

ACTA UNIVERSITATIS CAROLINAE
STUDIA TERRITORIALIA

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EDITORIAL

Dear colleagues and friends,

We are pleased to present the first issue of our journal, *Acta Universitatis Carolinae – Studia Territoria*, for 2020. Among other things, this issue features three original articles about contemporary history and socio-economic developments in the nations of Europe and the wider European cultural area.

Opening this issue is a contribution by Rachel Gould and Aron Tal on the population policies of the State of Israel. Their contribution is a result of our call for papers, made in 2019, entitled “Towards Sustainable Development: Environmental Agenda from Political, Economic, and Social Perspectives.” In their article, Gould and Tal provide a thorough review of the current debate on the nexus between population and the environment, seen from the angle of broader efforts to promote sustainable development. They argue that it is impossible to achieve sustainable development without appropriate population management. Using Israel as a test case, the authors discuss the public policy options available to high-fertility countries for addressing the environmental challenges they face due to continued population growth.

The second article contributes to knowledge about the socio-economic history of Germany. The focus here is on the German consumer cooperatives and their reconstruction in the post-WWII period. Consumer cooperatives, or coops, were self-help organizations that emerged as the nations of Europe industrialized. They were owned by the people who used their services and run for their benefit. Drawing on documents from local archives in Germany, Jana Stoklasa tells the story of the denazification of the coops and the restitution of the property that was expropriated from them by the Nazis, in the context of a divided Germany during the Cold War. She argues that these processes largely failed because they were not accompanied by critical self-reflection on the Nazi past on the part of the coops, their members, and German society as

a whole. She illuminates this missed chance for a “new beginning” with the help of a micro-historical study of the consumer cooperative society in Hannover, Lower Saxony.

The third article describes the perilous quest of Czech Roma for equal educational opportunities following the 2007 ruling of the European Court of Human Rights in *D.H. and Others v. the Czech Republic*. This ruling by the ECtHR was a milestone in the jurisprudence of educational rights. It found that the common practice of placing Roma children in “special schools” was indirectly discriminatory under the European Convention on Human Rights. Filip Sys analyzes the impact that this precedent-setting decision by the ECtHR had on Czech Roma with regard to their efforts to desegregate the schools of the Czech Republic. His analysis points out the limits of strategic litigation as a tool to effect societal change, which – if it is to succeed – must be complemented by activism outside the courtroom.

Apart from these three full-length articles, the 1/2020 issue features our regular Reviews and Reports columns, which familiarize readers with the latest books, news and developments in the field of Area Studies and related disciplines.

It is with deep sorrow that we announce the passing of Professor Jan Křen, a leading authority in the field of Czech-German relations and the modern history of Central Europe. Professor Křen was the founding father and first head of the publisher of this journal, Charles University’s Institute of International Studies. He was a long-time member of the editorial board of *Acta Universitatis Carolinae – Studia Territorialia* and was instrumental in the establishment of Area Studies as a full-fledged field of research in the social sciences in post-communist Czechia. We cannot stress enough how much we owe him.

On behalf of the editorial board,

Lucie Filipová and Jan Šír
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ARTICLES

RETURNING POPULATION POLICY TO THE SUSTAINABLE DEVELOPMENT DISCOURSE: ISRAEL AS A CASE STUDY

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Abstract

Population policy, once a core environmental concern globally, has long since shifted its focus and is typically informed by considerations of maternal/fetal health. Yet, in many countries, environmental progress will remain elusive as long as the population continues to grow. Israel already exhibits adverse ecological impacts as a result of its rapidly growing population and needs to begin to adopt policies that prioritize demographic stability. This article reviews the current literature as well as the current status of population growth and environmental devastation in Israel, from a public policy perspective. The authors call on Israel and other high-fertility countries to foster strategic discussions about sustainable population policies. Along with an emphasis on the intrinsic advantages of small families, they should also include a dispassionate presentation of the anticipated environmental impacts associated with continued demographic growth.

Keywords: environment; population policy; population management; sustainable development; Israel

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1. Introduction

Margaret Mead articulated in her work, *Male and Female*, that “every human society is faced not with one population problem but with two. How to beget and rear enough children and how not to beget and rear too many. The definition of ‘enough’ and ‘too many’ varies enormously.”¹ Nearly every country on the planet currently faces one side of this dilemma or the other. If done judiciously and with constant monitoring, societal stability, and a sharp eye to the future, policies can find the balance between *too few* and *too many* in an effort to ensure that population growth remains within the boundaries of environmental resources.

Accelerated industrialization at the turn of the twentieth century and more recent technological advancements have brought about demographic transitions in most developed countries. Together with the adoption of voluntary family planning programs and advances in education, we have witnessed a 50% decline in the global birthrate over the past forty years.² Furthermore the majority of countries belonging to the Organisation for Economic Co-operation and Development (OECD) have experienced declining birthrates well beyond expectations.³ While it is typically assumed that overpopulation is no longer a germane issue for the developed world, in fact populations in countries like the United States, Canada and Australia are all steadily expanding at rates ranging between 0.7 and 1.6 percent annually. As a result of the geometric nature of population growth, past peak global fertility has brought the global population to the unprecedented population densities found today – as the world inches closer to eighth billion people, concerns mount about our ability to sustain another two or three billion beyond that.

Playing in European basketball leagues, competing in the Eurovision contest and participating in EU scientific consortia identify Israel, in the eyes of many, as an essentially European country. Indeed, Israel’s economic reality and cultural norms are certainly comparable to the continent. In one vital

¹ Margaret Mead, *Male and Female: A Study of the Sexes in a Changing World* (New York: W. Morrow, 1949), 210.

² Joel E. Cohen, “Beyond Population: Everyone Counts in Development,” Center for Global Development Working Paper No. 220 (2010), <https://ssrn.com/abstract=1694135>.

³ Francis G. Castles, “The World Turned Upside Down: Below Replacement Fertility, Changing Preferences and Family-Friendly Public Policy in 21 OECD Countries,” *Journal of European Social Policy* 13, No. 3 (2003): 209–227, doi: 10.1177/09589287030133001. See also Joëlle Sleebos, “Low Fertility Rates in OECD Countries: Facts and Policy Responses,” OECD Labour Market and Social Policy Occasional Papers No. 15 (2003), doi: 10.1787/568477207883.

area – demographic dynamics – Israel is anything but European. Rather, Israel’s fertility rate resembles those found in developed countries experiencing rapid population increase. What causes Israel to stand out between the developed and the developing worlds is that population growth has yet to stifle Israel’s economic progress: in 1962, per capita GDP was a mere 1,132 USD; today it has reached 43,600 USD.⁴ Even still, there are growing signs that quality of life is suffering due to the expanding quantity of life. Israel’s total fertility rate (TFR), of 3.1 per woman, is roughly twice the average of OECD countries. The resulting impact of such population growth on Israel’s environment has been pernicious and raises important questions about the balance between population growth and environmental resources of a nation or a region.

Significant challenges hinder the implementation of population management policies. Fertility is a deeply personal and private matter, informed by cultural and religious mores.⁵ Several studies suggest that environmental motivations may lack sufficient influence to drive behavioral changes and fertility decisions.⁶ Economic motivations have proven to be effective, although not universally, in reducing birthrates.⁷ They are surely more persuasive when supported by a clear societal narrative venerating population stability together with a public relations campaign.⁸ That is because non-economic factors based on religion or culture play central roles in influencing fertility decisions.⁹ Nationalism and the desire

⁴ “Israel GDP per Capita,” CEIC Data, updated April 19, 2020, <https://www.ceicdata.com/en/indicator/israel/gdp-per-capita>. While Israel’s economy has grown 40-fold, its population has increased 10-fold – the most rapid population growth seen in a developed country.

⁵ Lisa S. McAllister, Gillian V. Pepper, Sandra Virgo, and David A. Coall, “The evolved psychological mechanisms of fertility motivation: hunting for causation in a sea of correlation,” *Philosophical Transactions of the Royal Society B: Biological Sciences* 371, No. 1692 (2016), doi: 10.1098/rstb.2015.0151.

⁶ Steven Arnocky, Darcy Dupuis, and Mirella L. Stroink, “Environmental concern and fertility intentions among Canadian university students,” *Population and Environment* 34, No. 2 (2012): 279–292, doi: 10.1007/s11111-011-0164-y; Nurit Carmi and Alon Tal, “The perceived relationship between population growth and current ecological problems using repertory grid technique,” *Human and Ecological Risk Assessment: An International Journal* 25, No. 7 (2019): 1773–1788, doi: 10.1080/10807039.2018.1473756; and Naomi Zeveloff, “GINK Is the New DINK: Going Childfree for Mother Nature,” *Ecosalon*, April 6, 2010, <http://ecosalon.com/gink-is-new-dink/>.

⁷ Alma Cohen, Rajeev Dehejia, and Dmitri Romanov, “Do Financial Incentives Affect Fertility?” National Bureau of Economic Research Working Paper No. 13700 (December 2007, revised May 2009); and Alma Cohen, Rajeev Dehejia, and Dmitri Romanov, “Financial incentives and fertility,” *Review of Economics and Statistics* 95, No. 1 (2013): 1–20, doi: 10.1162/REST_a_00342.

⁸ Alan Weisman, *Countdown: Our last, best hope for a future on Earth?* (London: Hachette UK, 2013).

⁹ Barbara S. Okun, “Religiosity and fertility: Jews in Israel,” *European Journal of Population* 33, No. 4 (2017): 475–507, doi: 10.1007/s10680-016-9409-x.

for increased birth rates to populate both the country as well as fill the armed forces frequently sanctifies the woman's role as mother above all else, damaging or eliminating a woman's ability to exercise self-agency in choosing whether to become a mother, or how frequently.¹⁰ Globally, preference for a large family size remains one of the core determinants of high fertility.¹¹ Population management policies must navigate these disparate motivations in a culturally sensitive manner, even before they begin to address the environmental consequences of continued population growth.

Overpopulation's impact on the environment worldwide is beginning to elicit powerful arguments encouraging reduced birth rates. An acceptance that population size is a core driver of climate change is emerging.¹² Reducing population size likely offers the greatest single most efficient measure to ameliorate future carbon dioxide emissions for the developed world.¹³ Sustainable demographic policies are a critical element for driving the success of climate change mitigation programs. The role of population pressures is even more self-evident in the area of biodiversity loss. The famous adage "more people – less nature" is playing out across the planet as 60 percent of wildlife on the planet has disappeared over the past forty-five years.¹⁴ The conventional scientific wisdom is that we are witnessing Sixth Extinction dynamics.¹⁵ Indeed, the UN sponsored Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services recently reported that one million species are in danger of extinction.¹⁶

¹⁰ Nitza Berkovitch, "Motherhood as a national mission: The construction of womanhood in the legal discourse in Israel," *Women's Studies International Forum* 20, No. 5 (1997): 605–619.

¹¹ John Bongaarts, "Can family planning programs reduce high desired family size in sub-Saharan Africa?" *International Perspectives on Sexual and Reproductive Health* 37, No. 4 (2011): 209–216, doi: 10.1363/3720911; Jane O'Sullivan, "Synergy between Population Policy, Climate Adaptation and Mitigation," in *Pathways to a Sustainable Economy. Bridging the Gap between Paris Climate Change Commitments and Net Zero Emissions*, ed. Moazzem Hossain, Robert Hales, and Tapan Sarker (Cham: Springer, 2018), 103–125, doi: 10.1007/978-3-319-67702-6_7.

¹² John Bongaarts and Brian C. O'Neill, "Global warming policy: Is population left out in the cold?" *Science* 361, No. 6403 (2018): 650–652, doi: 10.1126/science.aat8680.

¹³ Seth Wynes and Kimberly A. Nicholas, "The climate mitigation gap: education and government recommendations miss the most effective individual actions," *Environmental Research Letters* 12, No. 7 (2017), doi: 10.1088/1748-9326/aa7541.

¹⁴ Monique Grooten and Rosamunde Almond, eds., *Living Planet Report – 2018: Aiming Higher* (Gland: World Wildlife Fund, 2018), https://wwf.panda.org/knowledge_hub/all_publications/living_planet_report_2018.

¹⁵ Gerardo Ceballos, Paul R. Ehrlich, and Rodolfo Dirzo, "Biological annihilation via the ongoing sixth mass extinction signaled by vertebrate population losses and declines," *PNAS* 114, No. 30 (2017), doi: 10.1073/pnas.1704949114.

¹⁶ "Nature's Dangerous Decline 'Unprecedented'. Species Extinction Rates 'Accelerating'," Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, IPBES (2019),

Our research begins with a brief historic review of global demographic dynamics and the evolution of a myriad of processes which have come to inform population policies around the world. We then turn to consider factors that motivate an individual's fertility decisions, including economic conditions, the status of women, cultural and religious norms, the role of education, etc. In addition, we find that even though carrying capacity considerations should make the environment an important driver of population size, we find that its role has actually diminished in recent years. The dynamics associated with these factors need to be considered when designing population management strategies to address population growth on a country-by-country basis.

We then turn to the specific demographic circumstances of Israel.¹⁷ The Israeli case is particularly germane for developing countries with rapid population growth as well as for developed countries still facing population growth, albeit at lower rates. Israel exhibits an extremely high population density which increasingly compromises quality of life, in particular *vis-à-vis* climate change. As a multi-cultural society, ethnic tensions and competition inform demographic dynamics, often with minimal regard for the environmental consequence. Much of the country's historic population growth has been due to pro-immigration policies; the increasingly crowded reality, however, is raising questions about the sustainability of a constantly expanding population. Israel is beginning to come to terms with the necessity to balance population growth with available natural resources both to combat climate change and ensure the continued quality of life Israelis have come to demand, which includes access to open spaces and nature.

Israel's experience belies the oxymoronic ideology of "sustainable growth." As the world increasingly comes to realize that any meaningful progress in addressing the climate crises requires a stable population, the Israeli experience is germane. While tactically, environmental framing may not offer the most effective motivation, stabilizing population cannot be excluded from a broad agenda of sustainability if countries are to move onto a sustainable path. As developing countries become more prosperous and emerge as rapidly growing, affluent nations, sustainable population policies will become increasingly critical for successfully addressing their most pressing environmental and societal challenges. The Israeli dynamics suggest that while environmental arguments

<https://ipbes.net/news/Media-Release-Global-Assessment>.

¹⁷ For the purpose of this paper Israel includes the territories known as the West Bank and the Golan Heights.

may not need to be in the front of sustainable population campaigns, demography can no longer be ignored by sustainability advocates or vice versa. This research focuses on the dynamics of Israeli population growth as a case study to inform other high-TFR countries. It highlights the importance of fully understanding the cultural and social factors at play within the economic context and the potential role of environmental concerns as a catalyst for creating a holistic and sustainable population policy.

2. Population Policy: From Environmental Motivations to Maternal Health Drivers

The evolution of population policy and the emergence of demography as a discipline provide a valuable background to understanding how current conversations around population growth are embraced or abhorred. Perfunctory familiarity with the historical transitions and motivations is necessary for the success of modern day population policy efforts. Environmental limitations were once a core consideration in assessing the viability of population size. But in recent years this orientation has been in retreat. As a result of religious, feminist and political dogma, along with the complicated history of colonization, raising concerns about the impact of population size on the environment have become significantly more sensitive, and in some circles, even taboo.

Among the many profound technological advances and societal changes over history, the Industrial Revolution serves as a particularly salient demographic milestone. As populations grew rapidly, Thomas R. Malthus framed the implicit conflict between *exponential* human expansion and the *arithmetic* growth of food production as not just an economic but also an environmental challenge.¹⁸ This contributed to a worldview, especially pervasive among colonial British elites, that hunger amongst the poor was an indication that a specific population had overpopulated, exceeding local carrying capacities. The implication was that their pitiful fate was both self-imposed and ineluctable, given environmental constraints. In short, if someone could not feed their family, they should not have more, or even any children at all. Malthus' influence reached across the Atlantic where population management was perceived as an essential tool for alleviating poverty. Post-WWII, wealthy private donors, such

¹⁸ Thomas R. Malthus, *An Essay on the Principle of Population, as It Affects the Future Improvement of Society, with Remarks on the Speculations of Mr. Godwin, M. Condorcet, and Other Writers* (London: J. Johnson, 1798).

as Rockefeller, Gamble, Ford and their foundations, convinced U.S. Presidents Johnson and Nixon to make foreign aid provided by USAID conditional on provision of family planning and contraceptive programs in recipient countries.¹⁹ US-driven global population planning was firmly focused on the alleviation of poverty. Environmental concerns remained on the agenda, although secondary to addressing poverty.

As the United States emerged from the post-WWII baby boom, efforts to refocus the conversation on population growth and the environment came from scholars like Paul R. Ehrlich and Garrett Hardin.²⁰ Their publications reignited the Population-Environment (P-E) dialogue. U.S. Presidents Johnson and Eisenhower both acknowledged the need to invest in population planning programs, even at the United Nations.²¹ The publication of *The Limits to Growth* by the Club of Rome in 1972 offered scientific validation of the unsustainable nature of geometric, global population growth.²² While it gained considerable traction amongst ecological advocates, addressing high fertility and its associated environmental impacts remained beyond the realm of mainstream demographic policy considerations. Women's health and poverty alleviation came to dominate the discourse, even as the UN began to convene global population conferences every decade.

Over the course of thirty years, UN conferences on population (1974 in Bucharest, Romania; 1984 in Mexico City, Mexico; 1994 in Cairo, Egypt), witnessed a dramatic shift in the way the international community perceived global population growth and management. Delegates from developing nations pushed back against efforts to address poverty reduction through population management, decrying this worldview as neo-colonial and racially motivated. Poverty, they argued, was the result of under-development and exploitation at the hands of the international capitalist system.²³ As right-leaning movements galvanized in the mid-1980s, efforts to discuss family planning, contraceptive use, and

¹⁹ Fred Pearce, *Peoplequake: Mass Migration, Ageing Nations and the Coming Population Crash* (London: Random House, 2010), 63–64.

²⁰ Paul R. Ehrlich, *The Population Bomb* (New York: Ballantine Books, 1968); Garret Hardin, "The Tragedy of the Commons," *Science* 162, No. 3859 (1968): 1243–1248.

²¹ Dave Foreman, "The Great Backtrack," in *Life on the Brink: Environmentalists Confront Overpopulation*, ed. Philip Cafaro and Eileen Crist (Athens, GA: University of Georgia Press, 2012), 56–71.

²² Donella H. Meadows, Dennis L. Meadows, Jorgen Randers, and William W. Behrens III, *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind* (New York, Universe Books: 1972), <https://clubofrome.org/publication/the-limits-to-growth>.

²³ Diana Coole, "Too many bodies? The return and disavowal of the population question," *Environmental Politics* 22, No. 2 (2013): 195–215, doi: 10.1080/09644016.2012.730268.

abortion were equated with eugenics and genocide.²⁴ This shift effectively quashed efforts on the part of the environmentalists to address population growth on the global stage. The discourse was formally delegitimized in Cairo when population control policies were labelled coercive, even as this was rarely the nature of family planning initiatives.²⁵ The population issue was now officially framed as a challenge that was potentially disadvantageous to women and their health.²⁶ Sustainable population policies were excoriated as racist, anti-poor, or even eugenic,²⁷ even as populations began to decline in various countries. The lack of meaningful discourse on demographic overshoot led the term “population” to become almost unmentionable within many mainstream environmental organizations and nearly absent from the agendas of development institutions, universities, donors, and public health programs.²⁸ Cairo’s legacy shifted the population discourse to a development discourse with the belief that economic development constituted the most effective strategy for reducing population growth.²⁹

Nationalism and the need to maintain population size to preserve the sense of national identity, in times of war and peace, also became a powerful perspective as the global dialogue evolved and continues today. Women have long been placed in the role of needing to reproduce for the sake of the nation. Continuous population growth ensures stature and status in relation to other countries around the world.³⁰ In times of conflict, while the men go off to fight and perhaps die, the women can birth the next generation, and in particular more soldiers.³¹ For instance, during the war with Iraq, Iranian women’s fertility was pushed to its uppermost limits in order to produce a twenty-million man army.³² The col-

²⁴ Foreman, “The Great Backtrack”, 56–71.

²⁵ Martha Campbell, “Why the Silence on Population?” in *Life on the Brink: Environmentalists Confront Overpopulation*, ed. Philip Cafaro and Eileen Crist (Athens, GA: University of Georgia Press, 2012), 41–55.

²⁶ Coole, “Too many bodies?”, 195–215.

²⁷ Don Weeden and Charmayne Palomba, “A Post-Cairo Paradigm: Both Numbers and Women Matter,” in *Life on the Brink: Environmentalists Confront Overpopulation*, ed. Philip Cafaro and Eileen Crist (Athens, GA: University of Georgia Press, 2012), 255–273.

²⁸ *Ibid*, 255–273.

²⁹ Madeline Weld, “Deconstructing the dangerous dogma of denial: the feminist-environmental justice movement and its flight from overpopulation,” *Ethics in Science and Environmental Politics* 12, No. 1 (2012): 53–58, doi: 10.3354/esep00123.

³⁰ Nira Yuval-Davis, “Women and the biological reproduction of ‘the nation’,” *Women’s Studies International Forum* 19, No. 1–2 (1996): 17–24.

³¹ Wendy Bracewell, “Women, motherhood, and contemporary Serbian nationalism,” *Women’s Studies International Forum* 19, No. 1–2 (1996): 25–33.

³² Seyed A. Marandi, Amir Mehryar, Mohammed J. Abbasi-Shavazi, and Mohammed H. Shamsian, “Iran,” in *No Vacancy: Global Responses to the Human Population Explosion*, ed. Michael Tobi-

lective conscience, when mobilized by a sense of nationalism, proved to be very effective in catalyzing a common desire for increasing reproduction.³³

As the twenty-first century unfolded, the international environmental movement continued to distance itself from population related policies. Americans disengaged as a result of a number of factors, including declining domestic fertility rates globally, anti-abortion politics, a shift to a focus on women's issues from population scholars, political rifts, and immigration as the dominant factor in demographic growth.³⁴ This perspective began to resonate around the world, *inter alia*, due to the influence of the U.S. policies via distribution of foreign aid that broadcast these attitudes on the global stage. Globally, environmentalists contended with visibly declining fertility rates throughout the world. Attention shifted to the environmental impact of consumption. The emerging might of the conservative political and religious powers began to influence support for reductions in family planning provisioning. And then the AIDS epidemic which changed the priorities of contraception programs; the shift at the Cairo conference to a focus on coercive family planning; and finally the assumption that couples naturally want to have many children all contributed to the change.³⁵ These factors reveal the complexity not only of the challenge of addressing population growth, but also of the complicated interface between the environment and demography. This long arc of transition from environmental concerns to health and the autonomy of the individual/fetus reveals the enormity of the challenge before the environmental community in reviving concerns about population pressures as a core environmental driver.

Recently, however, apprehensions about population growth in relation to the environment are reemerging in the global dialogue. Publications from the Royal Society (UK) and recent reports from the UN Environmental Programme recognize the difficulty of making ecological progress in the face of growing demographic pressures, and of reintroducing population growth as an environmental driver. In 2005, the UN's Millennium Ecosystem Assessment returned population growth to the international agenda and identified it as a core, yet indirect, driver of environmental change, especially in land-use and

as, Bob Gillespie, Elizabeth Hughes, and Jane Gray Morrison (Pasadena, CA: Hope Publishing, 2006), 1–5.

³³ Ruth Landau, "Religiosity, nationalism and human reproduction: The case of Israel," *International Journal of Sociology and Social Policy* 23, No. 12 (2003): 64–80, doi: 10.1108/01443330310790408.

³⁴ Leon Kolankiewicz and Roy Beck, *Forsaking Fundamentals: The U.S. Environmental Movement Abandons U.S. Population Stabilization*, (Washington, DC: Center for Immigration Studies, 2001), <https://cis.org/Report/Forsaking-Fundamentals>.

³⁵ Campbell, "Why the Silence on Population?," 41–55.

desertification.³⁶ Renewed attention to the P-E connection, driven by nonprofits like the Optimum Population Trust (UK) and the Population Institute (U.S.), as well as books, television programs, and films, have begun calling attention to this issue.³⁷ In 2019, while interviewing iconic zoologist Jane Goodall, England's very popular Prince Harry made a widely publicized announcement that he and his wife, actress Megan Markle, were limiting their own procreation to "maximum" two children out of concern for the environment.³⁸ Finally, academics have begun to conduct research on the relationship between population size, carbon footprints, consumption, and environmental impacts.³⁹ The COVID-19 pandemic refocused international attention on the role of population density in increasing disease infection⁴⁰ as well as on the contribution of habitat loss to the outbreak of new zoonotic diseases.⁴¹ Even with this renewed attention to the environmental consequences of population growth and its role as a driver of climate change and biodiversity loss, environmental agendas almost universally do not include population management policies.

³⁶ Robert Engelman, "Trusting Women to End Population Growth," in *Life on the Brink: Environmentalists Confront Overpopulation*, ed. Philip Cafaro and Eileen Crist (Athens, GA: University of Georgia Press, 2012), 223–239.

³⁷ Weeden and Palomba, "A Post-Cairo Paradigm," 255–273.

³⁸ "HRH The Duke of Sussex Interviews Dr Jane Goodall for the September Issue," *British Vogue*, July 30, 2019, <https://www.vogue.co.uk/article/prince-harry-jane-goodall-september-2019-issue>.

³⁹ Mark Caudell and Robert Quinlan, "Life-history theory and climate change: resolving population and parental investment paradoxes," *Royal Society Open Science* 3, No. 11 (2016), doi: 10.1098/rsos.160470; Paul A. Murtaugh and Michael G. Schlax, "Reproduction and the carbon legacies of individuals," *Global Environmental Change* 19, No. 1 (2009): 14–20, doi: 10.1016/j.gloenvcha.2008.10.007; Thomas Wire, "Fewer Emitters, Lower Emissions, Less Cost: Reducing Future Carbon Emissions by Investing in Family Planning," A cost/benefit analysis provided by LSE Operational Research (2009); and Wynes and Nicholas, "The climate mitigation gap."

⁴⁰ Kate E. Jones, Nikkita G. Patel, Marc A. Levy et al., "Global trends in emerging infectious diseases," *Nature* 451 (2008): 990–993, doi: 10.1038/nature06536. See David Rubin and Paul A. Offit, "We know crowding affects the spread. It may affect the death rate." *The New York Times*, April 27, 2020, <https://www.nytimes.com/2020/04/27/opinion/coronavirus-crowds.html>. See also Yaara Tsairi and Alon Tal, "The Contribution of Urban Population Density to Corona Incidence in Israel," *Ecology and Environment* 20 (2020): 1.

