morgenthau (1967): ordering principles of the anarchical system, similarity among states, and the distribution of material capability across states. The assumption of ordering principles established the decentralized international power structure, which clearly separates itself from domestic politics with its clear hierarchical line of authority. Moreover, by making a parallel between international politics and microeconomics, Waltz (1979, 89) argued that “economists think of the acting unit, the famous ‘economic man,’ as a single-minded profit maximizer. They single out one aspect of man and leave aside the wondrous variety of human life.” Neo-realists also single out one aspect of the state in an anarchical system and leave aside the variety of a state’s domestic politics. The first difference lies between a state’s domestic politics—which Waltz (1979) discusses as irrelevant to international relations—and the international order, which Waltz, like Morgenthau, identifies as anarchic. In an anarchic system, authority is lacking, meaning that states are not governed by any ordering principle outside their own sovereignty, so that “states seek to ensure their survival” (Waltz 1979, 91, 96).

The second principle assumes that “[s]tates perform or try to perform tasks, most of which are common to all of them; the ends they aspire to are similar” (Waltz 1979, 91, 96). Although the state has the same task to ensure survival in this anarchical international system, its ability to perform this task can vary significantly. Variations in capability in the international system is the third principle of neo-realism. Unlike anarchy and the desire to survive, the distribution of power is the only independent variable in Waltz’s (1979) strain of neo-realism that constantly varies. With the rise and fall of the great powers, the distribution of power changes regularly, and such alternation has a direct impact on the war-proneness of state interactions,

and therefore has the most direct influence on the stability or instability of the system. Hence, polarity, rather than human nature, is the primary determinant of state behavior.

While Waltz’s (1979) analysis shifted realist theorizing toward a more scientific orientation, theoretical limitations, such as the lack of study of the global distribution of hegemony, detected by Wagner (1993), led to the development of two further strains of neo-realism: offensive realism and defensive realism.

Offensive and Defensive Realism

Offensive realism fills the vacancy of studying hegemony in realist theories by arguing that states seek security not only by balancing each other’s power, but also by seeking dominance and hegemony. Mearsheimer (2001, 3) argues that “the structure of the international system forces states which seek only to be secure nonetheless to act aggressively toward each other.” States seek security through aggressive expansion in terms of their power and influence in an anarchical international system. Mearsheimer further enumerates five assumptions for his theory: international anarchy; presence of offensive military capabilities; uncertainty; survival as the state’s primary goal; and rationality of states (Mearsheimer 2001, 30-31).

For Charles Krauthammer (1990-1991, 23): “[t]he most striking feature of the post-Cold War world is its unipolarity”, and he argued in the immediate post-Cold War period for a more aggressive American approach to international relations based on the assumptions of offensive realism. But the desire for hegemony, even if a natural product of the international order, comes with huge costs of potential risks. Paul Kennedy (1987) demonstrated that the increasing price of maintaining a U.S.-led international system inflicts a huge burden on the United States, while other powers benefit from security without incurring the costs. This can allow other states to accumulate resources and later challenge American preponderance (Kennedy 1987).

In contrast, defensive realism studies the balancing and bandwagoning behaviors of states in the international arena, and argues that balance of threat, instead of the balance of power, explains the dynamics of the competition and cooperation between states. Based on the study of hegemony from offensive realism, defensive realists observed that after the fall of the U.S.S.R, there was not a wave of rebalancing behavior from states to deter the only remaining hegemon, as offensive realists would have predicted. Instead of rebalancing the United States, scholars consistently viewed the trend of bandwagoning alongside the United States in the post-Cold War world.

Defensive realism solves this puzzle by arguing that states balance threats, rather than power to ensure their own survival. Walt (1990, 21) contends that “it is more accurate to say that states tend to ally with or against the foreign power that poses the greatest threat,” and he identifies four variables that factor

into states' threat assessments: aggregate power, geographic proximity, offensive power and aggressive intentions. From a defensive realist's perspective, states will assess the threat based on these four categories and then choose to bandwagon or balance against the threat. Rather than solely examine states' behaviors based on the balance of power analysis, Walt (1990, 26) concludes that "[b]y defining the basic hypotheses in terms of threats rather than power alone, we gain a more complete picture of the factors that statesmen will consider when making alliance choices." Although Walt (1990, 26) reminds statesmen that "[o]ne cannot determine a priori, however, which source of threat will be most important in any given case," scholars actually can prioritize the research importance of the different types of sources. In Walt's (1990) defensive realism, three of four independent variables, including aggregate power, geographic proximity and offensive military weapons are relatively static by comparison to aggressive intention. By recognizing the difference between the static and dynamic sources of threat, scholars can place more effort in researching the dynamic source rather than the static source. Yet, as the coming analysis demonstrates, even static variables can be subject to perception and misperception when states perceive aggressive intent.