⁴¹ Serge Morand and Bruno A. Walther, "The accelerated infectious disease risk in the Anthropocene: more outbreaks and wider global spread," *BioRxiv*, April 20, 2020, doi: 10.1101/2020.04.20.049866. See also Qun Li, Xuhua Guan, Peng Wu et al., "Early transmission dynamics in Wuhan, China, of novel Coronavirus-infected pneumonia," *New England Journal of Medicine* 382 (2020): 1199–1207, doi: 10.1056/NEJMoa2001316.

3. Demographic Theories and Fertility Motivations

One of the reasons for the pervasive complacency in recent global population discourse is the powerful role played by Demographic Transition Theory (DTT). At some point in their history, most modern nations underwent dramatic shifts in birth rates, seemingly unrelated to any specific public demographic policy: As nations became wealthier, fertility dropped, often dramatically. It is very convenient to have faith that such inexorable demographic transitions will continue to spread, invariably producing a stable, sustainable population on the planet. Unfortunately, for many Western, developed nations, such stability is nowhere in sight.

While DTT was initially applied globally, it has frequently been observed at the national level. In the pre-industrialization (or pre-transitional) first phase, high birth and mortality rates result in long-term population stability with limited growth within these subsistence-based economies. With the development of technologies and medical advancements, lifespans are lengthened and infant mortality declines while fertility rates remain high, resulting in both an increase in quality of life and significant population growth. In time, as the decline in infant mortality becomes normalized, with more children surviving to adulthood, population growth begins to slow and even decline. In the final stage, both birth and death rates decline, resulting in a stabilized population larger than before a transition occurred, and often producing a declining trend.⁴² In other words, population momentum resulting from this transition process drives continued population growth even after fertility rates began to decline to below replacement rate. The parents of the next, larger generation have already been born.

Evidence suggests that if they wish to achieve sustainable dynamics, countries characterized by high fertility rates must identify their desired demographic target, understand the potential avenues to achieve the stated goal and then craft appropriate policies to realize their demographic future.⁴³ A number of potential policy motivations have been tested and the lessons learned from other nations can inform modern-day nations as they build their own policy. Economic incentives, educational messaging, empowerment of women, ensuring access to contraception and efforts to manipulate cultural, normative, and religious influences are all policy tools available to craft an effective strategy.

⁴² Dudley L. Poston, Jr., and Leon F. Bouvier, *Population and Society: An Introduction to Demography*, 2nd ed. (Cambridge: Cambridge University Press, 2017), 25.

⁴³ Weisman, *Countdown*, 395–414.

3.1 Economic Motivation

States can use a variety of economic incentives or benefits to motivate individual fertility decisions. These include direct cash payments, subsidies for fertility treatments or pregnancy related healthcare, subsidized childcare, or maternity or paternity leave benefits, to name a few. The economic theory of fertility states that the demand for children is a function of individual preferences and the cost of children. Therefore, governmental benefits or incentives should have a positive effect on fertility rates. Yet the influence of financial incentives on fertility behaviors depends largely on the type of benefit offered and families' specific socio-economic conditions. For example, empirically, direct cash benefits tend to be more positively associated with increased fertility, while maternity leave, both in terms of length and benefits, is not.⁴⁴

Accordingly, an individual's economic status plays a role in one's desire to have more children. Ermisch identified that the more money a woman earns, the less likely she is to have children; conversely, the more money a man earns, the more likely he is to have a larger family. Further, he found that the more expensive the housing costs, the fewer children in a family.⁴⁵ In the case of both sexes, as men and women reach economic parity a preference for permanent or more advanced forms of contraception is observed.⁴⁶ Parity in employment opportunities, reductions in social inequality, and the shift away from traditional gender roles all have been shown to result in reduced fertility rates.⁴⁷ Providing financial benefits and social support mechanisms strengthen family ties which improves the overall happiness of parents in a marriage, thereby supporting parenthood in a society.⁴⁸ The array of economic incentives and benefits available to

⁴⁴ Anne H. Gauthier and Jan Hatzius, "Family benefits and fertility: An econometric analysis," *Population Studies* 51, No. 3 (1997): 295–306, doi: 10.1080/003247203100050066.

⁴⁵ John Ermisch, "Econometric Analysis of Birth Rate Dynamics in Britain," *The Journal of Human Resources* 23, No. 4 (1988): 563–576.

⁴⁶ Esther I. Wilder, "The contraceptive revolution in Israel: Changing family planning practices among ethnoimmigrant groups," *Social Science Research* 29, No. 1 (2000): 70–91, doi: 10.1006/ssre/1999.0654.

⁴⁷ McAllister, Pepper, Virgo, and Coall, "The evolved psychological mechanisms of fertility motivation"; Thomas Macias, "Risks, trust, and sacrifice: social structural motivators for environmental change," *Social Science Quarterly* 96, No. 5 (2015): 1264–1276, doi: 10.1111/ssqu.12201; and Anna C. D'Addio and Marco M. d'Ercole, "Trends and Determinants of Fertility Rates: The Role of Policies," OECD Social, Employment and Migration Working Papers No. 27 (2005), doi: 10.1787/880242325663.

⁴⁸ Sofie Vanassche, Gray Swicegood, and Koen Matthijs, "Marriage and children as a key to happiness? Cross-national differences in the effects of marital status and children on well-being," *Journal of Happiness Studies* 14, No. 2 (2013): 501–524, doi: 10.1007/s10902-012-9340-8.

policy makers is significant and varied, requiring thoughtful and analytically rigorous decision-making process in order to *ex ante*, identify and select the most appropriate choices and then evaluate, *ex post*, their impacts.

3.2 The Role of Gender and Education

Obtaining education, either as a result of increased investment in the national educational infrastructure, or through targeted encouragement of women to obtain higher education, can result in delays in the decision to have children. Investment in the educational system of a country can allow a government to react to population growth without having to address the subject of population growth directly.⁴⁹ This type of thinking suggests that at least for a finite period of time, it is possible to manipulate population growth instead of controlling or managing it directly.

The centrality of empowering women for effective sustainable population programs cannot be overemphasized. Women have been observed to delay their decision to have children in order to enroll in higher education newly available to them or to finish their academic degrees.⁵⁰ This is consistent with the previously observed trend of women with a 4-year college degree delaying their first child to a later age compared to those without the degree.⁵¹ It is interesting to note that as educational level increases, so too, does earning potential. This confirms the view, first forwarded by Nobel Prize winning economist, Gary Becker, that higher earning women are less likely to have larger families based on the assumption that in light of the opportunity costs, their career is prioritized over a large family.⁵² When salaries do increase, research has found that women are happier with larger families.⁵³ This presents a challenge to countries hoping to reduce fertility rates by incentivizing women's education. Much in the same light as economic incentives, policy makers must clearly understand their goals and

⁴⁹ Dan Ben-David, "Overpopulation and demography in Israel. Directions, perceptions, illusions and solutions," Shoresh Institute for Socioeconomic Research, Policy Brief (November 2018), <http://shoresh.institute/policy-brief-eng-overpopulation.pdf>.

⁵⁰ Arnstein Aassve, Alice Goisis, and Maria Sironi, "Happiness and childbearing across Europe," *Social Indicators Research* 108, No. 1 (2012): 65–86, doi: 10.1007/s11205-011-9866-x; and D'Addio and D'Ercole, "Trends and Determinants of Fertility Rates."

⁵¹ Steven P. Martin, "Diverging fertility among U.S. women who delay childbearing past age 30," *Demography* 37, No. 4 (2000): 523–533.

⁵² Gary S. Becker, "An economic analysis of fertility," in *Demographic and economic change in developed countries. A conference of the Universities–National Bureau Committee for Economic Research* (New York: Columbia University Press, 1960), 209–240.

⁵³ Aassve, Goisis, and Sironi, "Happiness and childbearing across Europe," 65–86.

motivations in order to select the most appropriate educational drivers to influence fertility decisions. At the same time, the intrinsic ethical and economic value of empowering and educating women make such interventions “no regrets” policies.

3.3 Cultural, Religious, and Normative Forces

Cultural factors, specifically departures from traditional ways of life, have shown to be significant factors in changing fertility patterns. This includes changes in traditional, gender defined roles and limitations upon women’s advancement, as well as hierarchical status between the sexes and generations. As young women seek out less traditional roles in their families and in society, birthrates decline.⁵⁴ Cultural influences are powerful in determining the number of children people want to have, even in cases where an individual wants fewer and the surrounding environment broadcasts its preference for larger families.⁵⁵ In climates that are receptive to women wanting fewer children, allowing them to recognize their “latent desire” to have fewer children, along with unfettered access to contraception, results in reduced fertility rates.⁵⁶

Religiosity has played a role in individual fertility decisions throughout developed countries primarily across the Abrahamic religious traditions.⁵⁷ Further, those with a strong religious identity also self-report greater happiness, suggesting a relationship between family size and happiness that may be a result of societal norms driven by a religious community or belief system.⁵⁸ It should be noted that numerous studies suggest that smaller families actually tend to be happier than larger ones.⁵⁹ While happiness is a challenging criterion to evaluate, self-reporting has proven to be a reasonable measurement mechanism and

⁵⁴ D’Addio and D’Ercole, “Trends and Determinants of Fertility Rates,” 38–41.

⁵⁵ Malcolm Potts, “Sex and the birth rate: Human biology, demographic change, and access to fertility-regulation methods,” *Population and Development Review* 23, No. 1 (1997): 1–39.

⁵⁶ Eileen Crist, “Abundant Earth and the Population Question,” in *Life on the Brink: Environmentalists Confront Overpopulation*, ed. Philip Cafaro and Eileen Crist (Athens, GA: University of Georgia Press, 2012), 141–153.

⁵⁷ “The Future of World Religions: Population Growth Projections, 2010–2050,” Pew Research Center, April 2, 2015, <https://www.pewforum.org/2015/04/02/religious-projections-2010-2050>.

⁵⁸ Stephen Cranney, “Is there a stronger association between children and happiness among the religious? Religion as a moderator in the relationship between happiness and child number,” *Journal of Happiness Studies* 18, No. 6 (2017): 1713–1727, doi: 10.1007/s10902-016-9798-x.

⁵⁹ Aassve, Goisis, and Sironi, “Happiness and childbearing across Europe,” 65–86.

the consistency of studies showing a casual association between smaller and happier families supports its validity.⁶⁰

In many cultures, marriage is a core social norm. Some societies value conformity with social norms, while others do not ascribe such significance to an individual's adherence to them.⁶¹ As more of a given age cohort partners up in marriage, single individuals, especially women, are increasingly perceived as deviating from the norm.⁶² Many in the field of population and environment policy hoped that environmentalist Stephanie Mills' bold pronouncement to remain childless would inspire and validate a whole new generation of women to have fewer or no children. Mills' focus on the cost-benefit calculations that parents can make balancing professional development against decisions to have children, however, remained anomalous.⁶³

All of these issues become more complex as a growing number of countries face declining populations as a result of local fertility rates dropping below replacement level and as local citizens grapple with the challenges of emigration patterns. In Italy, parts of Germany, as well as the states of Vermont and New Hampshire in the United States, declining population necessitates efforts to incentivize immigration or migration, or simply to market the area as appealing for new families.⁶⁴ The actuarial integrity of pension funds in these shrinking communities is being tested and many have begun to adjust fiscal policies so as to provide necessary services to their dwindling populations. For example, providing schooling to children sparsely spread over a rural area necessitates a different approach than a traditional schooling model with classrooms of 30 children and one teacher. On both sides of the demographic coin there are policy challenges to be faced.

⁶⁰ Alon Tal and Dorit Kerret, "Positive psychology as a strategy for promoting sustainable population policies," *Heliyon* 6, No. 4 (2020), doi: 10.1016/j.heliyon.2020.e03696.

⁶¹ Michele J. Gelfand, *Rule Makers, Rule Breakers: How Culture Wires Our Minds, Shapes Our Nations, and Drives Our Differences* (London: Hachette UK, 2018).

⁶² Gudmund Hernes, "The process of entry into first marriage," *American Sociological Review* 37, No. 2 (1972): 173–182.

⁶³ Foreman, "The Great Backtrack," 56–71; Stephanie Mills, "Nulliparity and a Cruel Hoax Revisited," in *Life on the Brink: Environmentalists Confront Overpopulation*, ed. Philip Cafaro and Eileen Crist (Athens, GA: University of Georgia Press, 2012), 154–159.

⁶⁴ Jessica Phelan, "Italy is in a 'demographic recession' not seen since World War One," *The Local It*, June 20, 2019, <https://www.thelocal.it/20190620/italy-is-in-a-demographic-recession-not-seen-since-world-war-one>; and Tobias Buck, "Eastern Germany on the brink of demographic collapse," *Financial Times*, June 9, 2019, <https://www.ft.com/content/05baa6ae-86dd-11e9-a028-86cea8523dc2>. See also "UNH Research Finds Shrinking Population in More Than a Third of Rural Counties," *University of New Hampshire Today*, February 6, 2019, <https://www.unh.edu/unhtoday/news/release/2019/02/06/unh-research-finds-shrinking-population-more-third-rural-counties>.

3.4 Population Growth as an Environmental Factor

Notwithstanding a consensus among environmental scientists, efforts by environmental advocates to link the size and growth of population with the associated impact on the environment have faded and overpopulation has been relegated to a peripheral issue in green circles.⁶⁵ The groundbreaking effort to calculate the potential boundaries of the natural resources present on the planet in *The Limits to Growth* was the first publication to systematically draw attention to the finite nature of the planet's natural resources and the challenges of unchecked population growth.⁶⁶ *Our Common Future* (also known as the Brundtland Report) was a subtle, but seminal call to pay attention to population growth within the framework of a new sustainability dialogue.⁶⁷ The report's authors drew attention to issues including the ability to choose one's family size; the interconnectedness of human actions and the environment; the interplay between poverty, development, and the environment; unsustainable rates of growth in parts of the world; the need for an informed public to foster support for difficult choices; and the complex and multi-faceted nature of population growth management. The authors astutely identified the need to overcome "sectoral fragmentation of responsibility" in the hope that with rising income and urbanization would come declining birth rates and changes in women's roles. More than thirty years later, while the concept of sustainable development has become widely accepted as a common global objective, the associated demographic implications appear to be forgotten.

In a 1988 interview, science fiction laureate Isaac Asimov called out the pressure population growth puts on the environment and the future risks of continued growth.⁶⁸ Six years later, in 1994, physics professor Albert Bartlett cultivated seventeen laws of sustainability, the first one being "population growth and/or growth in the rates of consumption of resources cannot be sustained".⁶⁹ Until his death, Bartlett continued to champion the idea that sustainable growth is

⁶⁵ Iris Alkaber and Nurit Carmi, "Is Population Growth an Environmental Problem? Teachers' Perceptions and Attitudes towards Including It in Their Teaching," *Sustainability* 11, No. 7 (2019), doi: 10.3390/su11071994.

⁶⁶ Meadows et al., *The Limits to Growth*.

⁶⁷ Gro Harlem Brundtland, *Our Common Future: The World Commission on Environment and Development* (Oslo: United Nations, 1987).

⁶⁸ Bill Moyers, "Isaac Asimov on His Faith in the Power of Human Reason," accessed July 23, 2019, <https://billmoyers.com/content/isaac-asimov-on-his-faith-in-the-power-of-human-reason/>.

⁶⁹ Albert A. Bartlett, "Environmental Sustainability," accessed July 23, 2019, <https://www.albartlett.org/articles/art1997aug16.html>.

impossible and presented a mathematical model to support this claim.⁷⁰ The 2005 UN Millennium Ecosystem Assessment identified population growth as a “principal indirect driver of environmental change,”⁷¹ and yet again, population growth and the environment did not assume a meaningful place in the resulting global conversation.

This dynamic is pervasive, even within the scientific community: approximately 4 out of 5 U.S. scientists recognize the strain population growth places on environmental resources but are unwilling to address it. The vast majority of them are simply unwilling to publicly make such a declaration.⁷² Researchers have attempted to identify the carbon footprint of humanity as well as of the individual or family unit; reduced reproduction has been shown to result in far more significant environmental benefits than any other lifestyle changes.⁷³ For instance, individuals are able to calculate their own carbon footprint online.⁷⁴ And yet, this calculation is focused on consumption, with recommendations about how to change consumption patterns. The business of reducing population size is left to academics, resulting in a gap in the public’s grasp of the collective impact of ecological footprint calculations.

4. Population Policy in Israel

Located at the cross-roads of Europe, Africa, and Asia, Israel is home to a wide range of habitats along with a noteworthy biodiversity of flora and fauna.⁷⁵ Israel’s rapid population growth has left a devastating mark on the environment.⁷⁶ The worst is yet to come. Historically, national planning efforts have

⁷⁰ Albert A. Bartlett, “Reflections on Sustainability and Population Growth,” in *Life on the Brink: Environmentalists Confront Overpopulation*, ed. Philip Cafaro and Eileen Crist (Athens, GA: University of Georgia Press, 2012), 29–40.

⁷¹ *Ecosystems and Human Well-being: Synthesis*, A Report of the Millennium Ecosystem Assessment (Washington, DC: Island Press, 2005), <https://www.millenniumassessment.org/documents/document.356.aspx.pdf>.

⁷² Robert Engelman, Yeneneh G. Terefe, Gaelle Gourmelon, Joyce Yang et al., *Family Planning and Environmental Sustainability: Assessing the Science* (Washington, DC: Wordwatch Institute, 2016), 40.

⁷³ Murtaugh and Schlax, “Reproduction and the carbon legacies of individuals,” 14–20.

⁷⁴ “Global Footprint Network,” accessed July 23, 2019, <https://www.footprintnetwork.org>.

⁷⁵ Alon Tal, “Going, Going, Gone: A History of Israel’s Biodiversity,” in *At Nature’s Edge, The Global Present and Long-Term History*, ed. Gunnell Cederlöf and Mahesh Rangariajan (New Delhi: Oxford University Press, 2018), 142–161.

⁷⁶ Daniel E. Orenstein, “Population growth and environmental impact: Ideology and academic discourse in Israel,” *Population and Environment* 26, No. 1 (2004): 41–60.

been undertaken with some degree of success to protect open spaces.⁷⁷ Building some 60,000 new homes every year continues to necessitate the further development of more open lands, with over 20 square kilometers of open space lost annually to development.⁷⁸ Israel's current TFR of 3.1 children per woman is, by far, the highest in the developed world. Should this rate remain constant, within a generation Israel will face a situation of crowding comparable to present-day Bangladesh.⁷⁹ Continued population growth must be carefully managed in order to avoid further destruction of the life-supporting ecological network along with a significant decline in basic social services and infrastructures.

Within the Israeli society, numerous sectors together create an aggregate identity while maintaining their idiosyncratic characteristics within the larger national framework. In this *multicultural* reality, population policies must be *multilateral* in their design to effectively reduce overall fertility rates. Both religion and community are particularly powerful influences on fertility norms within certain sectors.⁸⁰ In Israel, families that identify themselves as religiously observant in the Jewish religious traditions tend to have more children along with a larger ideal family size compared to Israelis who are less connected to religion.⁸¹ Among religious Muslim families, the phenomenon is less salient. And yet, across all sectors of Israel society large family preferences can be observed relative to OECD norms.⁸² Focusing on the associated environmental risks is unlikely to sufficiently raise consciousness about population growth's adverse effects sufficiently to influence family planning in Israel.⁸³ Developing a deeper and more nuanced understanding of the role of group ideology, economic motivations, and religion on personal procreation choices will be critical to constructing effective, sustainable population policies.

The country's history of pro-natal policies has profoundly influenced demographic dynamics: throughout the 1950s, 1960s, and 1970s the nation grew by 1 million new citizens each decade. Since the 1980s, as a result of increased fertility rates, along with the significant immigration from the former-USSR

⁷⁷ Amnon Frenkel and Daniel E. Orenstein, "Can urban growth management work in an era of political and economic change? International lessons from Israel," *Journal of the American Planning Association* 78, No. 1 (2012): 16–33.

⁷⁸ Michal Sorek and Idan Shapiro, eds., *Doch Matzav haTeva Yisrael 2016* [State of Nature Report Israel 2016] (Tel Aviv: HaMaarag, 2016).

⁷⁹ Ben-David, "Overpopulation and demography in Israel."

⁸⁰ Okun, "Religiosity and fertility," 475–507.

⁸¹ Landau, "Religiosity, nationalism and human reproduction," 64–80.

⁸² Ben-David, "Overpopulation and demography in Israel," 2.

⁸³ Carmi and Tal, "The perceived relationship," 1–16.

countries, Israel has grown by 1.5 million new citizens each decade.⁸⁴ Today, more than 9 million people live on a landmass of slightly more than 22,000 square kilometers, of which more than 16,000 square kilometers are desert. In addition to the colorful mosaic of Jewish immigrants converging from around every corner of the world, Israel also includes a wide spectrum of observance and practice among its Jewish, Christian, and Muslim citizens.

4.1 Demographic History of Israel

With high birth and death rates, pre-Mandate Palestine most closely resembled the first phase of the DTT. Development expedited by the colonial regime in the British Mandate triggered several characteristics typically found in the second phase of the traditional transition as the nation began to modernize. During these years much of the agricultural efforts focused on cultivating the land to provide enough calories for local residents while also managing the conflicts between the Jewish and Arab residents of the region. This was a period of high mortality rates with poorly developed healthcare and sanitation systems – consistent with the period and the region. While Zionist benefactors in Europe, like the Baron Rothschild, sent experts and technologies to advance development of Jewish communities in pre-Mandate Palestine, these did little to improve the lot of the Palestinian Arab majority. In short, Israel did not experience a classic nineteenth century Industrial Revolution technology shift like that found in other Western countries.

Emerging from its War of Independence, Israel rapidly embarked on a pathway to become a modern nation state, taking advantage of innovations other countries developed during their industrial revolutions. With the removal of the restrictive British immigration quotas after the war, Israel welcomed a steady stream of immigrants from around the world. These immigrants included Holocaust survivors, Jews forced to leave Arab countries, and inspired Zionists wanting to help build the Jewish State. This dramatic number of immigrants, after decades of severely limited immigration under the control of the British Mandate, expanded the local population in manner heretofore unknown. This massive influx of new arrivals also shifted Israel off a traditional DTT trajectory. Even as immigration boosted the Jewish population of Israel, the low birthrates

⁸⁴ Alon Tal, “C’sheYisrael Theyeh haTzafufah b’Yotair b’Olam ha’Mephutach” [When Israel Becomes the Most Crowded Developed Country in the World], *Haaretz*, September 9, 2017, <https://www.haaretz.co.il/opinions/.premium-1.4425796>.

(between 2 and 3 children per Jewish women) were seen by founding Prime Minister David Ben Gurion as problematic to future Jewish sovereignty in the disputed land.⁸⁵ The government, under Ben Gurion's direction, encouraged pro-natalist rhetoric and crafted pro-natalist policies focusing on a future with a significantly more robust Jewish population in Israel and an elevated role for women as "mothers".⁸⁶

Four factors that contributed to the decline in fertility rates across Israeli society, leading up to the establishment of the State, have been identified.⁸⁷ As a country comprised primarily of immigrants, many with strong cultural backgrounds and who initially remained in cloistered communities, absorption into the Zionist culture played a critical role. The longer new immigrants lived in Israel, the more acculturated they were by the newly emerging Israeli norms, in particular the relatively low levels of fertility. Education and social mobility brought greater awareness, access, and utilization of the available contraception options resulting in declining birth rates. Additionally, a younger generation after immigration began shifting away from traditional marriage patterns and family structures. This shift was observed in fewer arranged marriages and greater independence on the part of the children of immigrants as they came of age. Finally, religiosity influenced views about family size and acceptable contraception use. It is important to note that as Israel's secular majority dominated the political and societal dynamics, religious influence was much less pronounced. Ethnicity and class also affected family size preferences, making it difficult to accurately identify the role of religiosity in family size preferences.

Israel continues to promote a comprehensive and concerted national effort to increase natality among its Jewish citizens. This impulse can be attributed to numerous factors: a response to the decimation of the global Jewish community during the Holocaust; the religious edict to "be fruitful and multiply"; the desire to keep up with the rapidly growing local and regional Arab populations; and the fixation on a "war society" spawned by the ongoing Palestinian-Israeli conflict.⁸⁸

⁸⁵ Alon Tal, *The Land is Full: Addressing Overpopulation in Israel* (New Haven: Yale University Press, 2016), 79–81.

⁸⁶ Berkovitch, "Motherhood as a national mission," 605–619.

⁸⁷ Calvin Goldscheider and Dov Friedlander, "Patterns of Jewish fertility in Israel," in *Modern Jewish Fertility*, ed. Paul Ritterband (Leiden: Brill, 1980), 232–254.

⁸⁸ Dina Kraft, "Israel booms with babies as developed world's birth rates plummet. Here's why," *Christian Science Monitor*, December 14, 2018, <https://www.csmonitor.com/World/Middle-East/2018/1214/Israel-booms-with-babies-as-developed-world-s-birth-rates-plummet.-Here-s-why>. See also Landau, "Religiosity, nationalism and human reproduction," 64–80; Orenstein, "Population growth and environmental impact," 41–60; Daniel Sperling, "Commanding the 'be

The family unit was constructed as a central expression of patriotism, critical to the survival of the Jewish People, with a fixation on the role of the family at the national level.⁸⁹ Alongside men, who historically served the country in combat roles in the army, women were urged to do their part for the nation by having children.⁹⁰ Israeli women today are still raised in a pro-natal, family-oriented culture that values “family life,” a code word for having many children.⁹¹ Today, one’s entrée into adult society rests on parenthood; those without children are often deemed “selfish”⁹² or damaged and in need of “repair” through artificial reproductive technologies.⁹³

4.2 Population Dynamics in Israel

As mentioned, Israel is comprised of a widely diverse population. Its citizens include secular, Reform, traditional, modern Orthodox, traditional Orthodox, and ultra-Orthodox (i.e., Haredi) Jewish communities. In addition to secular and religious Arab Christian and Arab Muslim populations, two geographically distinct Bedouin communities (northern and southern or Negev), Druze communities, and a handful of other smaller religious minorities live in homogeneous communities dispersed throughout the country. Within the Jewish sectors, fertility rates are stable or rising,⁹⁴ even as the women’s average age at first birth is also rising.⁹⁵ By way of contrast, amongst Israel’s Arab minorities, in the Israeli Muslim, Christian and Druze sectors fertility rates have fallen dramatically and continue to drop.⁹⁶ Given the deeply personal nature of fertility decisions and

fruitful and multiply’ directive: Reproductive ethics, law, and policy in Israel,” *Cambridge Quarterly of Healthcare Ethics* 19, No. 3 (2010): 363–371, doi: 10.1017/S0963180110000149; Tal, *The Land is Full*; and Yuval-Davis, “Women and the biological reproduction of ‘the nation,’” 17–24.

⁸⁹ Berkovitch, “Motherhood as a national mission,” 605–619.

⁹⁰ Sperling, “Commanding the ‘be fruitful and multiply’ directive,” 363–371.

⁹¹ Leeat Granek, Ora Nakash, and Rivka Carmi, “Women and health in Israel,” *The Lancet* 389, No. 10088 (2017): 2575–2578, doi: 10.1016/S0140-6736(17)30563-9.

⁹² Daphna Birenbaum-Carmeli, “‘Cheaper than a newcomer’: on the social production of IVF policy in Israel,” *Sociology of Health & Illness* 26, No. 7 (2004): 897–924; Kraft, “Israel booms with babies.”

⁹³ Sperling, “Commanding the ‘be fruitful and multiply’ directive,” 363–371.

⁹⁴ Dafna Maor, “With fertility rising, Israel is spared a demographic time bomb,” *Haaretz*, May 29, 2018, <https://www.haaretz.com/israel-news/with-fertility-rising-israel-is-spared-a-demographic-time-bomb-1.6131135>.

⁹⁵ Avi Weiss, *A Picture of the Nation 2019* (Jerusalem: Taub Center for Social Policy Studies in Israel, 2019), 32, <http://taubcenter.org.il/pon-2019-eng>.

⁹⁶ Micahel Bachner, “Israel’s fertility rate is far higher than rest of OECD,” *Times of Israel*, March 14, 2018, <https://www.timesofisrael.com/report-finds-israels-fertility-rate-significantly-higher-than-rest>

the role religion and tradition play in driving fertility attitudes and behaviors,⁹⁷ policy in Israel must take into consideration the normative reality in the many religious sub-populations.

Specifically, within the Haredi, Orthodox and Southern Bedouin communities, adherence to community norms are strictly observed, including traditional gender roles (which are slowly changing), attire, foods, and employment practices. Both the Haredi and Southern Bedouin sectors, which exhibit the country's peak fertility rates, suffer from high rates of poverty. Applying conventional definitions and calculations for poverty are debatable in these sectors. Some argue that defining poverty by average income discounts the differences in lifestyle between the Haredi and secular communities.⁹⁸ For instance, Haredi society has developed extensive sharing economies within its tight-knit communities, with different economic values and priorities than those found in other sectors of Israeli. Haredi families live in concentrated communities allowing for use of public transit instead of private car ownership, thereby reducing their monthly expenses and the overall income necessary to support a family at a level deemed comfortable. Similarly, Bedouin living in the south of Israel still identify with traditional tribal structures, making a true economic picture of their situation within their societal context difficult to fully characterize.

In contrast to pockets of declining population in Europe,⁹⁹ not a single geographic region in Israel faces declining population numbers. Nonetheless, the majority of Israelis live in the central corridor of the country, resulting in megalopolis conditions sprawling out from Tel Aviv. Birth rates in the center of the country are comparable to those in the periphery. Israel's celebrated entrepreneurial spirit and start-up culture, together with religious identity, result in strong beliefs about the redemptive power of technology (and/or a higher being) and its ability to resolve challenges created by population growth, even in the face of irrefutable, discouraging trends.¹⁰⁰

-of-oecd/; and Hila Weissberg, "Israeli fertility rate highest in OECD," *Globes*, June 6, 2019, <https://en.globes.co.il/en/article-israeli-fertility-rate-highest-in-oecd-1001288665>.

⁹⁷ Michael Blume, "The reproductive benefits of religious affiliation," in *The biological evolution of religious mind and behavior*, eds. Eckart Voland and Wulf Schiefelhövel (Berlin: Springer, 2009), 117–126; and Lee Ellis, Anthony W. Hoskin, Edward Dutton, and Helmuth Nyborg, "The future of secularism: a biologically informed theory supplemented with cross-cultural evidence," *Evolutionary Psychological Science* 3, No. 3 (2017): 224–242, doi: 10.1007/s40806-017-0090-z.

⁹⁸ Dan Zaken, "Haredim aren't as poor as you think," *Globes*, December 17, 2018, <https://en.globes.co.il/en/article-haredim-arent-as-poor-as-you-think-1001265187>.

⁹⁹ Buck, "Eastern Germany on the brink of demographic collapse."

¹⁰⁰ Leonie Ben-Simon, "Overpopulation in Israel. Really?" *Israel National News*, February 2018, <http://www.israelnationalnews.com/Articles/Article.aspx/21749>.

Concerns about crowding as a result of the growing population historically were completely absent from the public discourse.¹⁰¹ The first signs of such disquiet, however, appear to be emerging. As Israel matures from its pioneering, nation-state building status and joins the ranks of the economically developed nations, the time has come to carefully consider competing demographic trajectories, apply lessons learned from other countries, and formulate a future-oriented, demographic policy.

4.3 Policy options for Israel

Childbearing is a personal decision; overpopulation is a national or global issue. In order to drive successful policy decisions, understanding the tension between individual motivations and national goals is essential. The personal choices each individual or family makes, together with all the other individual choices, result in an aggregate natality trend or pattern. As population size and density grow, the collective behaviors relating to fertility create a culture of natality. In attempting to shift fertility trends in Israel, policy makers have to reconcile two key factors: the intrinsic motivations of the individual to have (or not have) children; and the extrinsic signals from society, encouraging families to have many children. Understanding self-agency and personal efficacy allows policy makers to protect and respect the autonomy of the individual while crafting policy designed to shift individual behaviors that are fundamentally based on the preferences and desires of the individuals. In Israel, in particular, the influence of disparate communities and subpopulations adds a layer of complexity to the design of policy, requiring a balance between the needs of the nation, communities, and individuals. We argue that selecting the most efficacious policy approach requires a clear understanding of the economic, normative, and environmental influences present in Israeli society.

Economic policy considerations. Israel is the only OECD country with both a growing GDP and a TFR far beyond replacement levels. Israel's debt burden as a percent of GDP is already considered high and continues to grow, *inter alia* due to the low participation in the workforce among ultra-Orthodox and Israeli Arab communities.¹⁰² The 2018 Ministry of Labor, Social Affairs and Social Services report on the local employment market noted that the percentage of Arab

¹⁰¹ Maor, "With fertility rising"; Tal, *The Land is Full*, 1–12, 79–89.

¹⁰² Reuters, "As Israel's Population Booms, Could It Run out of Room?" *Ynetnews*, September 25, 2015, <https://www.ynetnews.com/articles/0,7340,L-4704144,00.html>.

women with Israeli citizenship employed is low (38.2%) though rising, having doubled in the last two decades. The Haredi male employment rate (50.2%), however, remains at a standstill and may in fact be slowly declining.¹⁰³

In both cases, these populations are typically employed in low wage-earning roles that are frequently part-time, with Israeli Arab women constituting the lowest wage earners in the Israeli economy.¹⁰⁴ In both sectors there is a large dependence on welfare entitlements with a relatively modest contribution to national tax revenues. This is a particularly salient point for population and economic projections, in that these two sectors demonstrate higher than average birthrates: Negev (or Southern) Israeli Arab and Haredi workers comprise 19% and 7% of the workforce in 2019, respectively, while comprising nearly 50% of the children aged 0–14 in Israel. This presents a significant challenge for the future of the Israeli economy and welfare rolls with the current status quo.¹⁰⁵

Since the mid-1960s Israel has provided an array of economic benefits to encourage natality, under the assumption that they would contribute to high fertility rates. These benefits include tax subsidies for working parents (predominantly mothers), day care subsidies, reduced working hours for new mothers, and government supported maternity and paternity leave.¹⁰⁶ Expanded child welfare payments, in particular when steadily increased after the first child, resulted in the creation of a culture of large families, with the child subsidy influencing local fertility.¹⁰⁷ Recently, the level of child allowances has been reduced significantly. Yet, other benefits remain that entice natality, including expanded maternity and paternity leave, significantly higher negative income tax for the working poor, exemptions from municipal taxes and military reserve service for large families, etc. In comparison to other countries, however, Israel provides a relatively lean package of child allowance benefits, with striking results. National economic policy discussions consistently keep the question of population growth and the challenges it places on the economic viability of the State as a peripheral topic on the country's political agenda. Indeed, many economists see population and GDP growth as inextricably linked.¹⁰⁸

¹⁰³ Lilach Baumer, "The Israeli Employment Market: a Timestamp," *Ctech by Calcalist*, August 1, 2019, <https://www.calcalistech.com/ctech/articles/0,7340,L-3767545,00.html>.

¹⁰⁴ Eytan Halom, "Study shows Israeli employment at record high, pay gaps remain," *The Jerusalem Post*, August 1, 2019, <https://www.jpost.com/Israel-News/Study-shows-Israeli-employment-at-record-high-pay-gaps-remain-597220>.

¹⁰⁵ Baumer, "The Israeli Employment Market."

¹⁰⁶ Tal, *The Land is Full*, 83–84.

¹⁰⁷ Cohen, Dehejia, and Romanov, "Financial incentives and fertility," 1–20.

¹⁰⁸ Orenstein, "Population growth and environmental impact," 41–60.

Normative policy factors. Israel's strong history of immigration has brought a wide array of ethnic backgrounds together in one country. While a blending of these ethnicities has occurred, there are still distinct differences in foods, music, traditions, ideal family sizes, and relationships which influence behaviors and attitudes. Income inequality creates dynamics in sub-population groups that are important to understand in relation to decisions around fertility.¹⁰⁹ Understanding the role played by religion, culture, and social norms is critical to developing population policies that are respectful of and attentive to the uniqueness and the sensitivities of each sub-population group in Israel. This array of population sub-groups, and the need to craft diverse, if not modular, population policies, makes Israel a model for numerous other countries with diverse demographic profiles.

The powerful influence of communal norms is particularly pronounced in terms of fertility patterns in Israel. Demographer Barbara Okun has identified the powerful role of social norms and pressures on an individual's family size within the national religious (i.e., Modern Orthodox) communities.¹¹⁰ Her research reveals the power of both overt and covert motivations, suggesting that within this sub-population, *what others do*, and perceptions of *what others think*, constitute powerful motivators to have more children. Similarly, immigrants from the former Soviet countries, who have historically preferred smaller families (i.e., one child) are shifting their fertility patterns to align with the social norm of Israeli families with at least three children, a shift that has occurred in just one generation following immigration.¹¹¹ Use of contraception during the early years of marriage has also been observed as strongly influenced by religious community norms.¹¹²

The power of societal norms can also be observed in the surprising shift away from contraception use in Israel and the resulting rise in unintended pregnancies.¹¹³ Astonishingly the only national contraceptive use survey in Israel was conducted in 1987–1988,¹¹⁴ making accurate assessments of contraceptive use impossible. Nonetheless, it appears that concerns about the long-term safety

¹⁰⁹ Ben-David, *Overpopulation and demography in Israel*, 5–8.

¹¹⁰ Okun, "Religiosity and fertility," 475–507.

¹¹¹ Evgenia Bystrov, "The second demographic transition in Israel: One for all?" *Demographic Research* 27 (2012): 261–298, doi: 10.4054/DemRes.2012.27.10.

¹¹² Wilder, "The contraceptive revolution in Israel," 70–91.

¹¹³ Gideon Alon, "Poll: Most Israelis Not Using Contraceptives," *Haaretz*, May 20, 2003, <https://www.haaretz.com/1.5354697>.

¹¹⁴ "World Contraceptive Use 2018," United Nations, Department of Economic and Social Affairs, Population Division, <https://www.un.org/en/development/desa/population/publications/dataset/contraception/wcu2018.asp>.

of hormonal contraception use and the absence of widespread awareness of non-hormonal forms of contraception (e.g., copper intrauterine device) have resulted in the declining rate of contraception use. This trend has been observed in commercial pharmacy sales data, albeit not validated officially, via collected data from the Ministry of Health and the country's health delivery cooperatives.¹¹⁵ At the same time, Israel leads the world in providing assisted reproductive technologies as part of the standard basket of health services provided, in striking contrast to the underfunded, or even unfunded, provisioning of birth control.¹¹⁶ In short, the macro-problems associated with crowding and high population densities appear to be relevant to individual fertility decisions.

Environmental policy factors. Much in line with the international tendency to disconnect environmental concerns from population growth, so too, has Israel yet to address the unsustainable ideology of continued growth within a finite eco system. As Israel's population grew ten-fold in 70 years, the damage to this tiny country's environment became egregious. A recently released, definitive report by government and non-government agencies, *The State of Nature in Israel*, documents the resulting loss of habitats critically endangering a range of species.¹¹⁷ Israel's total greenhouse gas emissions have increased steadily, despite modest per capita reductions attained.¹¹⁸ The effects can also be seen in surface water resources, landfill capacity and prevalence of noise pollution.¹¹⁹ As Israel's population is predicted to double over the next thirty years, the environmental consequences will become increasingly intolerable.¹²⁰

Addressing the pressures that population growth places on the State of Israel is complicated by a number of factors. For the Zionist vision it is axiomatic that Israel be a Jewish, democratic state, based on a solid Jewish majority. Historically,

¹¹⁵ Roni Bar, "Less and less women are taking the pill, and for a good reason," *Haaretz*, July 21, 2017, <https://www.haaretz.com/israel-news/.premium.MAGAZINE-less-and-less-women-are-taking-the-pill-and-for-a-good-reason-1.7539907>.

¹¹⁶ Daphna Birenbaum-Carmeli, "Thirty-five years of assisted reproductive technologies in Israel," *Reproductive Biomedicine & Society Online 2* (2016): 16–23, doi: 10.1016/j.rbms.2016.05.004; Birenbaum-Carmeli, "Cheaper than a newcomer," 897–924; Sperling, "Commanding the 'be fruitful and multiply' directive," 363–371; and Daniel Sperling and Yael Simon, "Attitudes and policies regarding access to fertility care and assisted reproductive technologies in Israel," *Reproductive Biomedicine Online 21*, No. 7 (2010): 854–861, doi: 10.1016/j.rbmo.2010.08.013.

¹¹⁷ Sorek and Shapiro, eds., *Doch Matzav haTeva Yisrael 2016*.

¹¹⁸ *Israel's Third National Communication on Climate Change*, prepared on behalf of the Ministry of Environmental Protection and submitted to the United Nations Framework Convention on Climate Change (2018), https://www4.unfccc.int/sites/SubmissionsStaging/NationalReports/Documents/386415_Israel-NC3-1-UNFCCC%20National%20Communication%202018.pdf.

¹¹⁹ Tal, *Land is Full*, 12–27.

¹²⁰ *Ibid.*

this necessitated strong natality to counter birthrates both among Israeli Arab citizens and in neighboring Arab countries, as previously discussed.¹²¹ The ongoing presence of representatives of religious parties within the Israeli government inextricably ties religion and the state together, thereby contributing to an official government policy that perceives procreation as sacrosanct. Israeli confidence in techno-salvation creates a sense that science and ingenuity can resolve any challenges, including those brought about by population growth.

The absence of consensus amongst scholars about the role of population growth on the environment in some circles leads to ambivalence.¹²² Citizens typically connect to the environment on a visceral level, with little interest in non-monetary valuation of the benefit received from local ecosystems, clean air or water. Predictably, individuals relate to the environment in a personalized manner based on a variety of factors including proximity to and use of nature. These relationships result in a range of different behaviors and opinions about the environment as well as a contrasting valuation of the ecosystem among individuals from different communities.¹²³ Together, these factors historically converged to push the dialogue about the impact of population growth on the environment and its effect on the future environmental well-being of Israel to the sidelines, if not off the national agenda completely.

This disagreement concerning P-E interactions can be divided into three schools of thought on how the two are related. The first focuses on the precise way population growth stresses the environment (i.e., in a negative and direct manner). The second identifies overconsumption of natural resources and the resulting waste as the core environmental stressors, which can be alleviated by reducing consumption. The third argues that proper economic and social policies, combined with planning and technical innovation, can relieve environmental stress. These perspectives compete in a *passionate* national debate that inhibits *dispassionate* engagement in a constructive national dialogue about P-E interactions, so critical for designing sound demographic policy.¹²⁴

¹²¹ Berkovitch, "Motherhood as a national mission," 605–619.

¹²² Daniel E. Orenstein, "Zionist and Israeli Perspectives on Population Growth and Environmental Impact in Palestine and Israel," in *Between Ruin and Restoration: An Environmental History of Israel*, ed. Daniel E. Orenstein, Alon Tal, and Char Miller (Pittsburgh, PA: University of Pittsburgh Press, 2012), 82–105.

¹²³ Tally Katz-Gerro and Daniel E. Orenstein, "Environmental tastes, opinions and behaviors: social sciences in the service of cultural ecosystem service assessment," *Ecology and Society* 20, No. 3 (2015), doi: 10.5751/ES-07545-200328.

¹²⁴ Orenstein, "Population growth and environmental impact," 41–60; and Orenstein, "Zionist and Israeli Perspectives on Population Growth," 82–105.

Concerns about the negative impacts on society resulting from over-crowding, however, are starting to enter the mainstream news cycle, with a strong focus on inadequate social infrastructures, as reflected in overcrowded hospitals, courts, highways and educational facilities. The environmental ramifications of population growth thus far appear to be less relevant for Israeli's day-to-day reality and the public's political priorities.¹²⁵ Indeed, the emergence of a P-E dialogue is only recent in Israel and it remains extremely limited for a number of reasons. The most common response of the community of urban and regional planners in Israel has been to view population growth as a given or a constraint to which planning and policies must adapt.¹²⁶ They have never seen the issue as a challenge requiring policy attention in its own right.

General Israeli awareness of population growth as a problem, until recently, has been minimal. Israelis do not see population growth as something that might cause them personal or collective harm, but rather as a sign of sign of successful Jewish sovereignty and something to celebrate.¹²⁷ Population growth is surely not perceived as a critical factor, responsible for local environmental degradation. Climate change, while widely recognized as a negative global trend, is not a threat that concerns most Israelis. Studying a small cohort of environmentally literate Israeli adults, Carmi and Tal explored the relationship between environmental knowledge and activism with concerns over population growth – or rather the lack thereof – in Israel. They found that even those Israelis sufficiently primed to engage in pro-environmental behaviors do not view population growth as a core environmental problem.¹²⁸ This conclusion stands in contrast to Macias' findings elsewhere in the world,¹²⁹ connecting the level of education and understanding of environmental risks with a willingness to sacrifice as a response to these risks.

Even still, recent research suggests that education may provide a valuable and effective tool to raise awareness about new environmental risks in Israel, such as population size. In particular when teachers are well informed and empowered to raise population issues in their classrooms as part of national

¹²⁵ See Sami Peretz, "Tzifuf Katlanit" [Deadly Density], *Haaretz*, July 31, 2019, <https://www.haaretz.co.il/opinions/.premium-1.7605803>; Dan Tamir, "Politika Yerukah zeh Mitzuyan, aval mah im Tzimtzum haYeuldah?" [Green Politics are Great, But What about Reducing Birth Rates?], *Haaretz*, September 3, 2019, <https://www.haaretz.co.il/opinions/.premium-1.7795182>.

¹²⁶ Orenstein, "Population growth and environmental impact," 41–60.

¹²⁷ Carmi and Tal, "The perceived relationship," 1–16.

¹²⁸ *Ibid.*

¹²⁹ Macias, "Risks, trust, and sacrifice," 1264–1276.

curricula, increased awareness about the subject was observed.¹³⁰ Education alone is hardly a magic bullet for resolving Israel's demographic challenges. But it is an important place to begin.

This of course does not change the fact that Israel's long-term, high birth rates are economically and environmentally unviable. Israelis are slowly coming to realize the need to address the balance between population size and resource availability as a result of the emergence of sustainable population or zero population groups in the national discourse. Nonetheless, typically, sustainable population advocates prefer to couch their policy recommendations in more sanitized terms which are considered more likely to influence individual decisions and framed to be less culturally abrasive. Such prescriptions include empowering young women educationally and professionally; expanding access to knowledge about family planning and contraception; and reducing subsidies which incentivize large families due to their tendency to encourage unemployment and perpetuate poverty.¹³¹

Changing the government's orientation in such areas will undoubtedly still produce powerful political pushback from sundry interest and religious groups. But assuming that Israel makes these policy alterations, other countries who face demographic situations similar to that of Israel's may be able to turn to the decision and policy making process enacted in Israel as an example of how to include population management in larger, pragmatic, sustainability population policy programs. Israel's experience can inform policy makers in fellow OECD/developed countries, while serving as a model for emerging countries facing high birthrates as their economic conditions improve.

5. Policies that nudge

This research suggests that implementing tools from behavioral economics, specifically “nudging” toward desired behaviors or empowering the self-agency of an individual, offer the most salient approaches for designing a sustainable population policy for Israel. As a wealthy country (i.e., OECD member), Israel has before it a number of possible tools (in addition to constraints) in order to reach a more sustainable demographic policy outcome. Tools that are associated with behavioral policy interventions, as opposed to traditional command

¹³⁰ Alkaher and Carmi, “Is Population Growth an Environmental Problem?” 17–18.

¹³¹ See generally the website of sustainable population advocacy NGO “Zafuf,” at www.population.org.il.

and control practices (e.g., one-child policy in China), are highly suitable for implementation in Israel. For example, Israel can consider shifting the default provision of contraception as a standard part of women's annual health check-ups, ensuring that birth control is fully covered by national health insurance, thereby normalizing its use. In addition, fertility treatment services can be curtailed (although not eliminated for couples without children), while abortion access can be eased. Raising the permissible marriage age from 18 to 20 can delay first births, especially in traditional societies, and contribute to smaller family size. Another less than subtle nudge involves the cancellation of birth grants provided after the birth of a second child. And of course, public service messages can emphasize the psychological and economic benefits of two-child families.

While these and other policy options are available for implementation in Israel, decision makers must first map the social and cultural reality on the ground. The first phase of an effective change in policy demands understanding that the drivers at the level of the individual can have limited efficacy at best. The individual's sense of powerlessness in the face of dominant, prevailing cultural or societal expectations hinders self-agency and one's ability to affect change in the face of established, countervailing norms.¹³² Self-agency, or the ability of the individual to "influence intentionally one's own functioning and life circumstances,"¹³³ is vital to ensuring the intentionality of an individual to act,¹³⁴ to influence or to control one's future. When facing difficulties or challenges, individuals need to believe their actions can make a difference, both as an individual and within the context of their community or society.¹³⁵

Through social comparisons, in order to conform to their society's expectations, individuals will tend to align their behavior with the collective to ensure their overall well-being.¹³⁶ In the absence of self-agency of the individual, collective efficacy (i.e., belief that a group can affect a societal change) may emerge. It is possible to empower collective efficacy much in the same way that self-agency

¹³² Katherine Trebeck and Jeremy Williams, *The economics of arrival: Ideas for a grown-up economy* (Bristol: Policy Press, 2019), 195.

¹³³ Albert Bandura, "Social cognitive theory for personal and social change by enabling media," in *Entertainment-education and social change*, ed. Arvind Singhal, Michael J. Cody, Everett M. Rogers, and Miguel Sabido (New Jersey: Lawrence Erlbaum Associates, 2003), 76.

¹³⁴ Albert Bandura, "Social cognitive theory: An agentic perspective," *Annual Review of Psychology* 52, No. 1 (2001): 1–26.

¹³⁵ Bandura, "Social cognitive theory for personal and social change," 75–96.

¹³⁶ Albert Bandura, "A social cognitive perspective on positive psychology," *Revista de Psicología Social* 26, No. 1 (2011): 7–20.

can be motivated.¹³⁷ Due to the “psychology of previous investment,” individuals are wont to change behaviors and are programmed to continue along the same trajectory of the collective even when their individual values differ.¹³⁸ In economic terms, this is tantamount to the “sunk cost” of a project that drives continued investment toward a defunct or less than ideal objective. The “project” of nation building is based upon previously invested efforts of childbearing, much of which is a result of the pro-natal policy interventions. This results in the current collective proclivity toward larger families.

Unfortunately, the norms of a community may create unnecessary barriers to realizing self-agency. For example, in the Jewish tradition, the commandment (*mitzvah*) to “be fruitful and multiply” contains a call for procreation. Orthodox Judaism traditionally views this as a male obligation to fulfill; men are not allowed to decline relations with their wives, although women are allowed to abstain as an acceptable form of birth control.¹³⁹ On the surface, this interpretation appears to empower women and endow them with meaningful self-agency to determine family planning. In reality, the predominance of large family size as a communal norm diminishes a woman’s individual self-agency, given high fertility’s normative power.¹⁴⁰ Okun has identified a tension in Israel’s sub-population groups between the norms of the community and the desires of the individual that result in reduced self-agency for women in decisions related to fertility.¹⁴¹ Recognizing the need for women to both be seen as individuals and members of the collective underscores this challenging dialectic at play.

Israeli society blurs the binary between “choice” and “non-choice” for adults to become parents. It is assumed that Israeli adults wish to become parents and at some phase will attain this “status,” regardless of marital status or sexual preference. The self-agency of the individual is compromised, if not erased, by this blurring. The result is that women, in particular, frequently experience pregnancy and even motherhood on “auto-pilot,” never having the space or tools to reconsider, evaluate, or analyze personal priorities and values. At least anecdotally from Donath’s research, many women became mothers

¹³⁷ Bandura, “Social cognitive theory for personal and social change,” 75–96.

¹³⁸ Tom Butler, “Colossus versus Liberty,” in *Life on the Brink: Environmentalists Confront Overpopulation*, ed. Philip Cafaro and Eileen Crist (Athens, GA: University of Georgia Press, 2012), 160–171.

¹³⁹ Bojana Pinter, Marwan Hakim, Daniel S. Seidman, Ali Kubba, Meera Kishen, and Costantino Di Carlo, “Religion and family planning,” *The European Journal of Contraception & Reproductive Health Care* 21, No. 6 (2016): 486–495, doi: 10.1080/13625187.2016.1237631.

¹⁴⁰ Okun, “Religiosity and fertility,” 475–507.