Perceiving Aggressive Intention

Compared to the other three variables in Walt's (1990) defensive realism, aggressive intention is less tangible and less quantifiable for both state leaders and scholars. Since intention is the result of a psychological process, rather than a physical existence, it is difficult to observe and measure with precision. States will find more difficulties in solving the uncertainty problem and detecting others' intentions than in measuring capabilities or assessing geographic proximity.

In determining a state's behavior in an anarchical international system, static variables, such as geographic proximity, would generally correlate to relatively predictable state behavior. The United States' intervention in Central America is a typical justification of this paradigm, since in 1983, President Reagan claimed that, "Central America is much closer to the United States than many of the world's trouble spots that concern us" (*New York Times* 1983). However, a dynamic variable, such as perceived intention, would more likely lead to relatively unpredictable state behavior. For instance, the unexpected military support from China in the 1950-1953 Korean War resulted from strategic misperception on the part of the Truman administration, which did not realize the potential threats it had imposed on China by approaching the Yalu River.

While the static variables are somehow quantifiable, a pattern is also observable in which the dynamic variable, aggressive intention, can largely influence a state's interpretation of the static variables, including aggregate national power, geographic proximity and offensive military power. The Korean War is also a typical example of this pattern. The retaliation

from South Korea with the support of the United Nations Command (UNC) imposed a perceived threat to Chinese security interests once the army crossed the 38th parallel. Within the Cold War context, the mutual distrust resulting from two confrontational camps enabled Beijing to comprehend the military actions that were conducted by the UNC through an aggressive prism. This military action was not a mere defensive or punitive measure that only targeted North Korea. It was also perceived as threatening the newly established People's Republic regime. As the Korean War example demonstrates, the dynamic variable, in this case the Chinese perception of the UNC's intention, produced unexpected Chinese military intervention from the United States perspective. Moreover, the U.S. response to the invasion from North Korea was interpreted and distorted by China to fit with an established perception of the United States as a hostile state. A vicious cycle of producing a security dilemma may be fulfilled by a series of states' behaviors that are grounded in distortions.

Despite its importance to understanding state behavior, defensive realism presently offers an unsatisfactory study of aggressive intention. By treating aggressive intention as a perceived element in determining states' behaviors, Walt overlooks the nature of subjectivity for intention itself. Although it is a genuine observation from Walt (1990, 25) that "even states with rather modest capabilities may prompt others to balance if they are perceived as especially aggressive," he overlooks the complex understanding of an intention within a state's psychological process, that aggressive intention might come from a cognitive dislocation rather than a true hostile motivation. In the present study, cognitive dislocation refers to the gap between an actor's true intention and the perceived intention by an opposing actor.

Cognitive dislocation can originate from a psychological paradox: a state can have a clear and definite apolitical or political intention, but such subjective intention can never be accurately comprehended by others, since other states have to rely on limited and distorted information to assess intention. Cognitive dislocation will appear when there is a significant difference between the comprehended intention and the true intention in a particular case. The context depends on the perceptual threshold, which can be explained as familiarity between actors. A high perceptual threshold means that a state has difficulties in comprehending and approaching the true intention of another due to the unfamiliarity between the two states. A context that entails high perceptual thresholds for states is the hotbed of the cognitive dislocation, since mutual trust, norms and rules are not established in such context to lower the perceptual thresholds. Moreover, it is important to note that a cognitive dislocation might not occur for a political reason, but as the product of psychological processes in a state's decision-making. Although cognitive dislocation can be an apolitical product of a state's psychological process, it might serve as a political foundation for the following stage of a security dilemma. This means that understanding a state's

“aggressive intention” is easily tainted by a pathological process, yet it ultimately contributes to policy-making.

Distorted information resulting from cognitive dislocation may ultimately distort seemingly objective facts—including geographic proximity, aggregate national power, and offensive capability—and may cause these otherwise observable factors to be interpreted through a subjective lens colored by the faulty understanding of intentions.

The first stage of a state’s decision-making process is called perception or theory formation. In guiding a state’s foreign policy, a state has to develop a perception of another state in order to interact with that actor. However, in developing a perception, a state encounters a series of difficulties, including time constraints and limited information on another actor. Therefore, as Jervis (1976) contends in his second hypothesis on misperception, it is impossible for a state to have a perfect understanding and, as a result, a comprehensive perception of another state. Jervis (1976, 459) further claims that “[A]ctors tend to establish their theories and expectations prematurely.” Moreover, such premature and imperfect perception would exhibit a strong cognitive consistency that “[d]ecision-makers are apt to err by being too wedded to the established view...as opposed to being too willing to alter their theories” (Jervis 1976, 459). As Jervis’s (1968) first hypothesis on misperception demonstrates, cognitive consistency can be understood as an actor’s strong tendency to assimilate incoming information into their established perception. Therefore, once a state forms a set of perceptions of other states in a context that entails a relatively high perceptual threshold, interactions between the state and others will reinforce the state’s perception of others. The information perceived by the state would be processed or molded to fit into its pre-existing perception. This is the process of ensuring cognitive consistency, regardless of its accuracy.

Such cognitive consistency becomes extremely problematic when states are stubborn in their pre-existing perception regardless of the logic in evaluating evidence and the changing external context. A state’s illogical and ill-based resistance to changing the perception can be described as an “irrational consistency” in its decision-making process. (Abelson and Rosenberg 1958).¹

After the perception formation stage, a state will enter into the intention formation stage, where cognitive dislocation becomes difficult to avoid. Before analyzing the mechanism of intention formation, it is important to realize that in international politics, an intention needs to be evaluated based on its subjectivity and objectivity. In other words, a state’s intention should be analyzed by recognizing the difference between the subjectively perceived intention and objectively true intention. The gap between the subjectivity and objectivity of an intention often produces a distorted perception since it depends on external evidence presented by another actor. That evidence is often interpreted with limitations, and irrational consistency taints the psychological process.

Therefore, a state’s understanding of intention is perceived to be an accurate representation rather than a subjective product of a state’s psychological process. Moreover, a state usually fails to comprehend the subjective interpretations of its own intention, and generally believes that others can accurately perceive its objective intention as a state’s true motivation. This paradigm is perfectly reflected in John Foster Dulles’s proclamation (1962, 62), that “Khrushchev does not need to be convinced of our good intentions. He knows we are not aggressors and do not threaten the security of the Soviet Union.” The paradox of the subjective and objective nature of states’ intentions to build up armaments are clearly presented by Lord Grey (1952), that “[t]he distinction between preparations made with the intention of going to war and precautions against attack is a true distinction, clear and definite in the minds of those who build up armaments. But it is a distinction that is not obvious or certain to others.” Thus, states would generate an increasing amount of cognitive dislocations as the number of misperceptions increases. Such cognitive dislocation enables a state to attribute all “positive” behaviors from other states to its own efforts and to ascribe all the undesired behaviors from other states to their misperceptions and misunderstandings of its efforts and intentions. Therefore, as Jervis (1976, 75) concludes in his tenth hypothesis on misperception:

“[t]he inability to recognize that one’s own actions could be seen as menacing and the concomitant belief that the other’s hostility can only be explained by its aggressiveness help explain how conflicts can easily expand beyond that which an analysis of the objective situation would indicate is necessary”

An instance of cognitive dislocation can be observed in United States- China relations during the Korean War when the U.S. held that its intention to engage was based on defensive purposes but viewed China’s military support to North Korea as aggressive, rather than recognizing China’s legitimate concerns about her security. Likewise, China viewed its defense of North Korea as a defensive maneuver while the United States perceived it to be hostile.

Jervis (1976) concludes in his eighth hypothesis on misperception that states will have an overall tendency to see other states as more hostile when they observe an increasing amount of undesired behaviors from other states in a given time period. As the cognitive dislocations between states in a relationship accumulate to a certain level that causes a sense of mistrust between them, the security dilemma becomes a self-fulfilling prophecy: “a false definition of the situation... makes the originally false conception come true” (Merton 1957, 423) A state in an anarchical international system would believe that others have clear understandings of its peaceful intention to increase defensive military power, and it will reasonably conclude that those states that are pursuing hostile policies are

aggressive. The failure to comprehend one's external image and the subjective interpretations of one's own intentions can make countries increasingly hostile with each other. Thus, a security dilemma within international politics would not only be the product of a state's objective reaction to a sense of insecurity, lack of global policing power, other states' offensive capabilities and uncertainty, as an offensive or defensive realist might contend, but also a subjective product of irrational consistency or their cognitive rigidities that accumulate into compounding cognitive dislocations.

Understanding the subjective nature of interpreting another state's intentions facilitates a reassessment of Walt's central thesis of defensive realism. The factors that he identifies as contributing to a state's decision-making process can now be further understood as being impacted by cognitive processes so that the outward manifestation of a "defensive realist world" is actually the product of an inward process that can be highly irrational. The following section uses the United States' deployment of the THAAD system in South Korea as a case study to explore Walt's (1990) four variables in a way that accounts for the subjectivity of interpretation of aggregate national power, geographic proximity, offensive military weapons, and aggressive intention.