¹⁴¹ *Ibid.*, 475–507.

against their best intentions, so as to appease their partners and meet society's expectations.¹⁴²

Israel faces the daunting task of rethinking a long-standing pro-natal status quo while also carefully considering the possible policy tools that taken together will allow for implementation of a successful population policy. This is not only critical for the future of the State. It can also offer a new policy model for emerging economies with high birthrates.

6. Conclusion

Over the course of 300 years, the global population has grown from 700 million humans in 1700 to more than 7.7 billion in 2019.¹⁴³ Current estimates suggest that the current human population of planet Earth requires 1.75 times the Earth's current resources to survive at current consumption levels.¹⁴⁴ Present demands for infrastructure, housing, and food strain the carrying capacity of the planet. By 2100, the UN predicts that the population will increase by roughly 50%. It is unlikely that technological advances will be able to provide the necessary solutions to prevent significant damage to local ecosystems and urban environments. In particular, the region of the Middle East is in a zone identified as "resource deficit" indicating that consumption in the region has already increased well beyond the resources available in the region.¹⁴⁵

While individuals are the ones who ultimately make the deeply personal choice to have children, it is societies and the centralized governments who bear the responsibility for preserving the natural resources and social infrastructure for a sustainable future. Sustainable development, as defined by the Brundtland Commission, is predicated on the balance between the needs of the present and the ability of future generations to meet their own requirements. Israel's experience suggests that sustainable growth, in the long run, may not be possible.¹⁴⁶

¹⁴² Orna Donath, "Regretting motherhood: a sociopolitical analysis," *Signs: Journal of Women in Culture and Society* 40, No. 2 (2015): 343–367, doi: 10.1086/678145.

¹⁴³ "World Population Prospects 2019," United Nations, Department of Economic and Social Affairs, Population Dynamics, <https://population.un.org/wpp>.

¹⁴⁴ "Global Footprint Network."

¹⁴⁵ Denise Lu, "We would need 1.7 Earths to make our consumption sustainable," *Washington Post*, May 4, 2017, <https://www.washingtonpost.com/graphics/world/ecological-footprint/>.

¹⁴⁶ Bartlett, "Reflections on Sustainability and Population Growth," 29–40; Albert A. Bartlett, "The meaning of sustainability," *Teachers Clearinghouse for Science and Society Education Newsletter* 31, No. 1 (2012): 1–14.

Protecting the environment is a national and inter-generational responsibility that requires the participation of billions of individuals. As the central role of population stability in any future strategy of global sustainability becomes increasingly clear, policy makers must view individuals as critical stakeholders in their environmental efforts who can contribute enormously by changing fertility patterns. At the same time, in the foreseeable future there is little to suggest that environmental protection *per se* will constitute sufficiently compelling motivation for people to change their behavior and influence their family planning.¹⁴⁷

Israel can serve as a case study about how to nudge individuals toward behavior that will ultimately result in reduced population growth rates – growth rates aligning more closely with the limitations of the planet’s available natural resources. Specific measures adopted can provide a road map to developing countries as they begin to develop and shift to a more Western, consumer-oriented economies. And as larger developed countries, such as Canada, Australia and the U.S., begin to feel the negative effects of their mounting population pressures and seek slower demographic growth rates, policies adopted in a Western society like Israel may well be germane. It is critical that we recognize and acknowledge the devastating environmental results that eventually accompany rapid population growth. Acknowledging this ineluctable reality constitutes a vital next step in connecting the objectives of sustainability with population management policies.

Unfortunately, like so many problems with “commons” dynamics, it is unlikely that greater public awareness about the population-environment nexus alone will affect individual motivations and actual fertility decisions. People ultimately opt to increase their own utility, especially when the only thing at stake is an amorphous, imperfect ecological future that is difficult to envision and easy to rationalize away. While the environmental context should not be forgotten, only by convincing the public that its own wellbeing will be enhanced by replacement level fertility will meaningful progress be made in reaching sustainable demographic dynamics on an ever-crowded planet.

¹⁴⁷ Audhesh K. Paswan, Francisco Guzmán, and Jeffrey Lewin, “Attitudinal determinants of environmentally sustainable behavior,” *Journal of Consumer Marketing* 34, No. 5 (2017): 414–426, doi: 10.1108/JCM-02-2016-1706.

THE TRANSFORMATION OF GERMAN CONSUMER COOPERATIVES AFTER THE SECOND WORLD WAR

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Abstract

In Germany, as in other parts of Europe, workers faced social and political challenges in the process of industrialization. Consumer cooperative societies, or coops, emerged at the end of the nineteenth century as an answer to these challenges. As self-help organizations of workers, they developed into a stable pillar of the German labor movement. In 1932 they counted four million members. After 1945, under Allied supervision, “denazified” coops helped to reconstruct Germany, which was then divided into two opposing political camps. After the war, former victims of the Nazi regime, perpetrators of Nazi crimes, and bystanders all preferred to avoid discussing the Nazi past. Reconstruction in both German states focused on rapidly restoring the war-damaged economy, while ignoring the other burdens of the Nazi past. Most of today’s discussion of coops’ post-war reconstruction in Germany centers on economics. Due to various historical interrelations, critical discussion of the burdensome past remains buried. In this paper, I reflect on the transformation of the consumer cooperatives during and after the Second World War, based on archival sources documenting the denazification of the Hannover Consumer Cooperative Society in the British occupation zone and the restitution of property it lost under Nazi rule. I argue that despite the nearly complete demise of German consumer cooperatives after reunification in 1990, the buried history of how they handled the Nazi past should come to light.

Keywords: Germany; consumer cooperative societies; Konsum; coop AG; restitution; Nazism; Cold War

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Introduction

After their destruction under the Nazi regime, consumer cooperative societies did not succeed in regaining the importance they had in the time before and after the First World War. In Western as well as Eastern Germany, consumer cooperative societies had to accept bitter defeat [...]. The disaster that befell the coops proves that their legal form was not a random event. As the Equitable Pioneers of Rochdale believed, a cooperative society cannot be run as a for-profit company.¹

Following their infiltration and liquidation under the Nazi regime, German consumer cooperatives were revived, only to face another transformation, this time under the political constellations of the Cold War.² After the Second World War, the coops were taken over by the Social-Democratic Party in West Germany. In East Germany, the dogma of the planned economy determined how the coops' past was handled. However, on both sides of the ideologically divided Germany, the coops' collaboration with the Nazi regime and their intentional or unintentional support for it were one way or another left behind in history and memory.

Under the Nazi regime, property belonging to consumer cooperatives in an estimated value of 500 million Reichsmarks (RM) was gradually transferred to the Nazi machine.³ In order to preserve themselves economically, German consumer cooperative societies somehow adapted themselves to the Nazi political system and to the tasks of supplying goods to the German population and fulfilling war-related and political aims. Even though exceptional acts of resistance occurred,⁴ the German coops were all but eliminated or privatized by

¹ Burchard Bösche and Jan-Frederik Korf, *150 Jahre Konsumgenossenschaften in Deutschland. 100 Jahre Zentralverband deutscher Konsumgenossenschaften e.V.* (Hamburg: Stern'sche Druckerei, 2003), 51.

² Brett Fairbairn, "Wiederaufbau und Untergang der Konsumgenossenschaften in der DDR und in der Bundesrepublik 1945 bis 1990," in *Internationale wissenschaftliche Korrespondenz zur Geschichte der deutschen Arbeiterbewegung* 34, No. 2 (June 1998): 198.

³ By the term Nazi machine, I refer to the merging of tangible assets and intangible values that occurred in a plethora of National Socialist organizations, in accord with the so-called leader principle (*Führerprinzip*). Along with the restitution of tangible assets after 1945, reconstruction required reaffirming the values with which the organizations had been identified before 1933. Economic, social and political aspects were tightly interwoven in the history of the consumer cooperatives.

⁴ One exceptional act of resistance to the Nazis consisted of the founding of "transfer companies" (*Auffanggesellschaften*) as branches of the coop's source of supply, the Wholesale Company (Großeinkaufsgesellschaft, GEG) during the forced liquidation of the coops after 1936. In the Memorandum of the German Central Association of Consumer Cooperative Societies

1941. After that, their successor organizations produced goods with the help of forced laborers. The goods they produced moreover helped sustain the concentration camps. Therefore, in the twelve years of National Socialism, German coops and their members, who had previously followed the so-called Rochdale principles⁵ of worker solidarity, experienced the erosion of their high-minded intangible values by the encroachment of Nazi ideology. Furthermore, in the labor environment of the coops, perpetrating, opposing, being a bystander and benefiting were intertwined during the Nazi regime. The coops had served as a society-reforming instrument before the Second World War and moreover performed a strategic supply function during the war. To this day, the dominant narrative of the memory culture emphasizes the persecution, obstruction and intimidation⁶ of the coops, suggesting that during the Third Reich, the consumer cooperatives were no more than victims of Nazi Germany.

Even in recent years, the contributions of the nazified coops to the German war economy and to crimes like forced labor have barely been discussed.⁷ We can speak here about an astonishing lack of interest in how post-war transition

(Denkschrift des Zentralverbandes deutscher Konsumgenossenschaften) of 1950, the founding of these companies was already viewed as an act of resistance to the Nazis at that time. See Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 882/8, Niedersächsisches Landesarchiv Hannover.

⁵ In 1844, 28 weavers founded one of the most well-known coops in Rochdale near Manchester in Great Britain – the Rochdale Society of Equitable Pioneers. The Rochdale Pioneers are famous for having designed practices that later became the Rochdale principles: open membership, democratic control, distribution of surplus in proportion to trade, payment of limited interest on capital, political and religious neutrality, cash trading and promotion of education. Ever since 1895, maintaining this set of principles has been a requirement for membership in the International Co-operative Alliance. To this day, the Rochdale principles are the foundation on which coops operate worldwide. Brett Fairbairn, *The Meaning of Rochdale: The Rochdale Pioneers and the Co-operative Principles* (Saskatchewan: Centre for the Study of Co-operatives, 1994).

⁶ Erwin Hasselmann, *Geschichte der deutschen Konsumgenossenschaften* (Frankfurt am Main: coop Verlag, 1971); Karl Ditt, “Die Konsumgenossenschaften im Dritten Reich,” in *Internationale Korrespondenz zur Geschichte der deutschen Arbeiterbewegung* 23, No. 1 (March 1987): 82–111; Gert-Joachim Glaesner, *Arbeiterbewegung und Genossenschaft. Entstehung und Entwicklung der Konsumgenossenschaften in Deutschland am Beispiel Berlins* (Göttingen: Vandenhoeck & Ruprecht, 1989); Ulrich Kurzer, *Nationalsozialismus und Konsumgenossenschaften. Gleichschaltung, Sanierung und Teilliquidation zwischen 1933 und 1936* (Pfaffenweiler: Centaurus, 1997); Hans Pohl, “Die Rekonstituierung der konsumgenossenschaftlichen Organisation nach dem Zweiten Weltkrieg” in Hans Pohl, *Wirtschaft, Unternehmen, Kreditwesen, soziale Probleme. Ausgewählte Aufsätze*, VSWG-Beihefte No. 178/1 (Stuttgart: Franz Steiner, 2005), 373–381; Hans Pohl, *Aufstieg und Niedergang der deutschen Konsumgenossenschaften* (Stuttgart: Franz Steiner, 2007).

⁷ Jan-Frederik Korf, *Von der Konsumgenossenschaftsbewegung zum Gemeinschaftswerk der Deutschen Arbeitsfront: Zwischen Gleichschaltung, Widerstand und Anpassung an die Diktatur* (Norderstedt: Books on Demand, 2008); Wilhelm Kaltenborn, *Schein und Wirklichkeit. Genossenschaften und Genossenschaftsverbände. Eine kritische Auseinandersetzung* (Berlin: Das neue Berlin, 2014); Mi-

and restitution were performed and how they impacted the post-war development of the German coops, if they did at all. This lack of interest reflects how deeply repressed the contributions of German labor organizations to the Nazi regime were in the memories of the post-war organizations that succeeded them.

Coming to terms with the Nazi past of the German coops requires us to reappraise the pathways they chose during and after the Third Reich.⁸ This needs to happen from a perspective that questions the initial post-war narrative, which reflected the “patterns of excuse” that were typical of the post-war generation.⁹ Historical authenticity and conscious public acknowledgment of guilt are required for successfully dealing with the past. Therefore, I aim to encourage a historical dialogue¹⁰ on how the Nazi past of German consumer cooperatives was made “bearable.”

In order to fill the gap in the literature, I aim to describe the organizational transformation of the coops in the post-war years. I regard the organizations that pursued the restitution and denazification process as transitional entities. In the first part of this paper, I address the post-war reconstruction of the coops in the British occupation zone from the late 1940s until the mid-1950s, a period which saw them denazified, but which at the same time downplayed their implication in Nazi crimes. On the macro-historical level, how was the reconstruction of the coops framed by the East German-West German duality?

In the politically divided post-Nazi Germany, the refusal to critically investigate Nazi crimes was characteristic of large parts of the population and social groups, including academia.¹¹ For the consumer coops in both parts of Germany,

chael Prinz, “German Co-operatives: Rise and Fall 1850–1970,” in *A Global History of Consumer Co-operation since 1850: Movements and Businesses*, ed. Mary Hilson et al. (Leiden: Brill, 2017).

⁸ There is a need for reappraisal of the roles of other parts of German society during the Nazi regime, as has recently been done for dentists: See “Bundespressekonferenz: Zahnärzte im Nationalsozialismus, November 28, 2019,” on the homepage of the Institute of Medical History, Theory and Ethics, Uniklinik RWTH Aachen, <https://www.ukaachen.de/kliniken-institute/institut-fuer-geschichte-theorie-und-ethik-der-medizin/aktuelles/news/artikel/bundespressekonferenz-zahnaerzte-im-nationalsozialismus.html>.

⁹ Sebastian Brünger, *Geschichte und Gewinn. Der Umgang deutscher Konzerne mit ihrer NS-Vergangenheit* (Göttingen: Wallstein, 2017).

¹⁰ Historical dialogue and accountability are a growing field of advocacy and scholarship that encompass efforts to come to terms with the past. They are tools for achieving reconciliation and promoting democracy. This field places special emphasis on reaching new generations and considering how the meaning of the past changes with the passage of time. See “What is Historical Dialogue?” on the homepage of the Institute for the Study of Human Rights, Columbia University, www.humanrightscolumbia.org/ahda/what-historical-dialogue.

¹¹ The case of the sociologist Hanna Meuter, who in 1948 publicly expressed regret for the Holocaust, was something of an exception to the rule. We can say that the Nazi past was examined more

the silence about the crimes and collaboration allowed them to claim victim status. In the Soviet occupation zone, this tendency was even greater than in the West because the coops were forcibly integrated into the planned economy. Britain was the original home of the cooperative movement and British influence was decisive in the reconstruction of the German coops in all of the Western occupation zones. Therefore, it will be useful to examine an example of a coop from the British occupation zone.

In order to frame the specific reconstruction and denazification experiences I present, in the first part of my paper I look at the economic and political adaptation and subsequent integration of the coops into the National Socialist war economy, as well as their later demise after Germany was reunified. In the light of this “special German path,”¹² I argue that what I call a “missed new beginning,” when the chance to confront the Nazi past was passed up, contributed to the demise of the coops at the time of reunification.

In the second part of my paper, I present my micro-historical research into the denazification of the Hannover Consumer Cooperative¹³ in Lower Saxony, then in the British occupation zone, and its efforts to obtain restitution of property it lost under the Nazi regime. I shed light on the Hannover coop’s reconstruction and denazification, which were its main challenges in the post-war period. It is important to note here that the historical sources I used strongly reflect the self-image of the coops making claims for restitution, which saw themselves as victims of persecution by the Nazi regime. Thus, in order to avoid taking on their “victim perspective,” I aim to focus on the claimants’ interactions with the occupation authorities as well as their situation in society.

intensively in the humanities than, for example, in the natural and economic sciences. Breaking the silence on the complicity of individuals in Nazi crimes as well as concrete experiences of persecution started with uncomfortable questions posed by the student movements of the 1960s.

¹² Drawing on the debate over the existence of a so-called “special German path” (*Sonderweg*), I use the term here to underline that further examination of the development of German consumer cooperatives in the twentieth century is required. Although the historians agree that there is no “standard” path of national development, because every nation develops in the pursuit of different interests, I argue that the term is helpful because it highlights the political, societal and historical (dis)continuities in the development of the German consumer cooperative movement.

¹³ The sources I used in my research include 95 files of the Hannover Consumer Cooperatives concerning the restitution of its retail stores in the period from 1948 to 1962. These files are archived in the Lower Saxony State Archives, division Hannover (Niedersächsisches Landesarchiv Hannover, hereinafter NLA HA), in the collection Nds. 720 Hannover Acc. 2009/126. Furthermore, I have reviewed the denazification files of former Nazi-period leaders of the Hannover coop, found in collection Nds. 171 Hann. Concerning the Hannover Coop’s extensive property holdings, I have reviewed files in the Federal Archives in Koblenz (Bundesarchiv Koblenz, hereafter BArch Koblenz) in collection Z 36.

Recognizing that the German coops nearly totally disappeared in the 1990s, my aim is to examine how the challenge of rebuilding consumer cooperatives as social and economic self-help organizations was managed locally after the Nazi period. Based on a historical study of the Hannover coop in the post-war era, I discuss how the “difficult legacy” of its Nazi past was handled. I hypothesize that critical confrontations with the “dark years” were avoided during the transformation period and that the legacy of those years still remains buried in the history of the German coops.

The Role of the Nazi Past in the Nearly Complete Demise of the German Coops in the 1990s

Post-War Reconstruction and the German-German Silence

It became evident in the mid-1950s that the transition from the Nazi era and adaptation to the rapid changes taking place in the two German post-war societies were difficult for the cooperatives.¹⁴ The aim of the Allied governments to contribute to the denazification of German society by re-establishing the consumer cooperatives obviously failed. This happened even in the British occupation zone, where the authorities were inspired by the experiences of the British cooperative movement. It was already evident by the end of 1940s that the complete denazification of West German society was neither realizable nor popular. Around ten million Germans had been members of the Nazi party, the NSDAP (Nationalsozialistische Deutsche Arbeiterpartei). Accordingly, a large part of the population was potentially affected by denazification. Furthermore, in view of the urgent need to rebuild lines of supply, the leaders of the coops were essential personnel and thus could not be ousted in the course of denazification. The failure of denazifying the coops in the Western occupation zones only seemed to be different from the outcome of the policies of resocialization applied in the Soviet zone. The former NSDAP members in East Germany were legally excluded from leading positions in the consumer cooperatives, but so were the coops’ former social democratic leaders. This produced yet another injustice.

Although they remained in place in the West and were purged in the East, the coop leaders’ entanglements with the Nazi regime were met with “communicative silence” in both halves of Germany. A historic opportunity to authentically reconnect with traditional values was missed. The silence had a deep impact.

¹⁴ Prinz, “German Co-operatives,” 257.

After the Nazis were defeated, the cooperative concept was discredited in both the East and the West. In addition, due to Nazi persecution of the pre-war coop leadership, generational change in the leadership was interrupted, contributing to a delay in the modernization process. Bringing on new leadership was an urgent matter when the standard of living of the former coop members was rising and a revolution was taking place in consumer behavior.

The East-West division of Germany certainly influenced these developments. But did the consumer cooperatives lose their ability to contribute to social change only because of the duality of German society? In West Germany, this loss became evident after the rise of the social movements of the 1960s. Although the new movements for better environmental protection and the emancipation of women celebrated ideas of broad participation, social reform and mutual self-help that were principles of the coops, as institutions of the old, pre-war social movements the coops no longer connected people.¹⁵ Obviously, the coops' original aim of transforming society and freeing the individual from the "fetters of capitalism" had been lost in the wreckage of the war. I argue that the challenges faced by the coops require further research. This research has to draw on the post-Third Reich history of labor and the effects of Westernization and Sovietization on the denazified German labor environment. It must also take into account economic and political changes in the post-war years, like rising living standards and consumerism.

Westernization vs. Sovietization

In the Western occupation zones, the problem of handling the Nazi past was "solved" by focusing on economic priorities and buckling down to the work of material reconstruction. This "escape into building the future" was typical of the post-war years. At that time, important aspects of German guilt were met with silence.¹⁶ By the middle of the 1950s, the post-war coops had succeeded in rebuilding their business networks. In general, this would not have been possible without the help of restitution laws issued in 1945 in the Soviet occupation zone and in 1947 by the Allied occupation authorities.

In the German Democratic Republic (GDR), there was a deep cleansing of "fascists" from the cooperatives, which were there known as Konsum (from

¹⁵ Fairbairn, "Wiederaufbau und Untergang," 198.

¹⁶ Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: W. W. Norton, 2000), 87.

Konsumgenossenschaft – consumer cooperative). The GDR coops experienced an ideological cleansing of “mature” social democrats and unwanted dissidents.¹⁷ Then the operations of the Konsum were dictated by the central economic plan. Consequently, when civil rights and liberties were once again restricted in communist East Germany after the catastrophe of National Socialism, there was no space for the coops to distance themselves from their past entanglement with Nazi politics or to rebuild themselves in line with their former traditions. The GDR was effectively Sovietized. Moreover, the intra-German border was the front line of the Cold War. The effect of this political constellation was dystopian for the coops on both sides of Germany. As Fairbairn has pointed out, “For one Germany, the consumer cooperatives were too capitalistic, for the other too socialist.”¹⁸ Developments in the two Germanys during the post-war era of reconstruction covered up the Nazi past like a blanket.

Before the authorities in the Western occupation zones got around to restitution, Directive 176 of the Soviet Military Administration, issued in 1945 in the Soviet zone, mandated an accelerated restitution of the property of the coops that had been transferred to private persons, institutions and suppliers after 1933.¹⁹ The importance of consumer cooperatives in the Soviet zone was greater in comparison to the Nazi era and their situation in the Federal Republic of Germany (FRG). However, the coops’ commercial status did not really fit into the socialist system. They were tolerated because the economy needed them, and there was a strong motivation for ordinary citizens to join them as members. The Konsum became the second most important retailers in the GDR after the Handelsorganisation (HO), which was owned and centrally managed by the GDR state. However, the position of the coops in the GDR remained unsettled. The communists regarded them as a suitable platform for reaching beyond the workplace to influence families. At the same time, although they were fully integrated into the planned economy, they were accused of being deficient in the political work that was the duty of all organizations in the communist state.²⁰ The

¹⁷ This happened to the consumer and building cooperative in Leipzig, when in 1949, the so-called Volkshaus group of Social Democrats was dismantled in a famous trial. Fairbairn, “Wiederaufbau und Untergang,” 174.

¹⁸ *Ibid.*, 197.

¹⁹ Volker Beuthin et al., eds. *Genossenschaftsrecht der SBZ und DDR (1945–1990). SMAD-Befehle, Gesetze, Verordnungen und Musterstatuten* (Göttingen: Vandenhoeck & Ruprecht, 1997), 5–15.

²⁰ Jan Bösche, *Die Konsumgenossenschaften in der Wende von 1989/90. Von der Plan- zur Marktwirtschaft am Beispiel der Genossenschaft Sachsen-Nord / Eilenburg* (Norderstedt: Books on Demand, 2007), 17, https://www.kaufmann-stiftung.de/documents/Konsumgenossenschaften_Wende_von_1989_90.pdf.

narrative of a second victimization, this time by the socialist system, overshadowed any possible critical reflections of the coops' Nazi past in such a powerful way that their activities were essentially forgotten.

The so-called *Wirtschaftswunder*, the reconstruction of the West German economy from nothing, was an impressive feat.²¹ As applied to the West German coops, the theme was what Mooser called the "organizational wonder."²² This achievement might astonish us after we take a closer look at the economic-political subjugation of the coops under Nazism and later, their complete integration into the National Socialist war economy.

Self-Preservation During the Nazi Era

The transfer of the tangible property of the coops to the Nazi machine was a gradual process. During the economic crisis of the early 1930s, the coops were slandered by anti-cooperative propaganda. In 1933, due to the danger facing the whole economy, the Nazis' objective of a rapid and total elimination of the coops turned out to be a "utopian" dream. Beginning in 1934, the National Socialist Combat Alliance for the Commercial Middle Classes (Nationalsozialistischer Kampfbund für den gewerblichen Mittelstand – NS-Hago)²³ agitated unsuccessfully with the Reich's Ministry of Economics, the Reich Trade Group, and the leadership of the German Labor Front (Deutsche Arbeitsfront, DAF)²⁴ for immediate privatization of the coops.²⁵ Later on, the difficulty the war economy was having in supplying the German civil population with essential goods made a rapid takeover impossible. The National Socialist persecution of the coops had to walk the line between propagandistic bombast on the one hand and avoiding totally crippling the system of supply on the other. From a political-economic perspective, the development of the cooperatives was shaped by this tension since the crisis of the 1930s.

²¹ Fairbairn, "Wiederaufbau und Untergang," 192.

²² Josef Mooser, *Arbeiterleben in Deutschland 1900–1970. Klassenlagen, Kultur und Politik* (Frankfurt am Main: Suhrkamp, 1984), 204.

²³ This Nazi organization represented small businessmen and was the main actor in combating the competition from the consumer cooperative societies. Ulrich Kurzer, *Nationalsozialismus und Konsumgenossenschaften. Gleichschaltung, Samierung und Teilliquidation zwischen 1933 und 1936* (Pfaffenweiler: Springer, 1997), 158–159.

²⁴ In early 1933, this one National Socialist trade union replaced all former trade unions.

²⁵ At the end of 1934, there were 3,281,400 coop members (compared to 3,654,402 in 1932). The coops' total revenue decreased from 1.1 billion RM in 1932 to 660.1 million RM in 1934. Erwin Hasselmann, *Geschichte der deutschen Konsumgenossenschaften* (Frankfurt am Main: Knapp, 1971), 472.