THAAD ON THE KOREAN PENINSULA

The Terminal High Altitude Area Defense (THAAD) system's deployment in South Korea on April 26, 2017, serves as a typical manifestation of the cognitive dislocation between China, the United States, and South Korea in the context of the Korean Peninsula's geopolitics. The ultimate fuse of the escalating political and military tension within the Korean Peninsula resides in the process of accumulating cognitive dislocations between the two camps based on the perceived intention behind the U.S. decision to deploy the THAAD system. While the static elements, including aggregate national power, geographic proximity, and offensive power seem to be easily identifiable, cognitive dislocation is exerting its influence on distorting and assimilating these objective elements into a state's subjective interpretations of them.

Aggregate National Power on the Korean Peninsula

As a heritage of classical realism, defensive realism continues to treat aggregate national power as one of the crucial foundations in determining state behaviors. Walt (1985, 22) claims that "[a]ll else being equal, the greater a state's total resources, the greater a potential threat it can pose on others." Aggregate national power is an inclusive notion encompassing a variety of states' resources available to exert power and influence globally, including population, industrial and military capability, and technological prowess. The increasingly imbalanced distribution among states' aggregate national power can lead some states to initiate rebalancing mechanisms since they might interpret such imbalanced distribution of national

power as a potential threat to their national security.

Deploying the THAAD system can be viewed as a part of an American rebalancing strategy to adjust the imbalanced military power between North and South Korea. The asymmetrical conventional and nuclear military power between the North and the South within the Korean Peninsula is clearly manifested in three categories: active manpower, land forces, and nuclear arsenal. The active military personnel in North Korea is 1,190,000, which is nearly twice that in South Korea. The differences in the land forces are more astonishing since the North possesses nearly three times more tanks and other combat vehicles than the South (Armed Force). Although the quality of the military equipment and training in North Korea cannot match their counterparts in the South, any suicidal attack with the support of nuclear weapons from the North could inflict a decimating effect on the South. Therefore, a threat is perceived by South Korea and the United States when there is an unequivocal disparity in military power between the North and the South. Deploying the THAAD system would serve as a rebalancing strategy to adjust such maldistribution of military power in the peninsula by offering South Korea effective protection from North Korea's missile attacks.

The aggregate power analysis can also be applied to analyze the Chinese perspective on the deployment of the THAAD system in South Korea. When advanced military equipment is deployed in the South, China perceives this military movement as a balancing strategy from the United States and South Korea. Although designed as an anti-missile system, the degree to which this system can contribute to the aggregate power of the South is still questionable. It is undeniable that this military deployment was perceived as an intentional balancing behavior that targets both North Korea and China. The detecting capability of THAAD's AN/TPY-2 radar reinforces China's perception that this deployment is an aggressive, rather than a defensive, measure from the United States and South Korea. Equipped with a capacity of 1000 kilometers detection range, THAAD's radar system is able to complete an all-weather surveillance mission on Chinese soil. By playing an important role in the United States' global early-warning radar system, the THAAD system that has been deployed on South Korean soil is a perceived threat to Chinese intelligence security, since any large military maneuvers within the Northeast of China would be detected. This attitude against deployment is clearly manifested in a PRC Foreign Ministry press conference held in February 2015:

"China holds a consistent and clear position on anti-missile issues. It is our belief that every country should keep in mind other countries' security interests and regional peace and stability while pursuing its own security interests. We hope that countries concerned can properly deal with relevant issues in the larger interests of regional peace and stability and bilateral relations" (PRC Ministry of Foreign Affairs 2015).

The claim from the Chinese Foreign Ministry reveals China's negative perception of the THAAD system, that it is a system capable of threatening the Chinese intelligence security while largely enhancing the aggregate national power of the United States and South Korea.

From the disparity between the Chinese and the United States' interpretation of aggregate national power distribution in the Korean Peninsula, it is clear that, despite being a static and objective factor that contributes to the formation of state behaviors, aggregate national power can also be perceived differently by these two opposing states. As Jervis's (1976) first hypothesis on misperception claims, decision-makers fit incoming information into their existing theories and images. States will perceive objective information differently according to their own established theories (Jervis 1976, 455). Though a seemingly static and objective factor, aggregate national power ultimately contributes to the formation of subjective perceptions of these two states on evaluating the Korean Peninsula's power distribution and further contributes to the rebalancing strategies from both states.

Geographic Proximity in the Korean Peninsula

In summarizing a paradigm for geography and geopolitics, Walt (1990) claims that there is an inverse relationship between distance and the ability to project power. This paradigm has been reflected in the context of geopolitics in the Korean Peninsula. As a peninsula that is more than half of the land area of California, it is subjected to the power and influence of two main actors: China and the United States. By building military bases and deploying troops only 1.5 kilometers away from the border, the newly established Chinese Northern Theater Command is preparing to project its military power in case of any undesired or unexpected turmoil in North Korea. The same military preparation is also accomplished by Camp Casey at Dongducheon, one of the twelve U.S. military bases in South Korea. Camp Casey, home to 6,300 combat personnel who are equipped with the capacity for rapid reaction, is the closest military base to the Korean Demilitarized Zone, where the direct distance between these two locations is merely 23 kilometers (Military Base, 1998). The short distance between the border and the military bases has increased the public's perceived security threats from the North and South, since such short distance would largely limit their reaction time in case of an unexpected military assault. Therefore, as a highly militarized region since the Korean War in the 1950s, the Korean Peninsula and its military status quo is extremely sensitive to any military movement since such behavior has a high probability of being perceived as a military provocation, rather than a defensive measure.

China therefore perceives the introduction of the THAAD system as a military movement from the South that poses an actual threat that disrupts the delicate military status quo, such as it exists, on the Korean Peninsula. The geographic controversy of the deployment is mainly caused by a technical

parameter of THAAD's supporting X-band AN/TPY-2 radar system. With the capacity to detect and trace the trajectory of ballistic missiles within an estimated 1000 kilometers, the AN/TPY-2 radar is able to cover all the sovereign soil of North Korea and several strategic locations in China, including the Shanghai municipal area, Shandong, Hebei, Liaoning and Jilin province (Lockheed Martin 2017). By covering strategic and militarily sensitive locations in Jilin, the only province that borders North Korea, the AN/TPY-2 radar system is capable of conducting an all-weather surveillance mission that targets the conventional and nuclear deployments in Jilin province. As one of the Chinese Northern Theater Command's garrison areas, Jilin province is a militarily and geopolitically sensitive area that has deployed a considerable amount of armed force, and consistent surveillance from the United States in South Korea is provoking a noticeable asymmetrical intelligence gathering gap between China and the United States. In a border region with competing military interests, deploying the THAAD system will enable China to categorize this state behavior as a threat to endanger the fragile status quo and the political understanding for the Korean Peninsula that the United States and China reached. Chinese perception of THAAD's AN/TPY-2 radar system is reflected in a remark from Chinese Foreign Minister Wang Yi:

"The coverage of the THAAD missile defense system, especially the monitoring scope of its X-Band radar, goes far beyond the defense need of the Korean Peninsula. It will reach deep into the hinterland of Asia, which will not only directly damage China's strategic security interests, but also do harm to the security interests of other countries in this region" (PRC Foreign Ministry 2016)

Although China has presented its concerns over the surveillance capacity of the THAAD's radar system, the United States and South Korea also have reasonable geographic concerns that contributed to the decision to deploy the THAAD system in the South. Since the geographic distance between the capital Seoul and the non-military zone bordering with North Korea is only about 40 kilometers, the United States and South Korea have to bear the security pressure from defeating any attack that the North might initiate to annihilate the political, economic, and cultural center of South Korea. Within only 40 kilometers, the reaction time that the United States and South Korea may have if the North unexpectedly attacks is extremely limited. Designed as an anti-missile system to protect a small region within a radius of 200 kilometers from the deployment location, THAAD is one of the best available anti-missile weaponry systems that the United States can deploy in South Korea in order to protect critical strategic locations, including Seoul (O'Hanlon 1999, 68-82). Perceiving the THAAD system as a defensive anti-missile system that aims at protecting the South Korean citizens from any unexpected

attacks from the North, the Ministry of National Defense of South Korea claimed that “as a defensive action to protect Korea and our people from North Korea’s nuclear weapons, weapons of mass destruction, and ballistic missile threats, as well as to protect the military force of the Korea-U.S. alliance, THAAD would be deployed in the United States Forces Korea” (USFK, 2016).

Although typically understood as a static and measurable factor in analyzing state behaviors, geographic proximity itself can also be interpreted differently when two states hold two entirely different perceptions of the other’s behavior. The THAAD’s deployment is precisely the behavior that is highly controversial in the context of the rising cognitive dislocations between the United States and China in dealing with the issue of geographic proximity. China believes that it is the geographic proximity between the location of THAAD’s radar system and sovereign Chinese soil that makes the deployment an aggressive measure, and the United States holds the same argument in an opposite way: that it is because of the geographic proximity between Seoul and the North that makes the deployment a legitimate defensive measure to protect South Korean citizens.

Offensive Power in the Korean Peninsula

Walt (1985, 24) specifically defines offensive power as “the ability to threaten the sovereignty or territorial integrity of another state at an acceptable cost.” When narrowing the scope of research to focus on THAAD itself, it is difficult to draw the conclusion that the THAAD system, per se, is an offensive military weapon. Designed as an anti-missile system, THAAD’s missile adopts the hit-to-kill approach to annihilate the ballistic missiles in their terminal phase. By adopting a hit-to-kill approach, THAAD’s missile is not equipped with any warhead or explosive mechanism that can impose a direct cost to a state’s sovereignty, so it is impossible to compare a THAAD missile with, for instance, a cruise missile in the category of offensive weapons. Although by definition of offensive military capability, the THAAD system cannot be categorized as an offensive weaponry system, this system can be understood as a crucial contributor to the chain of the United States’ global strike and nuclear deterrent capability.