In the theory of the social economy, appropriating the coops' tangible assets implied the gradual obsolescence of their intangible capital, such as the principles of solidarity and self-help. The process meant the discrediting of the entire concept of the cooperative. Around 1936, so-called transfer companies (*Auffanggesellschaften*) were founded as branches of the Wholesale Company (Großeinkaufsgesellschaft, GEG).²⁶ In practice, this was an exceptional form of resistance to the forced liquidation. The new form of transfer companies allowed the former coops to continue on as self-managed local organizations until 1941. In the end, however, their remaining assets were definitively transferred to a new entity, the Gemeinschaftswerk, which was established to receive them.²⁷

Despite *Gleichschaltung*, the submission of all organizations to the ideology and totalitarian control of the Nazi state, the coops served as a shelter for members of the resistance until 1936.²⁸ Still, they were always under pressure from local Nazi leaders who pursued a mission to remove unwelcome "Marxist elements" from the consumer coop networks. However, in many cases local Nazi leaders were interested in maintaining the coops in operation for personal reasons. The Reich's Ministry of the Economy found that development unsatisfactory, which resulted in the Nazi liquidation law of 1935.²⁹

In Hannover, the transfer company provided a solution to handle this forced liquidation. Some of the stores were sold to their former employees, whereas the

²⁶ The Großeinkaufsgesellschaft was founded in 1894 as a manufacturing and food production coop in order to supply the individual cooperatives and support the coops' concept of social reform. As the coops' wholesaler, the GEG was nazified in 1933 and began doing business with private companies in 1935.

²⁷ This happened according to the Nazi law *Verordnung über die Anpassung der verbrauchergenossenschaftlichen Einrichtungen an die kriegswirtschaftlichen Verhältnisse* [Ordinance on the Adaptation of Consumer Cooperative Institutions to War Economic Conditions] of February 18, 1941. The Gemeinschaftswerk was a company owned by the DAF that consisted of 135 wartime supply networks (*Versorgungsringe*). The aim of the supply networks was to establish their holding company, the Gemeinschaftswerk, as a Europe-wide consumer goods group. Jan-Frederik Korf, *Von der Konsumgenossenschaftsbewegung zum Gemeinschaftswerk der Deutschen Arbeitsfront: Zwischen Gleichschaltung, Widerstand und Anpassung an die Diktatur* (Norderstedt: Books on Demand, 2008), 182–186.

²⁸ Prinz, "German Co-operatives," 252.

²⁹ The so-called Nazi liquidation law of May 21, 1935 forced about one third of the metropolitan consumer cooperatives to liquidate themselves. These urban cooperatives presented the most potential for resistance to Nazi rule. Although the self-organized liquidations meant the destruction of a substantial part of the consumer cooperative movement, this "solution" was actually a compromise. It distracted the attention of the Nazis from the wholesaling company GEG, which was the "soul" of the consumer cooperatives.

most prominent shops were handed over to the control of local Nazi leaders.³⁰ This strategy for survival was retrospectively classified as an act of protest in the sense that it expected and prepared for a future after the Nazi regime. But in fact, after 1945, this expectation turned into disappointment. In the first place, after 1945, the stores were being returned on a “volunteer” basis. This was because their privatization under the Nazis was not recognized as an act of protest nor as an expropriation of property subject to restitution. Furthermore, the Hannover case shows that the nazification of the purchasers was underestimated. Rarely was there any willingness to return the stores to the coops. The coops’ strategy of resilience in the face of the Nazi regime turned out to be a disadvantage during restitution proceedings. This was due to the fact that the consumer cooperative societies did not openly oppose National Socialism, but rather chose to adapt to it, mainly for economic self-preservation. The restitution proceedings did not provoke a critical discussion of the past in post-war society. Except among the so-called “hibernators”³¹ who had survived in niches during the Nazi regime, the infiltration of the coops by National Socialist ideology had resulted in lasting alienation from the principles of the consumer cooperative movement expressed by the Rochdale pioneers.

A Missed Chance for a New Beginning

A memorandum of the German Central Association of Consumer Cooperative Societies (Denkschrift des Zentralverbandes deutscher Konsumgenossenschaften) from 1950³² reflects how complex the situation was. The memo was prepared in order to illustrate Nazi persecution and substantiate the coops’ right to restitution of the stores privatized by the transfer companies after 1936. It was meant to support “difficult” restitution cases in the British and U.S. occupation zones where store purchasers refused to voluntarily return their stores to the coops.

In the memorandum, the Central Association equated the Nazis’ mistreatment of the consumer cooperatives with the early persecution of the Jews. The

³⁰ In Hannover, the most prominent store in the central district (Hildesheimerstrasse 7) as well as two shops in highly frequented working-class areas (Podbielskistrasse and Berkhusenstrasse) were sold to the local and regional Nazi executives of the coop, Fritz Sohns and Willy Goerres. Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 145 and No. 1265, NLA HA.

³¹ After 1945, leaders of the cooperatives often used the term *hibernate* to describe the survival strategy of outwardly bowing to National Socialist policy while preserving an inner distance from its ideology.

³² Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 882/8, NLA HA.

post-war coop association distanced itself from the “abandon and brutality” with which “the extermination of Jews” was carried out, which “no human thought possible.”³³ But they missed the occasion to reflect critically on the contribution of the consumer coops and their successors to Nazi crimes. The memorandum reproduces some of the patterns of excuse common to the post-war generation. It illustrates the societal miscommunication that was typical of the early years of the FRG. Hence, I call the memorandum a “missed chance for a new beginning.”

In a more self-critical analysis, there would have been a mention of how anti-Semitism and Nazi racial ideology were put into practice by the coops. Already in 1933, the Central Association, the author of the post-war memorandum, was reporting to the Reich’s Ministry of the Economy that the consumer cooperatives were “free from Jewish capital” and that only a few of their employees were of Jewish religion or origin.³⁴ Wilhelm Kaltenborn, an author and chairman of the board of the Zentralkonsum eG, has insightfully pointed out that the current literature hardly mentions the key words “racial laws” in connection with the consumer coops.³⁵ There was no investigation of the coops’ contributions to societal crimes like the use of forced labor. Likewise, the extent to which the assets of the nazified former consumer cooperatives, like the industrial bakeries and meat packing plants, supplied the Wehrmacht and later all types of labor camps, armament manufacturers, and their SS personnel, went unstated.³⁶ The Gemeinschaftswerk’s trafficking in goods that were robbed from occupied countries was also met with silence.³⁷ Disentangling the Gemeinschaftswerk structures from the Nazi regime was thus a complicated process that lasted until the 1970s, although its dissolution began in 1945.³⁸

³³ Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 882/8, 9, NLA HA.

³⁴ Korf, *Von der Konsumgenossenschaftsbewegung zum Gemeinschaftswerk*, 69–70.

³⁵ Kaltenborn, *Schein und Wirklichkeit*, 273.

³⁶ The Gemeinschaftswerk’s revenues from its large-scale business operations ranged from 95 million RM in 1942 to 159 million RM in 1944. Korf, *Von der Konsumgenossenschaftsbewegung zum Gemeinschaftswerk*, 230–231. In the forced labor camps, next to the “normal” rations provided by the camp, additional food items were sold to the detainees for excessive prices. The board of the Gemeinschaftswerk was very interested in this reprehensible business because it produced extremely high profits. The full scope of the business remains unknown, but the practice is substantiated by fragmental archival sources. *Ibid.*, 235.

³⁷ Usually, this is explained by the fact that the supply situation in Germany worsened as the war progressed. The Reich’s plundering of occupied countries allowed the German population a much better standard of living than in the early post-war years. In France alone, the Germans seized goods in an estimated value of 900 billion francs. The GEG received some of those French goods. Korf, *Von der Konsumgenossenschaftsbewegung zum Gemeinschaftswerk*, 198–206.

³⁸ Michael Prinz, “German Co-operatives,” 254, says that the Gemeinschaftswerk was dissolved in 1945.

After 1945, in West Germany, the authorities legally restituted property that had been taken over by the Gemeinschaftswerk, while restitution of the privatized stores remained voluntary for their owners absent a court order.³⁹ The law considered only the confiscated properties to be NSDAP assets.⁴⁰ From today's perspective, we might wonder why the Gemeinschaftswerk assets were restituted without giving consideration to how they contributed to the war economy and Nazi crimes. At the same time, the privatized stores were restored to the coops only on a voluntary basis despite the fact that their privatization was originally an act of resistance. The intangible damage done to the coops was "restored" by focusing on the tangible, rapid economic reconstruction of Germany itself. Although this boom proved to be largely an illusion, the reestablished "consumer cooperatives were given ample scope in the process of reconstruction."⁴¹

To sum up, the Nazi past of the German consumer coops is a complex issue. Persecution, self-preserving adaptation and collaboration, acts of resistance and resilience, as well as distortion and perversion of the cooperative concept flow together here. In the divided Germany, the course of post-war transition was not much questioned. Rather, the demise of the coops in the two Germanys during the late 1980s and early 1990s allowed the German consumer coops' actions be forgotten, which helped make their Nazi past "bearable."

At this point, I reflect upon the effect of the division of Germany into two states that belonged to two different political camps and the near complete demise of the coops after reconstruction. What follows is a rough outline of the process.

In the Western part of Germany, assets with an estimated value of five billion Deutsch marks (DM) were embezzled from the coops due to a lack of supervision.⁴² The finale of the cooperatives' *Aktiengesellschaft* (coop AG) was a public scandal that led to the total collapse of the corporation. The coop AG was a German corporation into which nearly 100 West German consumer cooperatives were merged beginning in the late 1960s. In 1988, the magazine *Der Spiegel* uncovered how coop managers had falsified the corporation's balance sheet and enriched themselves at the expense of the coop AG members.⁴³ By

³⁹ That was the case in the British zone. Further study of restitution practice in the other zones is required. In Hannover the reestablished post-war coops got back 80% of the stores they had lost.

⁴⁰ Prinz, "German Co-operatives," 252.

⁴¹ Ibid.

⁴² An estimate the former coop AG speaker, Armin Peter, made in a conversation with the author, October 28, 2016.

⁴³ "Missmanagement bei Coop: Das fast perfekte Verbrechen," *manager magazin*, August 28, 2001, <https://www.manager-magazin.de/unternehmen/missmanagement/a-149040.html>. The scandal

forming a group of companies around the coop AG, the managers were able to appropriate the coops' assets for themselves. Their malfeasance subsisted in the manipulation of the holding companies, stock corporations, foundations and trustees in the coops' structure until the coops' property came under their complete control. Only a few million DM were found and returned in several criminal trials. It is no wonder that after this "perfect crime" West Germany had the smallest number of coop members in the world.⁴⁴ This spectacular failure⁴⁵ was fatal to the reputation of the consumer cooperatives⁴⁶ and is an embarrassing history.⁴⁷ Somehow, the embarrassment still obscures the coops' earlier history.

During the negotiations that led to reunification, the consumer cooperatives in East Germany were somehow "forgotten" in the Unification Treaty (*Einigungsvertrag*) between the FRG and the GDR; soon, they were dissolved. The coops received no financial support from the state for losses incurred in the course of reunification, such as those caused by monetary reform. For the "mass organizations" of the GDR, their status as instrumentalities of the unjust GDR state may have played a role in the complete ignoring of their special economic status. Most of the organizations of the former Konsum were unable to re-establish themselves after 1990 because of their heavy indebtedness. With unclear property rights and owing many debts, the former organizations of the Konsum were neither privatized nor given any state guarantees during the post-unification transformation period.⁴⁸ That was a major reason for their nearly complete ruin in the regions of Eastern Germany.⁴⁹

of the West German coops and its historical context are not well explored in the literature. However, there is a fiction novel that deals with the subject, written by Armin Peter, the former speaker of the coops' AG. In his novel, Peter calls himself Pitt, whose duty it is to write the story of the coop scandal. Armin Peter, *Gemeinwirtschaft. Der Roman vom Soll und Ist* (Norderstedt: Books on Demand, 2014).

⁴⁴ Fairbairn, "Wiederaufbau und Untergang," 195–196.

⁴⁵ The coop eG (*eingetragene Genossenschaft* – registered cooperative society) in Schleswig-Holstein is today the last remnant of the consumer cooperatives in the former West Germany. It was not merged into the coop AG, which was based in Frankfurt. Supermarkets that belonged to some former West German consumer cooperatives (e.g. those in Minden and Göppingen) are now run by the EDEKA supermarket chain.

⁴⁶ Prinz, "German Co-operatives," 255.

⁴⁷ "Embarrassing history" is the expression used by experts on German cooperative history during the 11th Annual Congress on the Formation and the Doom of the Coop AG, see <https://www.zdk-hamburg.de/blog/2016/08/tagung-zur-genossenschaftsgeschichte-entstehung-und-untergang-der-coop-ag/>.

⁴⁸ Fairbairn, "Wiederaufbau und Untergang," 197.

⁴⁹ Thirteen of the former 198 consumer cooperatives in the German Democratic Republic (GDR) are still in existence today on the regional level. Ten of them are members of Zentralkonsum eG in Berlin, <https://www.zentralkonsum.de/>.

The demise of the East German coops closely followed the coop AG scandal in West Germany. Nevertheless, after the reunification of Germany, there were more coops left in the East than in the West.⁵⁰ No resurrection of the coops in one unified organizational structure took place in Germany as a whole after 1990. The possible reasons for the coops' nearly complete extinction in West Germany include the changed economic and political environment in the post-war society. Above all, the coops and their management had abandoned their idealistic principles under Nazi rule. They were never able to recoup those ideals and distinguish themselves ethically from any other type of commercial entity. This failure contributed to the more or less complete demise of the German consumer cooperatives, both East and West.⁵¹

The pressure of competition, the rise of mass production, and advances in technology helped to raise the living standard of workers in Germany after the Second World War. The commercial revolution that followed the war required the coops to rebuild themselves organizationally.⁵² The former neighborhood coop stores started to be replaced by large self-service supermarkets at the beginning of the 1950s. The trend to large retail chains represented one of the biggest challenges for the coops. Numerous attempts to centralize their structure failed. The coops had to accept that they were no longer leading lights in marketing development.⁵³

The debate over how best to reform the coops lasted for over a decade. The decision to transfer their assets into an ordinary stock company was finally made in 1968. For consumers, it was supposedly the "spirit of the business" and not the legal form that was decisive in their choice of where to shop.⁵⁴ But the coops' somewhat romanticized self-image was not enough to overcome the difficulties raised by challenging times.

⁵⁰ There were 67 consumer cooperatives in Germany in 1993: 28 in the West (with 600.000 members) and 39 in the East (with two million members). Fairbairn, *Wiederaufbau und Untergang*, 196.

⁵¹ Fairbairn, "Wiederaufbau und Untergang," 173.

⁵² *Ibid.*, 193.

⁵³ Prinz, "German Co-operatives," 255.

⁵⁴ Bösche and Korf, *150 Jahre Konsumgenossenschaften*, 39–40.

Challenging Times: The Post-war “Resurrection” of the Consumer Coop in Hannover

The Restitution Challenge

In Hannover, similar to other German cities in the post-war period, some of the owners who had taken over the coop stores maintained that the “consumer cooperatives were liquidated for economic and business management reasons, without any apparent relation to political causes.”⁵⁵ After the war, these owners of the former coop stores denied the right of the Hannover coop to restitution. They refused to return the stores they had purchased when the coops were forcibly liquidated between 1936 and 1941. Due to their intransigence and the fact that they held on to their Nazi views, the attorneys for the Hannover coop frequently referred to them as the “dregs” (*Bodensatz*).⁵⁶

The Hannover coop lost about 20 percent of 95 restitution cases that were brought because of the unwillingness of the “dregs” to return assets to the organization. The store owners’ National Socialist views were evident in the argumentation of their attorneys. After 1945, in Hannover, attorney and notary Dr. Walter Gröpke represented the interests of at least twelve opponents of the restitution of particular property to the consumer coop. Gröpke had actively denounced the coops in the Nazi period, when the regime’s propaganda was defaming them as well. This was especially true during the 1930s economic crisis, when the Nazis stoked fears that led to a “run” on savers’ deposits held in the coops. The run was a panic when savers withdrew their deposits from their accounts at the Hannover coop *en masse*. Gröpke claimed that at least 100 lawsuits were brought against the coop organization at that time. It was alleged that the coop organization had only itself to blame for its lack of liquidity. The very concept of the cooperative was effectively disgraced. This accusation was still part of the argumentation used by the “dregs” in the late 1940s to resist restitution in favor of the coops.⁵⁷

Furthermore, in October 1945 the district court of Hannover reopened the liquidation proceeding that was closed in 1941 when the Hannover coop’s remaining assets were transferred to the Gemeinschaftswerk and it was erased from the register of cooperatives.⁵⁸ In the reopened liquidation proceeding,

⁵⁵ Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 882/8, 2, NLA HA.

⁵⁶ Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 1960, NLA HA.

⁵⁷ Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 807, 14–15, NLA HA.

⁵⁸ Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 882/5, 659–665, No. 882/1, 148, and No. 882/4, 493–494, NLA HA. There is no evidence showing when the reopened liquidation

claims were filed demanding that the re-established coop repay loans made to it in pre-war times. However, the Allied authorities' legislation that provided the legal basis for re-establishing the coop ruled out those claims.⁵⁹

Nevertheless, despite the occupation authorities' legislation, the liquidation proceeding was reopened in Hannover. Its reopening provided a new opportunity to defame the coops, as well as to argue against the coops' right to restitution of their former property. A *Hetzschrift*, a long inflammatory letter, was written anonymously and forwarded to the restitution authorities.⁶⁰ The attempts to reanimate the anti-consumer cooperative propaganda of the Nazi years provides evidence of how challenging it was to re-establish the coops in the first post-war years, given the continuing strength of Nazi views.

In 1948, the British occupation government passed a law acknowledging that the Hannover coop was an organization that had been politically persecuted under National Socialism. Despite this legislation, the local restitution authorities in Hannover commissioned expert testimony about the economic situation of the coop before it was liquidated by the Nazis. Relying on arguments similar to those put forward in the "dregs" lawsuits, the local authorities refused to recognize the coop's right to restitution. Despite the fact that there were both economic and political motives for the Nazis' liquidation of the coops, the coops' post-war opponents' attempts to focus solely on the economic level kept the pre-war anti-cooperative propaganda alive.

In view of the urgent need to avoid a post-war breakdown of society, the restitution of large assets like the bakery and the meat plant in Hannover was turned over to a Cooperative Societies Commission (Konsumvereinsausschuss, KVA). According to the British military government's Order No. 149 issued in May 1948, the Commission was established to clarify the coops' legal relationships and approve re-forming them.⁶¹ Under the supervision of the British military government, the coops were re-established from the ground up as "free" initiatives. The KVA in fact gave the coops privileged access to restitution in the British zone of occupation. In the case of the Hannover meat plant, when the Supreme Finance Department (Oberfinanzdirektion)⁶² refused to allow its restitution to

proceeding was closed. However, it was used in other restitution proceedings as an argument against the rights of the re-established coop organization.

⁵⁹ Order No. 39 of the British military government, issued in July 1946, repealed the Nazi laws enacted from 1935 to 1941.

⁶⁰ Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 882/9, NLA HA.

⁶¹ Walter Petrich, *Kommentar zum Rückerstattungs-Gesetz: Militärgesetz Nr. 59 vom 12. Mai 1949 (Britische Zone)* (Paderborn: Mohr Siebeck, 1949), 95–98.

⁶² The Supreme Finance Department in Hannover was an intermediate tax authority of the FRG.

the Hannover coop, it was the KVA that helped obtain an admission of guilt from the Supreme Finance Department and supported the Hannover coop's right to restitution.⁶³ The process took five years and without the involvement of the British authorities there was little if any chance that the parties could have come to an agreement.⁶⁴ In 1957, British policy was incorporated in West Germany's Federal Restitution Law (*Bundesrückerstattungsgesetz*),⁶⁵ which legally recognized the coops as organizations that had been persecuted by the Nazis.

On the basis of the above-mentioned legislation, about 80 percent of the privatized Hannover coop stores were restituted to the Hannover coop by the mid-1950s. Usually, the transfers of ownership relied on mutual agreements between the purchasers and the reestablished Hannover coop. The coop got the privatized store back by repaying the purchase price in Deutsch marks at a one-for-one rate of exchange for Reichsmarks.⁶⁶ In the frame of these mutual agreements, the Hannover coop benefited from the shop-owners' uncertainty about the legal situation concerning the restitution of privatized coop stores. The Hannover coop claimed the establishment of the KVA in 1948 was an acknowledgment of its rights. It did not mention the legal difficulties concerning the restitution of the privatized stores to the Nazi-era purchasers.

The Central Association represented the consumer coops in the restitution proceedings. It referred to the co-optation of the coops by National Socialism as "denaturing" (*Denaturierung*).⁶⁷ As already pointed out, the Central Association's memorandum on the coops' persecution by the Nazis missed its chance to critically address post-war guilt and deal with what "denaturing" had actually signified in practice. Consequently, in Hannover – as in other German cities – the coop's industrial bakery's supplying of baked goods to the Bergen-Belsen

⁶³ Reparation file, Collection Nds. 720 Hann. Acc. 2009/126 No. 882/5, 580–594, NLA HA.

⁶⁴ The meat plant had operated for only two years when it was closed in 1932. It was exploited in the anti-cooperative turmoil during the economic crisis. In 1938, it was sold to the Wehrmacht. Part of it was used by the Continental AG tire company for storage purposes. In 1955, the Supreme Finance Department in Hannover, as a legal successor of the Third Reich tax authorities, paid the Consumer Cooperative Society of Hannover 500,000 DM. Reparation file, Collection Z 36 III – AZ 94/48 F, BArch Koblenz.

⁶⁵ Bundesgesetz zur Regelung der rückerstattungsrechtlichen Geldverbindlichkeiten des Deutschen Reichs und gleichgestellter Rechtsträger (Bundesrückerstattungsgesetz, BRüG), http://www.gesetze-im-internet.de/br_g/_11.html.

⁶⁶ In most cases, the pre-war purchasers did not acquire the coops' real estate. Usually they bought the right to occupy it as a tenant and the store fixtures and furniture.

⁶⁷ This term was used in the memorandum from 1950. Reparation file, Collection Nds. 720 Hannover Acc. 2009/126 No. 882/8, NLA HA.

concentration camp,⁶⁸ as well as its utilization of around 30 forced laborers,⁶⁹ was simply not talked about.

It is noteworthy that the last director of the Hannover supply network, Werner Roggenbach, escaped from Hannover four days before the British occupied the bakery. In his later denazification proceeding, he argued that he had to flee because the forced laborers would have killed him after the British arrived. Former employees described Roggenbach as a “sadist” and “Nazi fanatic” who forced employees to give the Hitler salute. During air raids he chased the forced laborers, even pregnant women, out of the bunker in the bakery at gunpoint.⁷⁰ Nevertheless, in 1946 the post-war GEG certified that Roggenbach had “brought the organization well through the perils of the time.”⁷¹

Denazification versus Renazification

Up to the year 1955, the Cooperative Societies Commission (KVA) was the trustee for the assets of the consumer cooperative in the British occupation zone that were subject to restitution. It oversaw restitution only for collectives, not for individuals. In practice, the commission had exclusive jurisdiction over the assets and its decisions could not be appealed.⁷² The commission members were its British chairman, D. H. C. Willers (in Hamburg), and four German coop members: Peter Schlack (Cologne), August Ellenbeck (Essen), Hans Schwartz (Kiel), and Carl Schumacher (Hamburg).⁷³

A closer look at Schumacher’s biography reveals how post-war reconstruction of the coops proceeded in practice, with the service of former Nazi collaborators like Schumacher. In 1929, Schumacher was already active in different positions in the consumer cooperative movement. During the Nazi era, he was an NSDAP member and an authorized special representative of the Gemeinschaftswerk. It was at that time that Schumacher’s career really took off. He profited from Nazi rule and assisted the regime. In 1944, Schumacher was responsible for the dismissal of Jewish coop employees.⁷⁴

⁶⁸ Steffen Meyer, *Ein Kriegsgefangenen- und Konzentrationslager in seinem Umfeld: Bergen-Belsen von “außen” und “innen” 1941–1950* (Stuttgart: ibidem, 2003), 57.

⁶⁹ Denazification file, Collection Nds. 171 Hann. No. 38190, NLA HA.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Reparation file, Collection Z 36 finding aid, 2, BArch Koblenz.

⁷³ Reparation file, Collection Z 36 finding aid, 45–50, BArch Koblenz.

⁷⁴ Korf, *Von der Konsumgenossenschaftsbewegung zum Gemeinschaftswerk*, 270.

During the rebuilding period after the war, Schumacher proved that he had changed his political spots by helping to oust former Nazi representatives from their positions in the coops. He was able to do this because he possessed the organization's personnel files, which he had maintained himself during the 1940s.⁷⁵ In the first years of reconstruction, a GEG commission, of which Schumacher was a member, decided whether to dismiss former Nazis from employment.⁷⁶ From today's perspective, his participation on the commission seems inappropriate, but in the post-war period it was not uncommon. At the time, there was another perception of citizens' cooperation with the Nazis. Any sensitivity to continuing, personally held Nazi views was superseded by the urgent need to restore the supply situation. Thus, because Schumacher was active in rebuilding a democratic post-war state, he was able to become a member of the KVA board in 1948 and to serve as its chairman and a member of the GEG board of directors from 1954 to 1957.⁷⁷ His earnings in the post-war reconstruction are known to have been considerable.⁷⁸

In Hannover, Schumacher's post-war activity was manifested in the restitution case of a textile store formerly owned by the consumer coop. During the forced liquidation of the coops in 1940, the store, in a building in the middle of Hannover's old town, was bought by the regional Evangelical Lutheran Church.⁷⁹ Schumacher himself chaired meetings where the representatives of the regional church office (Landeskirchenamt, LKA) assured the commission of their willingness to arrive at an agreement and compensate the coop in cash, because the former textile store building had become the LKA's post-war headquarters. But when the time came to act in 1949, the representatives of the LKA at first refused to agree to any restitution. Then, after they signed an agreement in 1951, they dug in their heels and waited for resolution of the afore-mentioned "dregs" restitution cases. The Central Association's memorandum documenting the coop's persecution by the Nazis was provided to the LKA.⁸⁰ The Hannover

⁷⁵ The files were in 37 folders that concerned the managing directors of the supply rings. Korf, *Von der Konsumgenossenschaftsbewegung zum Gemeinschaftswerk*, 8.

⁷⁶ In 1945, 68 of the former 258 Nazi directors were approved for continued employment. *Ibid.*, 267.

⁷⁷ *Ibid.*

⁷⁸ Carl Schumacher (20.8.1903–10.7.1993), *Zeitschrift für das gesamte Genossenschaftswesen* 44, No. 1 (2017): 57–58, doi: 10.1515/zfgg-1994-0109.

⁷⁹ Although church institutions were not allowed to purchase real estate during the Nazi era, in this case an exception was made, probably because there were no other interested buyers.

⁸⁰ Reparation file, Collection B1A No. 77, Landeskirchliches Archiv Hannover. Although the LKA was the opponent to the restitution of the property and not the claimant, the file on the proceedings is stored in the LKA's archive and not in the Regional Archive of Lower Saxony as is usual.