Equipped with the X band AN/TPY-2 radar, the THAAD system can not only detect the trajectory of the missiles in North Korea, but its extensive radar detective range also enables the THAAD to trace missiles launched from Northeast China. If the AN/TPY-2 radar conducts an all-weather surveillance mission to locate nuclear weapons deployments in Northeast China, then these fixed land-based nuclear weapons can certainly be targeted by unexpected first strike nuclear attacks. Before the deployment of THAAD in South Korea, a Chinese intercontinental ballistic missile launch would still have been exposed to the AN/TPY-2s in Japan, but that exposure alone wouldn’t have been enough to reliably help U.S. ground-based interceptors in Alaska achieve a convincing edge against incoming Chinese warheads (*The Diplomat* 2017).

However, this intelligence gap can be covered by the additional deployment of THAAD in South Korea, which offers valuable reaction time for the United States’ ground-based interceptors to locate and target the trajectories of those missiles launched by China. From a Chinese security perspective, if the region is under threat of a thermal nuclear war—even if China is able to initiate its nuclear retaliation or attack from regions outside the THAAD’s surveillance—a THAAD system in South Korea will be at least be able to offer a significant strategic advantage to the United States to weaken the Mutually Assured Destruction (MAD) between China and the United States. Thus, the THAAD system can be treated not only as a defensive military system, but also an offensive surveillance system that has the capacity to upset Sino-American strategic nuclear stability by weakening the Chinese second strike capability in an unforeseeable nuclear war. Under such security circumstances, the introduction of the THAAD system is not only viewed as a military rebalancing strategy by North Korea, but is also perceived as a military threat to MAD by China, and thus an offensive capability.

Contrary to the Chinese interpretation of THAAD’s formidable surveillance capacity, the United States offers the argument that North Korea’s missile threats are the priority reason to deploy the THAAD and the THAAD’s AN/TPY-2 radar detective mode can be adjusted to the Terminal Mode (TM), one of two radar detective modes that THAAD has equipped. There is a significant difference in the combat duty status and the detective range between the TM and Forward Based Mode (FBM). Rather than operating 24 hours a day, the TM is designed to operate only when a sign of missile launch has been detected. Moreover, the detective range of the TM, which is only 600 kilometers, is significantly shorter than the FBM. Although without any surveillance mechanism, U.S. defense officials have assured China that the THAAD radar installed in South Korea will operate in TM, which enables it to detect, track, and discriminate ballistic missiles in their descent phase of flight (Raytheon 2017). Besides the assurances that the United States has offered to China, the imminent threat that the North’s armed forces have imposed on South Korea is another convincing cause that contributes to the deployment of the THAAD system. Each type of weapon in the arsenal of North Korea’s strategic force is capable of inflicting a catastrophic impact on South Korean citizens, without even mentioning the intercontinental ballistic capability of creating “a sea of flames” in Seoul. The limited reaction time in the case of an unexpected attack from the North compels the United States to deploy the THAAD system, which is capable of annihilating the threat from ballistic missile attacks in their terminal phase. In the United States’ interpretation, deploying the THAAD system is a legitimate defensive mechanism to achieve the end of fulfilling the Mutual Defense Treaty between the United States and the Republic of Korea.

Under the situation of high perception threshold and cognitive dislocation, it is clear that even the static and

quantifiable technical parameters of the THAAD system is controversial and subject to different interpretations from the United States and China. Jervis (1968, 457) summarizes that “[f]acts can be interpreted, and indeed identified, only with the aid of hypotheses and revised theories. Pure empiricism is impossible.” Skepticism arises from cognitive dislocations such that even a security assurance is not sufficient to relieve the distrust between China and the United States over an anti-missile system. Even a system specifically designed as a defensive countermeasure can be perceived or even acted as an offensive system.

Aggressive intention

Aggressive intention is the only variable in Walt’s (1990) four independent variables that is identified as intangible and unpredictable. If subjected to cognitive dislocation, the intention itself will be the main factor that contributes to the distortion of objective facts, such as geographic proximity, aggregate national power and offensive power, and further produce a series of unpredicted state behaviors based on these distorted facts. Cognitive dislocation is a natural but detrimental issue that can cause an escalation of misunderstanding and mistrust between states in international relations. Defined as a psychological flaw that occurs when states are unable to comprehend others’ subjective interpretations of their own behaviors and perceiving others as fully-informed actors that are perfectly aware of their true intention, cognitive dislocation is a critical issue that can lead states to reach decisions based on distorted or assimilated facts, such as the geographic proximity and military power between two states. In analyzing the issue of perceptions and misperceptions on the Korean Peninsula, this study utilizes states as the level of analysis. Rather than falling into the abyss of studying true intentions of China and the United States by researching every level of analysis, this study makes the assumption that official statements and behaviors that both states have demonstrated are evidence for this study to analyze their true intentions.