Figure 1: Advertisement of the Consumer Cooperative Society Hannover, 1930.

Source: ver.di Landesbezirk Niedersachsen Bremen/co op-Geschichtsgruppe Hannover, ed., *Bildgeschichte der Konsum-Genossenschaften in Niedersachsen: co op – ein Stueck Wirtschafts- und Sozialgeschichte 1867–1994, Archiv mit 1250 Dokumenten* (Hannover 2008), CD-ROM, chapter 8.2, 61.



coop was interested in a “conciliatory settlement with the church.” For its part, the LKA wanted to find documents that would show the economic situation of the Hannover coop before its liquidation by the Nazis. It hoped the documents would prove that the liquidation happened for economic, not political reasons. As it turned out, the LKA paid the full value of the coop’s building only in 1955.⁸¹ Even now, the keepers of the culture of memory in Hannover have difficulty dealing with the building’s (today known as the Hanns-Lillje-Haus) complex history.⁸²

The case of Karl Schäfer is another interesting example of how challenging the reconstruction of the Hannover coop and denazification were. Schäfer came to Hannover in 1940 and took over the management of the Hannover transfer company, Gesellschaft für Haushaltsbedarf, from his predecessor Willy Görres. Then, in 1941, as the transition was finally made to the Gemeinschaftswerk, Schäfer became the deputy director of the Hannover supply network. When the director, Roggenbach, fled Hannover to escape imprisonment by the British military, Schäfer became the supply network’s director.⁸³

After May 1945 there was an urgent need to restore a functioning system for supplying goods to the population. For that reason, farmers and others who were needed to work in that system and the reorganization of the supply networks⁸⁴ were generally exempted from the denazification process. Schäfer was one of those people. He was also active as a member of the advisory council of the Economic Committee (Wirtschaftsrat⁸⁵) in Lower Saxony.

Willi Nippe was the first director who managed the reconstituted post-war Hannover coop, until March 1948.⁸⁶ After that, Schäfer took over the organization, once it had been legally recognized by the KVA. But as a leader of the organization under the Nazis, Schäfer was under huge pressure from the former Hannover coop representatives who had returned to their positions and, one

⁸¹ It is noteworthy that the LKA paid 115,000 RM for the building, which had an estimated value of around 373,000 RM. The LKA ended up paying the Hannover coop 40,000 DM in compensation, in five installments.

⁸² Today’s officials of the LKA responded to a recent request for information by the author by saying that they will “wait for [me] to publish on the past of the building.” Representatives of the Department of Municipal Memory Culture (*Städtische Erinnerungskultur*) of the City of Hannover were also hesitant to respond to the author’s requests.

⁸³ Denazification file, Collection Nds. 171 Hann. No. 48691, NLA HA.

⁸⁴ Reparation file, Collection Nds. 720 Hann. Acc. 2009/126 No. 145, No. 767, 5 and No. 1989, 9, NLA HA. It remains unknown when exactly the dissolution of the supply networks was complete.

⁸⁵ The Economic Committee administered the re-organization of economic life in the Allied occupation zones of post-war Germany and later of the states of the Federal Republic of Germany.

⁸⁶ Reparation file, Collection Nds. 720 Hann. Acc. 2009/126 No. 807, 14–15, NLA.

way or another, had opposed National Socialism. The post-war coop representatives sought Schäfer's removal and insisted he be investigated for his ties to the Nazis. Although Schäfer was exempt from the denazification law because of his strategic position in food distribution, a denazification investigation was opened anyway and Schäfer was screened. The highly controversial proceeding was conducted by officials of the local Hannover denazification committee, which was already made aware that Schäfer was exempt from the denazification process in 1946. His case reveals that there was a bitter fight going on in Hannover concerning the employment of a Nazi leader like Schäfer in the post-war reconstruction of the coop.

Denazification escalated into a criminal complaint against Schäfer for insulting Robert Wolf, the chairman of the local denazification committee. On November 25, 1947, an article on the case of Schäfer vs. Hannover Coop appeared in the local newspaper, *Hannoversche Allgemeine Zeitung*, under the title "The End of a Rumor." The newspaper described Schäfer's political attitudes as "irreproachable." A few days later, after intervention by the Hannover coop, the newspaper "corrected" this statement because Schäfer's denazification process was still open.⁸⁷

The rebuilders of the Hannover coop regarded Schäfer as "unacceptable in a leading position." Schäfer however fought back vigorously. He maintained that he had not been a member of the NSDAP. He said he had only pretended to be a Nazi party member and that he had in fact been persecuted by the Nazis before he came to Hannover in 1940. Among other evidence, he submitted certificates from four former forced laborers and 109 affidavits from former supply network employees to the denazification board. By the time of Schäfer's proceeding, the practice of submitting *Persilscheine* (a certificate given the nickname of Persil, a laundry detergent) was common. It reflected solidarity among former Nazis and their fears of losing their employment. Moreover, Schäfer did not hesitate to intimidate witnesses and even members of the denazification board themselves. A poster from the notice board of the Hannover supply network that was sent to the British military government as evidence of Schäfer's Nazi Party membership disappeared. His denazification proceeding ended after a four-hour hearing and the case was closed in 1948.⁸⁸

Schäfer's indispensability to post-war supply of goods was not mentioned at all in his file as a reason for freeing him from responsibility for his Nazi past.

⁸⁷ Denazification file, Collection Nds. 171 Hann. No. 48691, NLA.

⁸⁸ Ibid.

Nor were the resistance to the nazification of the coops by their officers who after the war opposed Schäfer's rehabilitation, and the coops' integration into the Nazi war machine, much discussed. Nevertheless, the vehement stance of his opponents led to Schäfer's removal from the advisory council of the Economic Committee in Lower Saxony. However, Schäfer remained in his position as general manager and trustee of the rebuilt post-war Hannover coop until an unknown date.⁸⁹

Schäfer's reappointment to head the Hannover coop in spite of the "massive tensions" between him and the "old cooperative leaders" was enforced by the British military government because Schäfer was the only remaining supply network leader. Furthermore, he claimed he had been an opponent of the Nazis. In the years after his reappointment, Schäfer used his position without scruple and did not hesitate to exert massive pressure on the denazification institutions, up to the level of Lower Saxony's State Commissioner for Denazification. His case shows what a farce denazification actually was. Its outcome suggests that at the local level, under the noses of the British and their allies, denazification actually meant renazification.

Conclusion

One of the fundamental functions of the post-war consumer cooperatives on both sides of the Iron Curtain in Germany was to distribute food at a time of social distress. Reconstruction of the coops proceeded in line with the Allies' goal of dismantling the nazified labor milieu. In the first part, I have shown that rebuilding and "democratizing" post-Third Reich society involved the "Westernizing" and "Sovietizing" of the two Germanys' consumer coop networks. The micro-historical analysis of the Hannover coop case in the second part shows that even though the coops' organizational principles like mutual self-help were given little respect under National Socialism, there was huge motivation to improve the supply situation from the late 1940s to the mid-1950s with the help of former Nazi era coop leaders.

As we consider how the post-war transformation went forward, it is important to note that improvement of the supply chain required rapid restitution of tangible assets to the coops. This occurred first in the GDR, where a "policy of forgetting" was part of the transition from one unjust regime into another. In the Western occupation zones, the problem of the Nazi past was "solved" by

⁸⁹ Ibid.

focusing on building the future and remaining silent about the crimes of Nazi rule. That silence was first questioned in social movements of the 1960s, but the coops still avoided discussion of their role in Nazi crimes.

I have shown that the reconstruction of German consumer cooperatives in the post-war period was characterized by a contradiction that was difficult to grasp and difficult to talk about. In the West, restitution of the coops' property was promoted by the Allies and this restitution was conditioned on avoiding any critical questioning of the coops' policy of self-preservation during the Nazi era. Here, also in view of the political reality of the Cold War, responsibility for the Nazi past was downplayed by an overemphasis on the coops' persecution.⁹⁰ The typical excuse patterns of the post-war generation appeared in the way the coops dealt with their post-war challenges. This mode of dealing with the Nazi past is still deeply rooted in the history of the German coops.

For now, it remains an open question requiring further research how successful the transition of the coops was under circumstances where democracy was imposed on the FRG "from outside" and nazified structures were only gradually dismantled. My research into the Hannover case has illustrated the conditions and societal setting in which the rebuilding of the coops took place.

The German consumer coops did not survive for long after the reunification in 1990. As a result of these challenging historical interrelations, the "difficult legacy" of the German coops resulted in what I diplomatically call a self-romanticized memory culture.

The discussion of how the Nazi past was handled during post-war reconstruction in Hannover reveals that the Allies acted rather diligently in the British zone as they supervised the self-initiated rebuilding of the consumer coops. The British military government's restitution legislation was implemented in the late 1940s to facilitate reconstruction, at the same time as the supply networks were gradually dissolving. I have shown that as the coops were restarted, there were sharp confrontations at the local level, as former adversaries had to cooperate with each other under the supervision of the British restitution authorities. The Hannover example and the so-called "dregs" cases highlight how those who had resisted Nazi ideology clashed with those who still held Nazi views, even into the 1960s. The persistence of this conflict led to the loss of around 20 percent of the former Hannover coop stores. Further micro-historical studies of restitution and denazification in all the occupation zones would yield interesting results and comparisons.

⁹⁰ Fairbairn, "Wiederaufbau und Untergang," 186.

As I have demonstrated with the Hannover example, intangible damages like the damage to the reputation of the Consumer Cooperative “brand” were not a subject of restitution claims, nor were they even discussed at all. Under the pressure of the urgent need to dissolve the Nazi machine and reconstruct the economic basis of German society, attempts at denazification went hand in hand with a willingness to overlook Nazi collaboration.⁹¹ Likewise, complex acts of resilience, like the establishment of the transfer companies, were minimized in the restitution proceedings or even turned into a disadvantage. This ambivalence reflects the view of many Germans who survived the war and who still considered anti-Nazi resistance during the Third Reich to be high treason (*Hochverrat*).⁹² Perpetrators and bystanders remained silent about their personal complicity since a critical examination and collective honoring of the resistance to the Nazis still required more temporal and emotional distance. The German consumer cooperatives also avoided introspection. Their complicity was further obscured by the coops’ nearly complete demise in the 1980s and 1990s. It would not be a surprise if further studies reveal that the policy of forgetting affected the usefulness of German consumer cooperatives as an alternative economic model.

⁹¹ Documents on the use of forced labor in the 135 supply networks and the factories of the Gemeinschaftswerk are scarce. In 1942 there were 2,300 forced laborers and 2,522 in 1943. No numbers are available for 1944 and 1945. The correspondence files of the post-war GEG indicate that the use of forced labor was an accepted part of the daily life of the consumer cooperatives. Korf, *Von der Konsumgenossenschaftsbewegung zum Gemeinschaftswerk*, 246–248.

⁹² This was the case until the mid-1950s for the von Stauffenberg assassination attempt on Hitler of July 20, 1944.

D.H. V. CZECH REPUBLIC: ROMA EDUCATIONAL EQUALITY AND THE VULNERABILITY OF STRATEGIC LITIGATION

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Abstract

In 2007, the Grand Chamber of the European Court of Human Rights ruled that 18 Czech Roma primary school children had been unlawfully placed into special schools, designed for “mentally handicapped” children, and were subject to indirect racial discrimination. *D.H. and Others v. the Czech Republic*, a landmark piece of strategic litigation, hoped to catalyse tangible Czech educational reform; however, reports persist of Roma educational segregation. Firstly, this study briefly investigates why strategic litigation is an attractive, albeit obstacle-ridden, tool to effect societal reform. The study then conducts an in-depth impact analysis of *D.H.*, focusing on Czech legal reactions and supranational developments and the post-judgment responses of the Czech Roma community. The study concludes that strategic litigation is a potent tool to effect social change but, regarding implementation and obstacles to its use and impact, remains vulnerable if not used in conjunction with extra-legal activism.

Keywords: strategic litigation; extra-legal activism; educational desegregation; Roma; European Court of Human Rights; Czechia

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Introduction

Through the lens of *D.H. and Others v. the Czech Republic*¹ (hereafter *D.H.*) and Roma educational desegregation efforts in Czechia, this study will assess the use and impact of strategic litigation in effecting social change, specifically reviewing reforms to domestic and supranational legal landscapes and the responses of the Czech Roma community.

Considering the historic plight of Roma school children in Czechia, education is a key to equality and an important counter to socially pervasive stereotypes. In 1999, the Czech Constitutional Court witnessed the beginnings of a lengthy legal challenge which culminated in the first supranational case addressing the educational segregation of Roma children in national education systems.² Finally reaching conclusion at the Grand Chamber of the European Court of Human Rights (ECtHR) in 2007, the case of *D.H.*, for the first time in European Convention jurisprudence, found an entire national policy to have a “disproportionally prejudicial effect”.³ Not only did the judgment compel Czechia to modify its entire system of primary education⁴ but it was, and still is, a proactive message of educational desegregation across Europe where similar abuses against Roma children have been reported.

D.H. is a prime example of what is known as strategic litigation: legal action designed to not only vindicate the rights of applicants, but to importantly contribute to a wider package of activism in an attempt to redress widespread abuses and create social impact. Under the rights afforded by the European Convention on Human Rights (ECHR),⁵ the Grand Chamber found that 18 Czech Roma

¹ *D.H. and Others v. the Czech Republic* (hereafter *D.H.*), App. No. 57325/00, European Court of Human Rights (hereafter ECtHR) Grand Chamber, November 13, 2007, <http://hudoc.echr.coe.int/fre?i=001-83256>.

² Adriana Zimová et al., *Strategic Litigation Impacts: Roma School Desegregation* (New York: Open Society Foundations, 2016), 22, <https://www.justiceinitiative.org/uploads/5731f49e-92ba-4adf-976f-156dcaaffe7c/strategic-litigation-impacts-roma-school-desegregation-20160407.pdf>.

³ *D.H.*, November 13, 2007, para. 209.

⁴ Hubert Smekal and Katarína Šipulová, “D.H. v. Czech Republic Six Years Later: On the Power of an International Human Rights Court to Push Through Systemic Change”, *Netherlands Quarterly of Human Rights* 32, No. 3 (April 2017), 289–290, doi: 10.1177/016934411403200305.

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by protocols No. 11 and 14, supplemented by protocols No. 1, 4, 6, 7, 12 and 16), homepage of the European Court of Human Rights – Council of Europe, https://www.echr.coe.int/Documents/Convention_Eng.pdf; transposed into Czech law by Sdělení č. 209/1992 Sb. Sdělení federálního ministerstva zahraničních věcí o sjednání Úmluvy o ochraně lidských práv a základních svobod a Protokolů na tuto Úmluvu navazujících.

applicants, former primary school children or attendees at the time, were denied the right to education (Art. 2, Protocol 1) and were subject to discrimination on account of their racial identity (Art. 14) when placed into special schools designed for “mentally handicapped” children. However, the wider effect of *D.H.* was to vicariously represent the denied rights of a historically marginalised community, systemically reform national education policy and attempt to break the generational abuse of “[excluding] Roma children from mainstream society at the very beginning of their lives”.⁶

Strategic litigation is an appealing prospect; however, from the outset, obstacles such as hostile socio-political environments, selecting the most effective case or overall strategy and the risk of impotent judicial remedies can create a perilous litigation journey. Furthermore, a favourable authoritative judgment like *D.H.* can only do so much in implementing effective reforms for the intended beneficiaries. As a consequence, extra-legal activism, defined in this study as measures which are beyond litigation and post-judgment legislative reforms, is an essential partner to strategic litigation before, during and after legal challenges. Whether collecting ethnically disaggregated data of Roma children in special education, creating victim empowerment projects, raising public awareness or giving agency to Roma communities, strategies to effect reform must not lose sight of the vital role of extra-legal activism. This study is not a forensic investigation into the changing legal position of Czech education policy post-*D.H.*, a critique of ECtHR discrimination jurisprudence, nor a discussion of how to give Roma agency when defending their educational rights. Rather, it intends to both describe the vulnerability of solely relying on strategic litigation (a legal response to abuses), but also argue for the coexistence of legal and extra-legal forms of redress in order to effectively challenge the status quo.

The study comprises an in-depth literature review and legal analyses of *D.H.*, subsequent Roma educational desegregation litigation and relevant Czech legislation. When analysing the academic discussion concerning explicit calls for strategic litigation or other legal forms of redress, the subject matter is limited. This is especially true when regarding Roma educational desegregation. Numerous academics cited in this study, including Smekal and Šipulová⁷ and Kosař and

⁶ Álvaro Gil-Robles, *Final Report by Mr Álvaro Gil-Robles, Commissioner for Human Rights: On the Human Rights Situation of Roma, Sinti and Travellers in Europe* (Strasbourg: Office of the Commissioner for Human Rights, 2006), 20.

⁷ Smekal and Šipulová, “D.H. v. Czech Republic Six Years Later”.

Petrov⁸, discuss *D.H.* regarding the effectiveness of international human rights courts or challenges to state compliance. This is a common discussion, but what is often missing in research is an analysis of how to address the evident vulnerability of strategically litigated cases.

Within post-judgment monitoring reports and submissions from major actors in the field of Roma educational desegregation, including the Open Society Justice Initiative (OSJI), the OSCE and the European Roma Rights Centre (ERRC), the need for extra-legal methods to strengthen legalistic responses to abuses is presented through advocating for a package of activism to effect systemic change. Although not always explicitly calling for the coexistence of legal and extra-legal forms of activism, various monitoring reports and submissions were used in this study in order to develop the argument. Quantitative data from international organisations, NGOs and government statistics were gathered to present strong data-based arguments as well as conflicts between government ministries and national and international monitors.

Enhancing the literature review and case analyses, primary research was conducted. A formal phone-interview with James A. Goldston, Chief Executive of the OSJI and one of the lead counsels to the *D.H.* applicants, was important in understanding not only how a key actor viewed challenges to the lasting impact of *D.H.*, but also the positive legal and social developments since the judgment.⁹ In addition, I made a field visit to a Člověk v tísní (People in Need) youth centre in Kladno, Central Bohemia. This visit gave the study first-hand insight into how an emancipatory judgment like *D.H.* can be weaponised locally to effect change.¹⁰

The Attractive and Obstacle-Ridden Pursuit of Strategic Litigation

Using *D.H.* and the wider issue of Roma educational desegregation, this part of the study will briefly explore why strategic litigation is an attractive, albeit obstacle-ridden, tool to effect societal reform from both an emotional and practical perspective. Even assessing the appeal of strategic litigation, it is evident

⁸ David Kosař and Jan Petrov, “Detriments of Compliance, Difficulties among ‘Good Compliance’: Implementation of International Human Rights Rulings in the Czech Republic”, *The European Journal of International Law* 29, No. 2 (May 2018), doi: 10.1093/ejil/chy028.

⁹ Filip Sys, “The Legacy of D.H. v. Czech Republic: A Discussion with James Goldston” (hereafter Interview with James Goldston), *Fil Sys Blog*, January 22, 2019, <https://filsysblog.wordpress.com/2019/01/22/the-legacy-of-d-h-v-czech-republic-a-discussion-with-james-goldston/>.

¹⁰ Filip Sys, “The Hostel on the Hill”, *Fil Sys Blog*, May 30, 2018, <https://filsysblog.wordpress.com/2018/05/30/the-hostel-on-the-hill/>.

that legal strategies alone are vulnerable to various obstacles and, consequently, extra-legal activism must play a pivotal role in implementation efforts.

Transforming reports of abuses into legal arguments has practical appeal to litigators, activists and victims because it is an opportunity to “produce legally binding enforcement” of states’ obligations.¹¹ In *D.H.*, the Grand Chamber, short of instructing the Czech government, urged the use of special schools as an option of last resort and recommended teachers be given training and resources to aid struggling pupils in mainstream primary schools.¹² It is questionable, but for *D.H.*, whether the Czech government would have independently sought to reform the national education system to redress Roma educational inequality. The case of *Horváth and Kiss*,¹³ concerning two young Roma men in Hungary who had previously attended sub-standard special schools, further illustrates the point. Taking unprecedented steps, the Second Section of the ECtHR imposed positive obligations to provide educational support to Roma in mainstream primary schools¹⁴ and negative obligations to avoid indirect discrimination during psychological testing and practices,¹⁵ occurring when neutrally worded legislation or policies have a disproportionate effect on members of a group sharing protected characteristics.¹⁶ The practical appeal, therefore, lies in the fact that strategic litigation can compel respondent states to take reforming action when no such activity was previously contemplated.

Despite the practical appeal of strategic litigation, one cannot be naïve to the challenges of implementation. For example, regarding *D.H.* in the Czech context, a historically hostile socio-political environment creates an obstacle to the influence that an authoritative judgment can organically foster. Public opinion before and after *D.H.* paints a picture of hostility towards the Roma community.

¹¹ Open Society Justice Initiative (hereafter OSJI), *Strategic Litigation Impacts: Insights from Global Experience* (New York: Open Society Foundations, 2018), 32–33, <https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>.

¹² Arlan Fuller, “Case Studies: Community Development – Combatting Segregation in Czech Republic”, in *Strategies and Tactics to Combat Segregation of Roma Children in Schools: Case Studies from Romania, Croatia, Hungary, Czech Republic, Bulgaria and Greece*, ed. Margareta Matache et al. (Boston: FXB Center for Health and Human Rights Harvard University, 2015), 77, <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2464/2020/01/Roma-Segregation-full-final.pdf>.

¹³ *Horváth and Kiss v. Hungary*, App. No. 11146/11, ECtHR Second Section, January 29, 2013.

¹⁴ *Ibid.*, para. 104.

¹⁵ *Ibid.*, para. 105 and 106.

¹⁶ Council of Europe and European Union Agency for Fundamental Rights, *Handbook on European Non-Discrimination Law* (Luxembourg: Publications Office of the European Union, 2018), 53, https://www.echr.coe.int/Documents/Handbook_non_discrim_law_ENG.pdf.

In 1992, a *Respekt* magazine poll found that 45 percent of Czechoslovaks wanted all Roma to leave the country¹⁷ and, in 2018, the Public Opinion Research Centre CVVM under the Czech Academy of Sciences recorded that 73 percent of Czechs found Roma “quite or very unpleasant”.¹⁸ Furthermore, research into attitudes towards Roma children show common stereotypes that Roma pupils are “unruly”¹⁹ and a still present ethnocentric opinion that Roma are “intellectually inferior”.²⁰ Such ingrained attitudes towards the Roma community are conducive to a mostly non-violent hostile environment²¹ which creeps into national policies and is often subject to denial when allegations of abuse surface.²² Therefore, simply relying on strategic litigation to independently reform hostile environments is futile and requires extra-legal activism to confront underlying discriminatory attitudes and inequalities. For example, *D.H.* vindicated children’s rights to equal education, but it did not take into account the remaining residential inequality faced by Roma communities which creates racially homogenous school districts. Perhaps recognising this, in 2018, the Czech Ombudsman issued recommendations for the facilitation of school buses for Roma pupils to and from mixed mainstream primary schools.²³ Although short-sighted, as “white flight” has consistently been recorded from mixed primary schools where Roma

¹⁷ Petr Janyška, “Menšina a většina” [Minority and Majority], *Respekt*, January 6, 1992, <https://www.respekt.cz/tydenik/1992/1/mensina-a-vetsina?issueId=112>.

¹⁸ Milan Tuček, *Vztah české veřejnosti k národnostním skupinám žijícím v ČR – březen 2018* [Attitude of the Czech General Public towards National Minority Groups Living in Czechia – March 2018] (Praha: Centrum pro výzkum veřejného mínění, 2018), <https://cvvm.soc.cas.cz/cz/44-tiskove-zpravy/ostatni/vztahy-a-zivotni-postoje/4588-vztah-ceske-verejnosti-k-narodnostnim-skupinam-zijicim-v-cr-brezen-2018?idU=1>.

¹⁹ Gregor Maučec, “Identifying and Changing Stereotypes Between Roma and Non-Roma: From Theory to Practice”, *Innovative Issues and Approaches in Social Sciences* 6, No. 3 (September 2013): 184–185.

²⁰ UNICEF, *The Right of Roma Children to Education* (Geneva: UNICEF CEECIS, 2011), 21, <https://www.unicef.org/eca/media/1566/file/Roma%20education%20postition%20paper.pdf>, 2019.

²¹ Pavel Bílek et al., *Zpráva o stavu lidských práv v České republice 1996* [Report on the State of Human Rights in the Czech Republic in 1996], April 1997, 35–38, <http://www.helcom.cz/cs/zprava-o-stavu-lidskych-prav-v-cr-za-rok-1996/>.

²² Rick Fawn, “Czech Attitudes toward the Roma: ‘Expecting More of Havel’s Country?’”, *Europe-Asia Studies* 53, No. 8 (December 2001): 1195, doi: 10.1080/09668130120093192.

²³ “Ombudsmanka doporučila deset opatření k lepší integraci Romů do běžných škol a mezi ostatní děti” [Ombudsman Recommends Ten Measures to Better Integrate Roma into Mainstream Schools with Other Children], *Romea.cz*, December 12, 2018, <http://www.romea.cz/cz/zpravodajstvi/domaci/ombudsmanka-doporucila-deset-opatreni-k-lepsi-integraci-romu-do-beznych-skol-a-mezi-ostatni-deti>.

children start attending,²⁴ extra-legal measures like these over a sustained period of time and coupled with other activism have a chance to translate courtroom success into on-the-ground reforms.

Although tangible reforms are far from guaranteed, cases of strategic importance have a raw emotional aspect which can create “emancipation stories”.²⁵ On hearing the Grand Chamber’s judgment, one Roma parent of the *D.H.* applicants poignantly stated: “someone [...] finally believed us... [we were] able to make it to Strasbourg and tell the truth.”²⁶ Successful test cases like *D.H.* have the ability to provide an emotional cornerstone on which victims, NGOs and other stakeholders can rely and build. Demonstrating the solid foundation that a successful piece of strategic litigation can offer, a recent Ostrava District Court case in 2017, which heard claims concerning the blocking of two Roma boys’ applications to a local elementary school, found a violation.²⁷ The precedent set by the Grand Chamber in *D.H.*, ten years previously, made clear to the District Court that admission policies which are shown to have a disproportionately negative effect on Roma can be deemed to be racially discriminative.