In its decision to deploy the THAAD system in South Korea, the United States firmly believes that its military deployment is a purely defensive measure, and that this intention should be obvious enough for the surrounding states, including China. On July 7, 2016, the United States Department of Defense made an announcement to declare its intention in deploying the THAAD system in South Korea:

“Based on recent consultations, the United States and South Korea have made an alliance decision to deploy a Terminal High Altitude Area Defense missile battery to U.S. Forces Korea as a defensive measure to ensure the security of South Korea and that of its people, and to protect alliance military forces from North Korea’s weapons of mass destruction and ballistic missile threats” (U.S. Department of Defense, 2016).

From the Department of Defense’s announcement, it is clear that the United States did not take into consideration the ways in which the deployment could be perceived by China. The United States’ response to Chinese security concerns came after consistent opposition and protests from China over an entire year. On March 7, 2017, nearly a year after the announcement of deploying the THAAD system, the United States State Department responded to the concerns of Chinese government by stating that “we [have] been very clear in our conversations with China that this is not meant to be a threat and is not a threat to them or any other power in the region. It is a defensive system and it is in place – or it will be in place – because of North Korea’s provocative behavior” (U.S. Department of State 2017). Rather than noticing the negative political and security concerns that THAAD has imposed on the Korean Peninsula and Northeast Asia, the statement of the State Department reinforced the United States’ defensive motivation after this deployment in response to the Chinese security concerns. The irrational consistency observed in the U.S.’s inability to understand China’s interpretation of the deployment falls into a pattern of continuous American assurances and Chinese opposition. Moreover, such irrational consistency also plays a foundational role in the second component of the symptom for cognitive dislocation, which is the state’s assumption that another state is a fully-informed actor of its true intention.

This symptom was manifested in the United States’ presumption about other states’ abilities to fully comprehend its defensive intention after the deployment of the THAAD system. Based on this presumption, the United States misinterprets China’s intentions behind its strong opposition to THAAD. Commander of the United States Pacific Command, Harry Harris, testified before the House Armed Services Committee, demonstrating American misunderstanding of Chinese opposition to the deployment after the United States clarified its defensive intentions:

“I find it preposterous that China would try to influence South Korea to not get a weapon system that is completely defensive against the very country that is allied with China. If China wants to do something constructive then they ought to focus less, in my opinion, on South Korea’s defensive preparations [and] focus instead more on North Korea’s offensive preparations” (*The Washington Post* 2017).

In Commander Harris’s testimony, the intention behind China’s opposition to the THAAD system is questioned. In this statement, the intention of China’s strong opposition to the THAAD system is perceived as a strategic measure to protect the status-quo power distribution on the Korean Peninsula and also to try to protect its traditional ally’s strategic advantage within the Korean Peninsula. Rather than interpreting the security concerns from the Chinese government as a reasonable

attempt to protect its national security interests, the United States perceives the opposition from China as a deliberate strategic calculation based on the fact that China is fully aware of the defensive intention from the United States to deploy the THAAD system. The inability to recognize that one's own actions could be seen as menacing and the concomitant belief that the other's hostility can only be explained by its aggressiveness is a symptom of the cognitive dislocation that the United States is experiencing, leading to the conclusion that China's security concern is an excuse for its geopolitical strategy, and the United States should continue to deploy the THAAD regardless of opposition from China.

As a naturally-occurring psychological flaw within a state's decision-making process, especially under the context of high perceptual threshold in the Sino-American relationship, China is experiencing the symptom of cognitive dislocation as well in the process of reacting against the THAAD system's deployment in South Korea. Following the announcement by South Korean and American military officials in February 2016, Chinese governmental statements on THAAD became more pointed, since China was now "deeply concerned" about the decision and asserted that "no country shall undermine other countries' security interests while pursuing its own" (PRC Ministry of Foreign Affairs, 2017). Rather than perceiving the deployment of THAAD as a legitimate North, China believes that South Korean citizens will notice the political turmoil that this deployment can bring to the Korean Peninsula. This political perception is addressed in a Foreign Ministry's press release:

"By getting on board with the U.S., the ROK has involved itself in tipping the scale of regional strategic balance. I think that it is completely understandable that people in the ROK are deeply concerned about the greater underlying security risks this decision may bring" (PRC Ministry of Foreign Affairs 2016).

Given the inability to acknowledge its disregard for the security of South Korean citizens under imminent military threats from the North, the Chinese government fails to recognize that up to 72% of respondents of a public opinion poll carried out by Gallup Korea (Hankyoren 2017) from August 2017 were in favor of the order issued by South Korean President Moon Jae-in to allow the temporary deployment of four THAAD launchers soon after North Korea's second launch of an intercontinental ballistic missile. (Institute for Security & Development Policy, 2017). Moreover, by directly referring to the X band AN/TPY-2 radar's security threat to China, Foreign Minister Wang Yi made a clear statement to the United States about the Chinese security concern over the issue of deploying the THAAD system in South Korea. Irrational consistency became more severe when China disregarded the technical explanations and political assurance from the United States to ensure that the THAAD system would be deployed as a purely

defensive weapon aimed to protect South Korean citizens from North Korea's missile threats. Foreign Minister Wang Yi stated:

"We believe that the deployment of the THAAD system goes far beyond the defense need of the Korean Peninsula. Any justification to this cannot hold water. We have every reason and right to question the real scheme behind this action. We demand the U.S. not to build its own security on the basis of jeopardizing other countries' security and not to damage other countries' legitimate security interests on the pretext of so-called security threats" (PRC Ministry of Foreign Affairs 2016). The skeptical Chinese view of American intentions behind deploying the THAAD system is consistent throughout the changing context of the political dialogue between the United States and China. The irrational consistency in China's decision-making process has led the Chinese government to categorize the deployment of the THAAD system as a tipping point of the power readjustment in the Korean Peninsula and Northeast Asia. The United States' commitment to deploy the THAAD system after a series of official protests from China has reinforced the skepticism in the Chinese decision-making process and made the Chinese government reach the conclusion that the intention behind the deployment of the THAAD system is not only a defensive move, but also an aggressive one that aims to alter the status-quo power distribution on the Korean Peninsula.

Cognitive dislocation becomes more noticeable when Chinese and American perceptions of one another's intentions significantly vary. Both states have made completely contradictory statements about the other's intentions even after repeated assertions. Under the paradigm of irrational consistency in both the United States and China, the increasing severity of this cognitive dislocation in these two states has reinforced the distortion of incoming information and state behaviors. The vicious cycle is forming and reinforcing cognitive dislocation between China and the United States, contributing to the escalating security dilemma between two states. As Merton claims, a situation is arising whereby "a *false* definition of the situation... makes the originally false conception come true" (Merton 1957, 423). The security dilemma becomes a self-fulfilling prophecy once two states initiate the rebalancing strategies, including Chinese economic coercion of the South Korean economy, and the United States' Asia-Pacific rebalancing policy that aims to contain China's expanding power.

CONCLUSION

The vicious cycle of the security dilemma not only is a product of the accumulation of physical and observable forces between the U.S and China, but is also a result of escalating cognitive dislocation on the part of these states. The by-products of cognitive dislocation, including distorted information and increasing amounts of perceived threats, consistently drive states into the abyss of a security dilemma. Avoiding such

psychological flaws can be extremely difficult even with foreign policy rapprochement. The reassessment of foreign policy can largely avoid the issue of irrational consistency, but states can never escape from it entirely due to the constraints of time and resources, as Jervis contends. A reassessment of international relations can offer a state new, but still premature, perceptions of other states. If anything can improve the cognitive issues in states' psychological processes, then a constant and regular reassessment of its foreign policy is needed in order to avoid irrational consistency. Only by adjusting and frequently cross-checking states' foreign policies according to changing circumstances, constant civilian and military leaders' exchange visiting, enhanced training in regional specialists, can states ensure that they are approaching an accurate perception of the true intentions of others. If the United States is willing to view the deployment of the THAAD system as a successful part of its strategy toward North Korea, Jervis (2018, 103-117) suggests that the United States' "must be guided by an accurate sense of how Kim's regime thinks, what it values, and how it judges its options. Washington must understand not just North Korean objectives but also how North Korean officials understand U.S. objectives and whether they consider U.S. statements credible." Since the deployment of the THAAD system is not solely being perceived as a threat by North Korea but also China, this research further concludes that the success of this deployment will depend on Washington's understanding of Chinese perception of the deployment as well. ■

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NOTES

- 1 The mechanism of the irrational consistency is called "psycho-logic balance" that introduced by Abelson and Rosenberg. In the process of forming an irrational consistency, a state is compelled by the "psycho-logic" pressure to create a balanced cognitive structure, where all relations among good elements are positive, and all relations between good and bad elements are negative. In reaching the decision of having a positive or negative relationship with a good or bad element, a state that has irrational consistency would always lack important logical links between the elements. In the absence of logical analyses of evidence based on the changing external context, a state exhibits strong irrational consistency via "psycho-logic balance" when it attributes all favorable characteristics to allied nations, and unfavorable characteristics to enemy nations (Jervis 1968).