Given the hostility of some environments and the emotional weight of strategic litigation, it is vital to select the right strategy to redress widespread discriminatory practices. Whether a selected case to litigate, an alternative advocacy option (like *amicus curiae*) or deciding on exclusively extra-legal methods, what needs to be avoided is the alienation of victims and their perception that justice is “dependent” on the efforts of “strangers”.²⁸ Especially when considering a legal reaction to abuses, if one can include victimised communities in the process, for example through legal teams updating community representatives or hosting presentations on case developments, a more lasting and inclusive solution may be found. Again, the partnership between strategic litigation and extra-legal activism is vital.

Part of the reason why considering the strategy in strategic litigation is important is because successful test cases are often part of lengthy, sequential

²⁴ Antonia Eliason, “With No Deliberate Speed: Understanding and Maximising Litigation”, *Duke Journal of Comparative and International Law* 27, No. 2 (Winter 2017): 205, <https://scholarship.law.duke.edu/djcil/vol27/iss2/2>.

²⁵ Adam Weiss, “What is Strategic Litigation?”, European Roma Rights Centre (hereafter ERRC), June 1, 2015, <http://www.errc.org/news/what-is-strategic-litigation>.

²⁶ Zimová et al., *Strategic Litigation Impacts: Roma School Desegregation*, 69.

²⁷ “Justice Served – Romani Boys Denied Enrolment in School Win Case in Czech Republic”, ERRC, March 6, 2017, <http://www.errc.org/press-releases/justice-served--romani-boys-denied-enrolment-in-school-win-case-in-czech-republic>.

²⁸ OSJI, *Strategic Litigation Impacts: Insights from Global Experience*, 37.

plans to effect reform. Considering European Roma educational desegregation efforts, there is certainly no discernible “champagne moment”²⁹ and it is still an incremental process to emancipation. Thought to have started in Hungary when Roma students complained of segregated canteens and graduation ceremonies,³⁰ it was not until *D.H.* that strategic litigation was employed more as a method to advance Roma educational rights.³¹ Since *D.H.*, the ECtHR has denounced the physical segregation of Roma children in mixed schools in *Sampanis*,³² refused to accept language proficiency as grounds to segregate Roma children in *Oršus*³³ and added clarity that neutral educational practices cannot be indirectly discriminatory in *Horváth and Kiss*. Thus, *D.H.* may be remembered as one landmark judgment, but the construction of an “emancipation story” may require many chapters to fully shift the status quo in favour of Roma educational equality.

Even in this study’s brief discussion on the attractiveness and challenges of strategic litigation, extra-legal activism has been shown to be essential in keeping the spotlight on respondent states. As a series of Greek Roma educational desegregation cases at the ECtHR demonstrate, sustained extra-legal pressure is vital when judgments do not provide an adequate deterrent or have an unhelpful tone which fails to express urgency. Similarly to *D.H.*, in 2008, judges in *Sampanis* allowed the Greek government to choose the means of redress after unanimously finding Greece in violation when Roma pupils were segregated into off-site annexes in mainstream primary schools – crucially not requiring the offending school board to cease segregationist policies.³⁴ Although the Committee of Ministers of the Council of Europe deemed the post-judgment measures of the Greek government satisfactory,³⁵ the freedom afforded by the ECtHR was shown to be ineffective, when, in another Greek case in 2012, the said reforms had merely helped to create Roma-only primary schools (*Sampani*).³⁶ Similar violations

²⁹ Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Litigation* (Oxford: Hart Publishing, 2018), 37–38.

³⁰ “Roma Sue School in Northeastern Hungary: The Submission Against the Principal of the Ferenc Pethe Primary School, Tiszavasvári, Hungary”, ERRC, May 14, 1998, <http://www.errc.org/roma-rights-journal/roma-sue-school-in-northeastern-hungary-the-submission-against-the-principal-of-the-ferenc-pethe-primary-school-tiszavasvari-hungary>.

³¹ Zimová et al., *Strategic Litigation Impacts: Roma School Desegregation*, 21–22.

³² *Sampanis and Others v. Greece*, App. No. 32526/05, ECtHR First Section, June 5, 2008.

³³ *Oršus and Others v. Croatia*, App. No. 15766/03, ECtHR Grand Chamber, March 16, 2010.

³⁴ Jack Greenberg, “Report on Roma Education Today: From Slavery to Segregation and Beyond”, *Colombia Law Review* 110, No. 4 (May 2010): 943–945.

³⁵ James A. Goldston, “The Unfulfilled Promise of Educational Opportunity” in *Realising Roma Rights*, ed. Jacqueline Bhabha et al. (Philadelphia: University of Pennsylvania Press, 2017), 173.

³⁶ *Sampani and Others v. Greece*, App. No. 59608/09, ECtHR First Section, December 11, 2012.

were found in *Lavida* in 2013.³⁷ The lack of urgency by the court in some Roma educational desegregation litigation is therefore exactly why extra-legal activism is required – it ensures the promises made in judgments are not diluted or ignored.

The Multi-Dimensional Impact of *D.H. v. Czech Republic*

Analysing *D.H.* and educational desegregation efforts in Czechia, this part will conduct a specific impact analysis on changes to domestic legal and supranational landscapes and the Roma response post-judgment. It is here where one can see, by means of a focused case study, the necessity of strategic litigation and extra-legal activism having a close relationship in order to achieve maximum social impact.

When measuring impact, this study reviewed reports from public interest organisations and NGOs that regularly monitor the results of their legal challenges. For example, the OSJI appraised its Roma desegregation litigation in 2016 by reviewing the post-judgment policies and practices of the respondent state, any legal and jurisprudential developments and the effect on “peoples’ lives”.³⁸ The OSJI later adopted an explicitly multi-dimensional approach, using a “material, instrumental and non-material” model.³⁹ Also considering Duffy’s call for “high definition” and “wide-angled” impact perspectives,⁴⁰ this study focused on jurisprudential and socio-legal issues from wide topic areas, for example the treatment of data in supranational jurisprudence post-*D.H.*, to provide a useful picture of impact.

Changing Legal and Jurisprudential Landscapes

Regarding impact, it is perhaps the legal and jurisprudential developments following *D.H.* which can be seen as having a timeless effect. Whether reviewing Czech domestic reforms or the elevation of data in European Convention jurisprudence, there must exist a close partnership between legal forms of redress, like strategic litigation, and extra-legal activism. This is vital in preventing courtroom successes being squandered in practice.

³⁷ *Lavida and Others v. Greece*, App. No. 7973/10, ECtHR First Section, May 30, 2013.

³⁸ Zimová et al., *Strategic Litigation Impacts: Roma School Desegregation*, 55.

³⁹ OSJI, *Strategic Litigation Impacts: Insights from Global Experience*, 42–43.

⁴⁰ Duffy, *Strategic Human Rights Litigation*, 37–41.

Prior to *D.H.*, it was Czechoslovak, later Czech, legislation and educational practices which enabled the effective segregation of Roma children in the national education system. Under the provisions of the Schools Act 1984 (1984 Act), children could be placed into special primary schools (*zvláštní školy*) which were designed for those deemed to have a mild mental disability, including those “difficult to educate”,⁴¹ a common stereotype that Roma children persistently face. Furthermore, a 1997 Ministerial Decree gave head teachers the power to decide on the appropriateness of a child’s special school placement on account of an individual psychological report and parental consent.⁴² Perhaps realising that inconsistent psychological testing was being used and there existed a shaky concept of parental consent, an amendment was passed in 2000⁴³ which allowed for “special school graduates” to attend mainstream secondary schools on passing an entrance exam.⁴⁴ Such a measure neglected the fact that the woefully abridged special school curriculums left children unprepared for such an entrance exam, nor did it facilitate the pursuit of any other forms of further education.⁴⁵ Roma children were trapped in a cycle of educational poverty.

By the time *D.H.* was heard at the Grand Chamber, the Czech government had arguably already felt the impact of judicial scrutiny. In 2004, Czechia had repealed the 1984 Act and had introduced a new Schools Act (2004 Act) which aimed to integrate special and mainstream primary schools.⁴⁶ Due to fierce anti-*D.H.* lobbying, however, crucial changes were reversed and instead special schools were simply renamed “practical schools” (*praktické školy*).⁴⁷

⁴¹ Zákon č. 29/1984 Sb. Zákon o soustavě základních a středních škol (školský zákon) [On the System of Primary and Secondary Schools (Schools Act)], § 29 (1), <https://www.zakonyprolidi.cz/cs/1984-29>.

⁴² Vyhláška č. 127/1997 Sb. Vyhláška Ministerstva školství, mládeže a tělovýchovy o speciálních školách a speciálních mateřských školách [Decree of the Ministry of Education, Youth and Sports on Special Schools and Special Kindergartens], § 7, <https://www.zakonyprolidi.cz/cs/1997-127>.

⁴³ Zákon č. 19/2000 Sb. Zákon, kterým se mění Zákon č. 29/1984 Sb., o soustavě základních škol, středních škol a vyšších odborných škol (školský zákon), ve znění pozdějších předpisů [Amendment to Schools Act 1984], <https://www.zakonyprolidi.cz/cs/2000-19>.

⁴⁴ Barbora Bukovská and Pavla Boučková, “Minority Protection in the Czech Republic”, in *Monitoring the EU Accession Process: Minority Protection*, ed. Open Society Institute (New York: Central European University Press, 2002), 138.

⁴⁵ Zimová et al., *Strategic Litigation Impacts: Roma School Desegregation*, 37.

⁴⁶ Zákon č. 561/2004 Sb. Zákon o předškolním, základním, středním, vyšším odborném a jiném vzdělávání (školský zákon) [On Pre-School, Primary, Secondary, Higher Vocational and other Education (Schools Act)], <https://www.zakonyprolidi.cz/cs/2004-561>.

⁴⁷ Laura Cashman, “No Label No Progress: Institutional Racism and the Persistent Segregation of Romani Students in the Czech Republic”, *Race Ethnicity and Education* 20, No. 5 (2017): 597–598, doi: 10.1080/13613324.2016.1191698.

Problematically, the 2004 Act, in what is quite ethnocentric language, described children from a “low socio-cultural status” as being in need of special educational attention.⁴⁸ Further worsening the situation, Ministerial Decrees in 2005 allowed for pupils without a declaration of mild mental disability to be placed into practical schools merely on the basis of parental consent.⁴⁹ As Smekal and Šipulová reported, these developments resulted in 60 percent of all recorded Roma pupils in 2009 attending practical (formerly special) schools purely on the basis of parental consent,⁵⁰ showing a void in informed consent.

Since *D.H.*, the Czech legal response has been characterised by inaction, opposition and fluctuating attitudes leading to “cosmetic changes”⁵¹ and little progress. Initially the response to the judgment was promising with Education Minister and *D.H.* advocate, Ondřej Liška, keen to collaborate with civil society and academics to create an implementation framework to desegregate national schooling.⁵² This culminated in a draft Action Plan for the Educational Inclusion of Roma in 2007.⁵³ Although this particular Action Plan was rejected by the Czech Parliament’s Chamber of Deputies in the same year, followed by the untimely departure of Liška in 2009 due to a vote of no-confidence in the government in which he served, the initial principle of extra-legal collaboration remained. For example, when a new National Action Plan for Inclusive Education (*Národní akční plán inkluzivního vzdělávání*) was finally created in 2010, a working group was established to implement it and, within that group, civil society played a key role.⁵⁴ These positive steps demonstrated that, in order to implement a judgment effectively and ensure that reforms tangibly reach victimised communities, it is essential to work with extra-legal actors who have a more in-depth knowledge of the issues facing Roma.

⁴⁸ Laura Fónadová, Tomáš Katrňák and Natalie Simonová, “The Czech Republic: From Ethnic Discrimination to Social Inclusion in the Education System” in *The Palgrave Handbook of Race and Ethnic Inequalities in Education*, ed. Peter A. J. Stevens et al., 2nd ed. (Cham: Springer, 2019), 390–391.

⁴⁹ Office for Democratic Institutions and Human Rights (hereafter ODIHR), *Equal Access to Quality Education for Roma Children – Field Assessment to the Czech Republic* (Warsaw: OSCE, 2012), 24–26, <https://www.osce.org/odihr/96661>.

⁵⁰ Smekal and Šipulová, “D.H. v. Czech Republic Six Years Later”, 305.

⁵¹ *Ibid.*

⁵² Gwendolyn Albert, “Education policies in the Czech Republic”, in *Ten Years Later: A History of Roma School Desegregation in Central and Eastern Europe*, ed. Iulius Rostas (Budapest: Central European University Press, 2012), 180–182.

⁵³ Fuller, “Case Studies: Community Development”, 77.

⁵⁴ Smekal and Šipulová, “D.H. v. Czech Republic Six Years Later”, 305.

This attitude did not last. By the time Josef Dobeš became Education Minister in 2010, significant pressure from some special education groups and other anti-*D.H.* actors had helped politicise the judgment and the inclusion of Roma pupils into mainstream primary education. After a new Czech Penal Code was passed in early 2010, explicitly criminalising segregation, the government approved the National Action Plan and allowed a multi-stakeholder working-group to implement measures.⁵⁵ However, after a negligible amount of working-group meetings and the termination of the operations of the ministerial department charged with implementing inclusive education, over half of the National Action Plan experts resigned over a lack of express governmental commitment.⁵⁶ Furthermore, when the Czech government constructed the Strategy for Combatting Social Exclusion (*Strategie boje proti sociálnímu vyloučení na období 2011–2015*) in 2011, aimed at completely abolishing schools for “mildly mentally handicapped” children and reforming the system of financial incentives in the education system, the Ministry sided with the concerns of the anti-*D.H.* lobby rather than pledging support for the Grand Chamber’s ruling in 2007.⁵⁷ Seeming to change attitudes again in 2012, the Ministry created another National Action Plan to desegregate schooling and has since communicated more frequently with the Committee of Ministers (Council of Europe).⁵⁸ Regardless of the attitude of the Ministry, the fact remains that the then Czech Ombudsman, NGOs and other pro-*D.H.* actors did not “[possess] sufficient formal powers and the political capacity to push through systemic change against the existing opposition”.⁵⁹

Despite the inaction and regression of the Czech government, national and international NGOs, like the OSJI, Amnesty International, the Together to School coalition (*Společně do školy*) and others, have been compiling reports on the progress of the Czech government in implementing *D.H.* since the 2007 judgment, consistently raising concerns.⁶⁰ Such persistence from extra-legal actors contributed to the EU Commission launching infringement proceedings against Czechia in 2014, specifically citing *D.H.* and a joint NGO report when calling into question Czechia’s compliance with the Racial Equality Directive.⁶¹ Currently,

⁵⁵ Albert, “Education policies in the Czech Republic”, 191–192.

⁵⁶ Smekal and Šipulová, “D.H. v. Czech Republic Six Years Later”, 306.

⁵⁷ Fuller, “Case Studies: Community Development”, 82.

⁵⁸ Kosar and Petrov, “Detriments of Compliance, Difficulties among ‘Good Compliance’”, 412–413.

⁵⁹ *Ibid.*

⁶⁰ ODIHR, *Equal Access to Quality Education for Roma Children*, 27.

⁶¹ Zimová et al., *Strategic Litigation Impacts: Roma School Desegregation*, 61; Council Directive 2000/42/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons

the EU Commission is still in dialogue with Czechia but, it is hoped that “the [...] action prompts swifter implementation of *D.H.* than we have seen to date”.⁶²

A causal link exists between extra-legal pressure, the Commission’s infringement proceedings and recent legislative reforms to the Czech education system. Policies for inclusive education faced significant opposition from parts of the media and some organs of government but, nonetheless, amendments in 2015 to the 2004 Act re-directed resources to provide support for special educational needs (SEN) students at mainstream primary schools rather than at segregated practical schools.⁶³ An enforceable right to educational support for children in mainstream primary schools was also introduced into law.⁶⁴ Furthermore, Ministerial Decrees in 2016 reformed financial aid to mainstream primary schools by providing different levels of support in an attempt to fund “joint education”.⁶⁵ The Grand Chamber’s judgment in *D.H.* was a legal response to systemic abuses but, rather than rely on the judgment itself to create the desired outcome, extra-legal actors maintained pressure and arguably catalysed an escalation in scrutiny and some recent reforms.

Regarding broader supranational impacts, *D.H.* was a jurisprudential landmark in a number of areas. It was particularly the recognition of reliable data to prove indirect discrimination which impressed on national governments that extra-legal measures (like collecting ethnically disaggregated data) are vital in implementing a judgment. Additionally, elevating the role of statistics to prove disproportionate impacts on ethnic minorities has acted to vindicate the watchdog role of NGOs.

In the early 2000s, scholars widely acknowledged that the equality jurisprudence of the ECtHR was rather underwhelming due, in part, to the court’s

Irrespective of Racial or Ethnic Origin (EU), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043>.

⁶² Interview with James Goldston, January 22, 2019.

⁶³ Zákon č. 82/2015 Sb. Zákon, kterým se mění zákon č. 561/2004 Sb., o předškolním, základním, středním, vyšším odborném a jiném vzdělávání (školský zákon), ve znění pozdějších předpisů, a některé další zákony [Amendment to 2004 Act], <https://www.zakonyprolidi.cz/cs/2015-82>.

⁶⁴ Isabelle Chopin, Catharina Germaine, and Judit Tanczos, *Roma and the Enforcement of Anti-Discrimination Law* (Luxembourg: Publications Office of the European Union, 2017), 14, <https://op.europa.eu/en/publication-detail/-/publication/cd62f9fe-92ae-11e7-b92d-01aa75ed71a1/language-en>.

⁶⁵ Vyhláška č. 27/2016 Sb. Vyhláška o vzdělávání žáků se speciálními vzdělávacími potřebami a žáků nadaných [Decree on the Education of Pupils with Special Educational Needs and Gifted Pupils], <https://www.zakonyprolidi.cz/cs/2016-27>.

strict reading of discrimination based on intent (direct discrimination).⁶⁶ Prior to *D.H.*, there had been increasing calls, especially from litigators in a series of Bulgarian Roma murder cases, for the ECtHR to adopt the concept of indirect discrimination. In *Velikova*⁶⁷ and *Anguelova*⁶⁸, counsels argued that inadequate investigations, and the fact that racism was not considered as a motive for police officers killing Roma, was a breach of Art. 2 (right to life) which should be read in conjunction with Art. 14 (prohibition on discrimination). Counsels hoped that, by providing reliable statistical evidence demonstrating a prevailing discriminatory attitude in the Bulgarian police and public at large, the ECtHR would shift the burden of proof to Bulgaria to provide a non-discriminatory reason why racist motives were not considered. In *Velikova*, the Bulgarian government admitted to “popular prejudice against Roma”⁶⁹ and, in *Anguelova*, details revealed that police officers were “unable to refrain from referring to [the victim] as “the Gypsy”.”⁷⁰ *Velikova* and *Anguelova* failed to persuade the court to shift the the burden of proof; however, the First Section in *Nachova*, due to the Bulgarian authorities not investigating racial motives in two additional Roma murders, allowed the burden to shift to Bulgaria.⁷¹ Although the First Section’s judgment in *Nachova* was overturned at the Grand Chamber,⁷² it signalled the ECtHR could be swayed to change its strict application of discrimination.

The *D.H.* judgment was significant because it was the first time the concept of indirect discrimination was applied in ECtHR jurisprudence. Throughout the *D.H.* litigations, the Bulgarian Roma murder cases were referenced, as was the EU Racial Equality Directive (RED)⁷³ which, at the time, was the only instrument in Europe which recognised indirect discrimination. In *D.H.*, the Second Section heard that the RED allowed a *prima facie* case of discrimination to be established when an “apparently neutral provision or practice” (like the 1984

⁶⁶ Andrea Coomber, “Strategically Litigating Equality – Reflections on a Changing Jurisprudence”, *European Anti-Discrimination Law Review* 15, No. 11 (November 2012): 10–12, https://www.migpolgroup.com/_old/portfolio/european-anti-discrimination-law-review-issue-15/.

⁶⁷ *Velikova v. Bulgaria*, App. No. 41488/98, ECtHR Fourth Section, May 28, 2000.

⁶⁸ *Anguelova v. Bulgaria*, App. No. 38361/97, ECtHR First Section, June 13, 2002.

⁶⁹ *Velikova*, 2000, para. 92.

⁷⁰ *Anguelova*, 2002, para. 164.

⁷¹ *Nachova and Others v. Bulgaria*, App. No. 43577/98 and 43579/98, ECtHR First Section, February 26, 2004.

⁷² *Nachova and Others v. Bulgaria* App. Nos. 43577/98 and 43579/98, ECtHR Grand Chamber, July 6, 2005.

⁷³ Council Directive 2000/42/EC of 29 June 2000 Implementing the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin (EU), <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043>.

Act) disproportionately disadvantaged “persons of a racial or ethnic origin” (like Roma)⁷⁴. Although the Second Section did not “rule out” the use of statistics to prove discriminatory practices, it stayed true to its strict application of discrimination by intent and warned against relying on such data.⁷⁵ The Grand Chamber reversed the Second Section’s judgment and not only used RED to define indirect discrimination, but shifted the burden to Czechia to provide a non-discriminatory justification for the disproportionate numbers of Roma children in special education.⁷⁶ The Czech government was unable to provide such a justification.

The displacement of intent and the elevation of statistical evidence was therefore “a revolutionary breakthrough within the framework [...] of the ECtHR”,⁷⁷ with the cases of *Sampanis*, *Oršuš*, *Sampani*, *Horváth and Kiss* and *Lavida* also all presenting statistical evidence to demonstrate a breach of Art. 14 alongside Art. 2 of Protocol 1 (right to education). The positive treatment of statistics by the Grand Chamber, as Klípa suggests, signalled to the Czech government that extra-legal measures in the form of ethnic data collection were essential, not only in monitoring the placement of Roma into special education, but to assess the impact of any reforms post-*D.H.*⁷⁸ It was reported by NGOs, shortly after the Grand Chamber’s judgment, that government ministers regarded the collection of ethnically disaggregated data as a matter of urgency to prevent another *D.H.*-style case.⁷⁹ Essentially, the Czech government had been put on notice to actively seek out legislation and practices which had an indirect discriminatory effect on Roma.

The Czech government’s use of ethnic data collection did not start well. At first, a voluntary survey for head teachers was circulated throughout Czechia and, unsurprisingly, it resulted in unhelpful samples being taken.⁸⁰ It was only when the Czech School Inspectorate was handed the responsibility for collecting disaggregated data that a more bullish approach was taken. Under this new approach, since adopted by the Ministry, all special and mainstream schools (with one or more Roma child in a special class) are obligated to record and

⁷⁴ Ibid, Art. 2, § 2 (b).

⁷⁵ D.H., 2006, para. 45, 46.

⁷⁶ D.H., 2007, para. 188, 189.

⁷⁷ David Strupek, “Before and After the Ostrava Case: Lessons for Anti-Discrimination Law and Litigation in the Czech Republic”, *Roma Rights Journal* 41, No. 1 (2008): 48, http://www.errc.org/uploads/upload_en/file/03/66/m00000366.pdf.

⁷⁸ Ondřej Klípa, “Chasing ‘Statistical Roma’: Ethnic Data Collection in Czech Primary Schools”, *Journal on Ethnopolitics and Minority Issues in Europe* 16, No. 1 (2017): 34–35.

⁷⁹ Ibid.

⁸⁰ Zimová et al., “Strategic Litigation Impacts: Roma School Desegregation”, 37.

send ethnic data to the Ministry.⁸¹ Although ethnic data collection from the government is not routinely forthcoming,⁸² it reveals the jurisprudential impact of *D.H.*, in that it has compelled the Czech government to engage in extra-legal activity to redress the disproportionate placement of Roma in special education. The fact that Czechia was unable to rebut the overwhelming statistical evidence presented in *D.H.* not only demonstrated a lack of a duty of care, but impressed on the Czech government that extra-legal measures were to be employed to effect the judgment.

As Goldston states, “data speaks for itself [and] it is an objective tool to monitor compliance with a judgment”.⁸³ Thus, the elevation of reliable statistical data also gives further credence to NGOs’ calls for widespread reform and their roles as watchdogs monitoring implementation. For example, in a recent Rule Nine Submission to the Committee of Ministers (Council of Europe) in 2019, proposed changes to a 2016 Ministerial Decree aimed at facilitating aforementioned inclusion amendments to the 2004 Act raised serious concerns that the Czech education system is returning to a pre-*D.H.* state.⁸⁴ The authors of the Submission especially pointed to the proposed diluting of the principle that SEN students are to be educated at mainstream primary schools and the possible establishment of SEN-only classes in separate schools⁸⁵ – segregation in all but name. Figures show the number of Roma in reduced educational or SEN-specific programmes within mainstream primary schools increasing, whilst the total number of Roma in primary education has remained fairly static.⁸⁶ With this data, NGOs are able to effectively rebut government claims that educational segregation is decreasing, exposing persistent and new threats to educational inclusion over a decade after *D.H.*

Despite the ECtHR elevating the position of reliable data in *D.H.*, compelling the Czech government to take previously un contemplated extra-legal measures and vindicating the role of NGOs, the organs of the state can still act to weaken or dilute an emancipatory judgment. In the 2013 Czech Supreme Court case of Jaroslav Suchý, concerning a Czech Roma man who had been sent to

⁸¹ Klípa, “Chasing ‘Statistical Roma’”, 35.

⁸² Albert, “Education policies in the Czech Republic”, 184.

⁸³ Interview with James Goldston, January 22, 2019.

⁸⁴ Amnesty International, Forum for Human Rights, Open Society Fund Prague, “Rule 9 Submission to the Committee of Ministers: *D.H. and Others v. Czech Republic* (Application No. 57325/00)”, August 2, 2019, 2–5, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168096c5c2.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

a special school in his youth, the court found the data presented inadequate to prove his placement amounted to indirect racial discrimination.⁸⁷ It was held that if statistical evidence was to establish a *prima facie* case of discrimination and shift the burden of proof, at least 50 percent of all Roma children would have to be shown to be in special education. At the time of Suchý's legal challenge, the Czech Ombudsman recorded that Roma represented 40 percent of all those in special education, absurdly meaning that the arbitrary threshold created by the court was not met.⁸⁸ On appeal in 2015, the Czech Constitutional Court also ruled against Suchý, upholding the judgment of the Supreme Court. It is clear that *D.H.* will not be a quick-fix, especially when the state fails to "[honour] the true spirit"⁸⁹ of a judgment, and extra-legal actors must continue to sustain pressure through data and other activism in order to ensure the promises of court-fought rights are not diluted and are eventually realised.

As illustrated when analysing both the specific response of the Czech government and its ministries and the elevation of reliable statistical data in European jurisprudence, it is evident that there must exist a strong partnership between legal and extra-legal actors and methods to fully realise educational equality. Changing legal and jurisprudential landscapes is no guarantee for tangible changes on the ground; however, a close relationship between strategic litigation and extra-legal activism and actors has been shown to at least apply pressure and scrutiny in the face of ineffective or unwilling implementation efforts.

Roma Responses

Beyond reshaping jurisprudential and legal landscapes, the very aim of strategic litigation should be to vindicate applicants' rights but, more profoundly, to also impact victimised communities. Analysing Roma responses, *D.H.* has evidently been utilised by Roma to claim their court-declared rights, increased human rights consciousness in Roma communities and culminated in initiatives to educate parents when making decisions about their children's schooling. Additionally, extra-legal activism crucially confronts pushback from

⁸⁷ "Czech Supreme Court: No Redress for 'Special School Enrolment'", *Romea.cz*, January 3, 2013, <http://www.romea.cz/en/news/czech/czech-supreme-court-no-redress-for-special-school-enrollment>.

⁸⁸ European Roma Rights Centre, "Written Comments of the European Roma Rights Centre Concerning the Czech Republic: For Consideration by the Human Rights Committee at its 108th Session (8–26 July 2013)", 10, http://www.errc.org/uploads/upload_en/file/czech-republic-iccpr-14-june-2013.pdf.

⁸⁹ Interview with James Goldston.

victimised communities who, in response to slow implementation and decades of discrimination, may be cautious and fearful of exercising their court-declared rights.

When interviewing Goldston, one of the major impacts of *D.H.* discussed was the confidence given to the Roma community that the law, as interpreted by an influential supranational body, was “after decades of [...] being seen as something to fear [...] used to grant justice to a community that has been deprived of it for so long”.⁹⁰ Renewed faith in the law and its structures is of major significance because victims can utilise judgments to empower themselves and actively become part of implementation efforts. An apt example is the Ostrava schools campaign in 2014 which was led by Roma parents and supported by the Czech NGO *Vzájemné soužití* (Living Together). Kristýna Vaněrková, recalling an all too common story, prepared her grandson for a mainstream primary school entrance exam and organised mentoring through *Vzájemné soužití* but, when it came to finally enrolling her grandson to the school, she was told unequivocally that Roma belonged to the local practical school.⁹¹ With sustained pressure from Roma parents and local NGOs, schools began to back-pedal after justifications for their decisions were demanded. Before the campaign, 95 percent of Roma parents in Ostrava expected their children to attend practical schools; however, after the campaign, 20 percent of Roma parents expected to see the same result.⁹² Such a dramatic shift in Roma attitudes clearly illustrates the vital relationship between legal and extra-legal strategies, with *D.H.* being shown to be a weapon for Roma parents to wield in everyday situations.

Having conducted a field trip to *Člověk v tísni* in Kladno with Charles University in 2018, it was clear from speaking to a youth worker that Roma-led activism continues. Echoing accounts from the Ostrava campaign in 2014, the youth worker described a similar pattern: Roma parents enrol their child into a mainstream primary school, their application is rejected due to alleged oversubscription and they are told to send their child to the local practical school which is exclusively attended by Roma children.⁹³ An important part of *Člověk v tísni*'s function in Kladno is to work with affected parents to demand not only a justification for their child's application's being rejected, but evidence that a school

⁹⁰ Ibid.

⁹¹ Ostalina-Maya Ovalle, “How Families are Taking Action against Czech Discrimination”, April 29, 2015, <https://www.justiceinitiative.org/voices/how-roma-families-are-taking-action-against-czech-school-discrimination>.

⁹² Ibid.

⁹³ Sys, “The Hostel on the Hill”.

is at full capacity. The social worker wryly described that when inquiries are made, “suddenly a place at the [mainstream] primary school opens”.⁹⁴ What the extra-legal activism in Ostrava and Kladno demonstrates is that, whilst strategic litigation is a potent tool, extra-legal activism is needed to enforce previously denied rights at a local level.

In addition to reacting to incidents of discrimination, *D.H.* has been used, often with the aid of local NGOs, to disseminate information to the Czech Roma community. A paradigm shift in Roma human rights consciousness can be demonstrated through the work of the Czech NGO Slovo 21 which is mostly led by Roma and collaborates with Roma communities throughout Czechia. In 2013, Slovo 21 created the campaign “Mami, tati, já chci do školy” (“Mum, Dad, I Want to Go to School”) which aims to educate Roma parents on the importance of mainstream schooling and the need to avoid practical schools unless absolutely necessary.⁹⁵ Through music, videos, workshops, public meetings and home visits, NGOs like Slovo 21 work hard to ensure that the rights fought for in *D.H.* permeate into the Roma community.⁹⁶ This is of immense importance because, instead of always being regarded as helpless, empowering and giving agency to Roma parents can transform everyday victims into everyday activists, having the potential to create widespread dissent against the status quo.⁹⁷ Without post-judgment extra-legal efforts, within and including the Roma community, *D.H.* would be left in a vulnerable position because the fight for emancipation would cease in the courtroom.

Although the increasing human rights consciousness and mobilisation of the Roma community is encouraging, data collected since the *D.H.* judgment provides for “grim” reading and demonstrates that the impact of *D.H.* has not completely filtered down to the victim level.⁹⁸ Reviewing its progress from 2009 to 2013, the Czech government argued that the number of Roma children in

⁹⁴ Ibid.

⁹⁵ “Mami, tati, já chci do školy [Mum, Dad, I Want to Go to School]”, official homepage of Slovo 21, 2014, <https://www.slovo21.cz/index.php/extensions/vsechny-romske-projekty/310-mami-tati-ja-chci-do-skoly>.

⁹⁶ “Slovo 21: Praktická škola není pro budoucnost romských dětí prospěšná [Slovo 21 – A Practical School is Not Beneficial for a Roma Child’s Future]”, *Romea.cz*, November 19, 2013, <http://www.romea.cz/cz/zpravodajstvi/tiskove-zpravy/slovo-21-prakticka-skola-neni-pro-budoucnost-romskych-deti-prospesna>.

⁹⁷ Alpha Abdikeeva and Alina Covaci, “The Impact of Legal Advocacy Strategies to Advance Roma Health: The Case of Macedonia”, *Health and Human Rights Journal* 19, No. 2 (December 2017): 104.

⁹⁸ Zimová et al., *Strategic Litigation Impacts: Roma School Desegregation*, 47.

practical schools had significantly decreased year on year, with the trend set to continue.⁹⁹ However, not concurring, the Czech School Inspectorate recorded in 2013 that 28 percent of all children diagnosed with “mild mental disabilities” were Roma, increasing to 32 percent in 2014,¹⁰⁰ and then decreasing marginally to 30.9 percent in 2017.¹⁰¹ Although numbers of Roma in practical schools have been somewhat affected by *D.H.*, new challenges have emerged even at the level of integration. In 2018, the Czech Ombudsman exposed a “separate but equal” attitude at mainstream primary schools which, having accepted Roma pupils, were increasingly segregating them from non-Roma into separate classes and buildings.¹⁰² The hard facts show that the implementation of *D.H.* is painfully slow, segregation is taking new forms and, as reported by NGOs, victims may be facing new forms of educational inequality.

In addition to a lack of implementation, a worsening hostile environment in Czechia, characterised in part by an increase in public support for the radical populist party Svoboda a přímá demokracie – Tomio Okamura (Freedom and Direct Democracy – Tomio Okamura) whose leader has openly denied the Roma Holocaust,¹⁰³ is perhaps why there has been a pushback from sections of the Roma community. The OSJI recorded that, although *D.H.* unequivocally supported Roma educational equality, some Roma parents continue to consciously send their children to sub-standard practical schools.¹⁰⁴ Messing makes the case that this type of pushback is due to a “safe island” mentality from the Roma community where, in order to “escape anti-Roma hatred” in mainstream primary schools, parents will take decisions on schooling based on the protection

⁹⁹ Ibid.

¹⁰⁰ Amnesty International, *Must Try Harder: Ethnic Discrimination of Romani Children in Czech Schools* (London: Amnesty International Ltd., 2015), 6, https://www.amnestyusa.org/files/musttryharder_embargoed_report.pdf, accessed: March 18, 2019.

¹⁰¹ Štěpán Drahoukoupil, “Discrimination against Roma in Education: Waiting for Changes on the Ground”, European Implementation Network, March 11, 2017, <http://www.einnetwork.org/ein-voices-archives/2017/3/22/discrimination-against-roma-in-education-waiting-for-changes-on-the-ground-VkDd8>.

¹⁰² “Doporučení veřejné ochránkyně práv ke společnému vzdělávání romských a neromských dětí” [Recommendations of the Ombudsman for the Joint Education of Roma and non-Roma Children] December 12, 2018, 31, https://ochrance.cz/fileadmin/user_upload/ESO/86-2017-DIS-VB_Doporučení_desegregace.pdf.

¹⁰³ Gwendolyn Albert, “Ignorance Breeds Contempt: Czech Holocaust Denial, the Pig Farm, and the Romani Genocide”, Heinrich Böll Stiftung Prague, December 19, 2017, <https://cz.boell.org/en/2017/12/19/ignorance-breeds-contempt-czech-holocaust-denial-pig-farm-and-romani-genocide>.

¹⁰⁴ Zimová et al., *Strategic Litigation Impacts: Roma School Desegregation*, 58.

of their children from majority population hostility.¹⁰⁵ Amnesty International have corroborated this fear and concluded that, in Czechia, a widespread culture of racialized bullying exists in mainstream primary schools: “Every week I am reminded that I am Roma, that I am dirty and that I am different”.¹⁰⁶ As the attempted suicide of a Roma school girl in Česká Lípa in 2018 illustrates, race-based harassment at mainstream schools and a lack of action from head teachers continue to surface.¹⁰⁷ It is little wonder, with accounts like these, that Roma may want to send their children to racially homogenous safe spaces where Roma language, culture, history and identity is not ridiculed or hidden away.

The fear-induced pushback is exactly why legal strategies are vulnerable and cannot be solely relied upon to effectively implement long-lasting societal change. As Cashman states, educational and wider social segregation was, before any court case, “uncritically accepted by Roma for generations” as part of their daily experience.¹⁰⁸ The experience of the Roma community, from their attempted extermination during the *Porajmos* (the Holocaust), forced assimilation under Communism,¹⁰⁹ unlawful sterilisation of Roma women¹¹⁰ and other forms of social persecution, cannot be undone by a legal declaration of rights. The wounds run deep and, although successful pieces of strategic litigation like *D.H.* can go some way in condemning historical wrongs, the use of extra-legal activism is vital in giving confidence to the Roma community and instilling a strong sense of personal identity to counter widespread discrimination.

The “safe island” mentality of the Roma community should also be discussed in the context of recent legislative reforms. The aforementioned amendments to the 2004 Act in 2015, and accompanying auxiliary Ministerial Decrees in 2016, attempted to establish a regime of inclusive education. This now includes the

¹⁰⁵ Vera Messing, “Differentiation in the Making: Consequences of School Segregation of Roma in the Czech Republic, Hungary and Slovakia”, *European Education* 49, No. 1 (March 2017): 95, doi: 10.1080/10564934.2017.1280336.

¹⁰⁶ “Segregation, Bullying and Fear: The Stunted Education of Romani Children in Europe”, *Amnesty International*, April 8, 2015, <https://www.amnesty.org/en/latest/news/2015/04/the-stunted-education-of-romani-children-in-europe/>.

¹⁰⁷ “Romani Girl Attempts Suicide after Bullying at her Primary School in Czech Town”, *Romea.cz*, October 30, 2018, <http://www.romea.cz/en/news/czech/romani-girl-attempts-suicide-after-bullying-at-her-primary-school-in-czech-town>.

¹⁰⁸ Cashman, “No Label No Progress”, 597.

¹⁰⁹ Filip Sys, “Why are Czech Roma in Ghettos?”, *Fil Sys Blog*, January 29, 2018, <https://filsysblog.wordpress.com/2018/01/29/why-are-czech-roma-in-ghettos/>.

¹¹⁰ Gwendolyn Albert and Marek Szilvasi, “Intersectional Discrimination of Roma Women Forcibly Sterilized in the Former Czechoslovakia and Czech Republic”, *Health and Human Rights Journal* 19, No. 2 (December 2017): 28.

safeguard that a child cannot be legally educated in a practical school without the informed consent of a parent or legal guardian.¹¹¹ However, such developments do not adequately address historical abuses. For example, the Awen Amenca association helps to educate Roma parents on the importance of mainstream primary school enrolment for their children and encourage applications to previously “closed” school districts, assisting in legal action where necessary.¹¹² On the other hand, it must also be accepted that while one avenue of discrimination is being tackled, new forms of discrimination in education – be that segregated classrooms or reassignment to different schools once teaching begins – are starting to pose new challenges to the ultimate aim of inclusive education in Czechia.¹¹³

Conversely, some accounts of why Roma make the decision to send their children to mainstream primary schools are disturbingly skewed: “[my father] wants us to belong to the white people [...] he never taught us *cikánsky* (Romani) [...] he does not see the value of being Roma in Czech society”.¹¹⁴ This socially engineered inferiority complex was further uncovered during a Channel 4 News report on the Czech Municipal Elections in 2018. Speaking to a Roma community leader in the city of Most, O’Brien reported some Roma starting to believe they were actually “animals” because of the racist election posters surrounding the city, advocating for their forced ghettoization.¹¹⁵ To effectively redress the disastrous consequences of generational social exclusion, one must go beyond legal strategies and realise that members of marginalised communities may not instantly empower themselves with court-declared rights due to lived and historically-based experiences. Therefore, extra-legal activism must, following legal outcomes, seek to give agency to Roma communities and to include them in the implementation process in order to create effective and sustainable impact.

Positively, Roma have increasingly organised to counter the prevailing narrative of inferiority in Czech society through confronting blanket attacks by state actors and celebrating their culture and history. In the run-up to the Czech Presidential elections in 2018, a poignant example of Roma-led extra-legal activism

¹¹¹ Zákon 82/2015 Sb., § 16 and 19 (j); Vyhláška č. 27/2016 Sb., § 4 (1).

¹¹² “Magdalena Karvayová: Parents in the Ghettos Need to See Education Offers their Children a Future”, *Romea.cz*, July 23, 2020, <http://www.romea.cz/en/news/czech/magdalena-karvayova-parents-in-the-ghettos-need-to-see-education-offers-their-children-a-future>.

¹¹³ *Ibid.*

¹¹⁴ Kazuyo Igarashi, “Support Programmes for Roma Children: Do They Help or Promote Exclusion?”, *Intercultural Education* 16, No. 5 (2005): 450, doi: 10.1080/14675980500378508.

¹¹⁵ Paraic O’Brien, “Far-Right in the Czech Republic: The Politicians Turning on the Roma”, News Report, 9:35, *Channel4News*, October 5, 2018, <https://www.channel4.com/news/far-right-in-czech-republic-the-politicians-turning-on-roma>.

was triggered by President Zeman calling Roma “work shy” and “inadaptable”.¹¹⁶ In response, the Roma community mobilised and started to post pictures of themselves at work in Czechia and abroad on social media.¹¹⁷ Supporting grass-roots activism and giving agency to Roma communities to individually or collectively defend their educational and other civil rights, arguably, has a more instant social impact and goes some way to demonstrate that legal strategies should not solely be relied upon to organically effect change.

Furthermore, events like the annual Khamoro (World Romani) Festival¹¹⁸ and International Roma Day help to mould a strong sense of personal identity amongst Roma communities, whilst encouraging Roma led-action against persistent abuses in public life.¹¹⁹ For example, the 2019 International Roma Day in Brno included a collaborative sound installation by local Roma groups and the National Theatre which played stereotypical comments and racial insults about Roma to passers-by.¹²⁰ Extra-legal activism can play a crucial role in giving agency to victimised communities and aiding implementation of judgments like *D.H.* at a local level. If that extra-legal activity can be spearheaded by Roma, the impact of *D.H.* and other future legal action could and would become more profound.

Conclusion

Václav Havel once said that the treatment of the Roma was a “litmus test” for society and that “efforts should be made to [...] drive out manifestations of intolerance”.¹²¹ Through the lens of *D.H.* and Czech Roma educational desegregation efforts, this study has assessed the use and impact of strategic litigation – one

¹¹⁶ Celia Donart, “Opinion: Anti-Roma Stigma of Czech President Miloš Zeman Threatens Progress over Romani Rights”, University of Liverpool, January 24, 2018, <https://www.liverpool.ac.uk/history/blog/2018/czech-president-roma/>.

¹¹⁷ “Romové zaplavili Facebook stovkami fotografií, kde je vidět, jak pracují a vzkazují Zemanovi: pracujeme, přestaňte nás urážet! [Roma Flooded Facebook with Hundreds of Photos Showing How They Work and Tell Zeman: We Work, Stop Insulting Us!]", *Romea.cz*, October 3, 2018, <http://www.romea.cz/cz/zpravodajstvi/domaci/romove-zaplavili-facebook-stovkami-fotografii-kde-je-videt-jak-pracuji-a-vzkazuji-zemanovi-pracujeme-prestante-nas-urazet>.

¹¹⁸ “Program Khamoro 2020”, *Khamoro.cz*, n.d., <https://www.khamoro.cz/cs/program>.

¹¹⁹ “International Roma Day: A Day to Raise Awareness of Human Rights Problems Experienced by Roma”, ERRC, April 6, 2007, <http://www.errc.org/cikk.php?cikk=2740>.

¹²⁰ “International Roma Day – Events in the Czech Republic”, *Romea.cz*, April 8, 2019, <http://www.romea.cz/en/news/czech/international-romani-day-2019-events-in-the-czech-republic>.

¹²¹ Henry Kamm, “Havel Calls the Gypsies a Litmus Test”, *The New York Times*, December 10, 1993, <https://www.nytimes.com/1993/12/10/world/havel-calls-the-gypsies-litmus-test.html>.

such method to “drive out” intolerance – in effecting social change. Grounding the discussion through a brief analysis of the attractive but obstacle-ridden pursuit of strategic litigation and then conducting a more specific legal and victim-impact analysis of *D.H.*, this study has argued that strategic litigation cannot organically effect social reform and must be closely partnered with extra-legal activism in order to maximise impact. Regarding practical appeal, the potential of strategic litigation to bind respondent states to reforms, when no such activity was previously contemplated, is a draw for litigators and activists alike and demonstrates the impact of legal routes to redress. Although *D.H.* found an entire national education system to be structurally discriminatory and subsequently influenced further Roma educational desegregation litigation in Europe, court declarations cannot independently implement on-the-ground reforms.

Despite challenges to implementation, there exists a raw emotional aspect in representing and furthering a victimised community’s rights in court. Whether through the law being shown to provide previously-denied justice to Roma communities or setting a precedent for lawyers, activists and victims on which to further build and rely, strategic litigation can have a generational impact. However, in order for that impact to be sustainable and for a positive narrative of emancipation to be constructed, extra-legal activism must be employed to ensure that the progress made in court is not diluted or disregarded by a respondent state. The extra-legal activism should also seek to holistically address the social consequences of educational segregation. The conclusion that strategic litigation is vulnerable and requires extra-legal support is further crystallised when considering historically hostile socio-political environments, choosing victim-centred strategies of redress and the risk of impotent court remedies.

Reviewing the impact of *D.H.* on legal landscapes, from Czech domestic developments and ECtHR jurisprudential perspectives, it is evident that extra-legal measures play a crucial role in the implementation of a judgement and the pressure applied to respondent states. Compliance with, and implementation of, the *D.H.* judgment by the Czech government has been consistently monitored with concern by extra-legal actors. It is this extra-legal monitoring and subsequent pressure which has arguably caused an escalation in scrutiny of Czech educational desegregation efforts – namely the EU Commission initiating infringement proceedings in 2014 – and influenced recent Czech legislative reforms.

Jurisprudentially, the post-*D.H.* impact of elevating the use of reliable data acted to not only vindicate the function of extra-legal actors, but to also compel the Czech state to take extra-legal measures itself (in the form of ethnic data

collection) to redress the disproportionate placement of Roma in special education. Analysing changes to legal and jurisprudential landscapes post-*D.H.* strengthens the argument that a close relationship between strategic litigation and extra-legal activism can at least apply further pressure and scrutiny against ineffective or unwilling implementation efforts by governments.

It is perhaps when one reviews the impact of *D.H.* on the Roma community that both the vulnerability of strategic litigation and the need for extra-legal collaboration are most evidently displayed. The field trip to Kladno and past campaigns in Ostrava led by Roma parents and supporting NGOs have shown Roma themselves weaponising *D.H.* to enforce their court-declared rights at a local level. Increased human rights consciousness of the Roma community additionally can be seen as further evidence of legal and extra-legal activism working in tandem to effect change on a social level. However, one must appreciate that current statistical evidence of Roma in special education and reports of racialized bullying continue to describe a dire situation. There is much work to be done and, as one reflects on generations of Roma social segregation, giving agency to Roma communities to claim their court-declared rights will be a gradual, sensitive but vital process moving forward.

REVIEWS

Jakub S. Beneš, **Workers and Nationalism: Czech and German Social Democracy in Habsburg Austria, 1890–1918**. Oxford: Oxford University Press, 2017. 268 pages. ISBN 978-0-198-78929-1

The title of this book, *Workers and Nationalism*, connects two seemingly unrelated phenomena in Central European society at the turn of the nineteenth century: the internationalist working-class movement and ethnic nationalism. However, Jakub S. Beneš, an American historian with Czech and Slovak roots, proposes a new approach, through which he attempts to refute the idea that labor was indifferent to nationalism until bourgeois nationalists prevailed upon it to take an interest in the advantages offered by national ethnic communities. Beneš's monograph was awarded the 2016 George Blazyca Prize by the British Association for Slavonic & East European Studies and received the 2017 Barbara Jelavich Prize from the Association of Slavic, East European, and Eurasian Studies. Both professional associations appreciated Beneš's work as an outstanding contribution to the current debate on the history of the working class and the multi-ethnic society of the Habsburg monarchy in its last years.¹

The author's main thesis is that the Czech- and German-speaking Social Democrats² in Habsburg Austria each developed their own separate culture of left-wing populist nationalism. The rising awareness within national groups of their bonds of a common language and shared everyday cultural attributes, as well as displeasure with the privileged social elites' control of public affairs, engaged the masses in Austro-Hungarian politics but also gradually split the Social Democrats into separate Czech and German organizations. In 1897, the Social Democratic Party in Habsburg Austria formally transformed itself into a confederacy of six autonomous national parties. Nevertheless, the Party's German leadership still maintained decisive influence over the policies of the labor movement and promoted an internationalist orientation. According to Beneš, the turning point that saw the beginning of the merger of socialism with nationalism was the campaign for universal suffrage in 1905–1907, when the masses started to perceive themselves not only as an integral part of Austrian society but as the power that would determine the future of the nation.

Since Beneš aims to explain how nationalism became so attractive for most workers, he cannot focus only on the performance of prominent political leaders. He also needs to make the Social Democratic Party's ordinary members and supporters visible in his analysis. Therefore, he researches the popular culture that created the space in which working

¹ Compare the reviews of Beneš's work published by the awarding associations, the 2016 George Blazyca Prize of the British Association for Slavonic and East European Studies: <http://basees.org/news/2018/3/8/jakub-bene-wins-george-blazyca-prize-for-workers-and-nationalism> and the 2017 Barbara Jelavich Prize of the Association of Slavic, East European, and Eurasian Studies: <https://www.aseees.pitt.edu/programs/aseees-prizes/barbara-jelavich-book-prize/citations-past-winner-barbara-jelavich-book-prize>.

² The author of this review adopts a practice suggested by Beneš, who uses the terms "socialists" and "social democrats" interchangeably as synonyms throughout his book.

people expressed and shared their life experiences at a time when the government was resisting the development of social democracy and the political enfranchisement of the masses. The book is based on extensive research drawing on sources such as songs, poetry, and fiction composed by socialist activists and ordinary workers. It also draws on memoirs and diaries by low-level functionaries of the party, which Beneš masterfully contextualizes into the canon of the movement's leaders' statements and the Party's programs. This cultural-historical approach distinguishes Beneš's study from older works on the history of the working class in Habsburg Austria, which mostly adopted the German historian Hans Mommsen's social-historical interpretation. Mommsen understood the economic emancipation of the Czechs from the Germans, which the Czech middle classes managed to achieve in cooperation with the workers' leaders, as the key factor in the breakdown of the internationalist labor movement into individual national social democratic parties.³

The book is divided into three parts, which describe how the popular cultural practices and poetics of Czech- and German-speaking workers developed from the beginning of the mass labor movement around 1890 to the end of World War I and the establishment of the successor states. Starting with the chapter "Narrating Socialism in Habsburg Austria," Beneš places popular socialist culture in the context of restrictions on labor political organizations imposed by the Taaffe government (1879–1893). Shared participation in May Day manifestations, singing proletarian songs and reading socialist novels were the only ways that ordinary workers could take part in a movement that was denied the form of a legal political party. The writers of labor movement-influenced fiction used the Christian motifs of suffering, sacrifice, and salvation that were well-known to all people coming from the country to the city for work. Their portrayals of workers' stories turned those themes into a class ethos. By appealing to the emotions, their poetics gained more popularity for democratic socialism among ordinary people than did all the pamphlets written by the prominent theorists of socialism, such as Marx, Engels, Lassalle, Bauer and others.

In the second chapter, "Exclusion from the Nation," the author discusses another fundamental thing that shaped the social experience of Czech- and German-speaking labor at the turn of the century. The working class mostly lived on the outskirts of the cities, separated from the bourgeois residential areas of the city centers. Workers were spatially excluded from the public life of Austria's national community. This led them to reject Austro-Hungarian nationalism as a bourgeois construct and strengthened class consciousness among the inhabitants of the suburban settlements. From the perspective of a middle-class nationalist, the working people were indifferent to nationalism. Nevertheless, the intimate proximity of Czech- and German-speaking neighbors in the suburban settlements emphasized ethnic differences in their everyday lives. Since bilingualism

³ Hans Mommsen, *Die Sozialdemokratie und die Nationalitätenfrage im Habsburgischen Vielvölkerstaat. Das Ringen um die supranationale Integration der zisleithanischen Arbeiterbewegung (1867–1907)* (Vienna: Europa-Verlag, 1963).

was rather an exception in those circles, most people naturally preferred to associate with their co-nationals.

The second part of the book shows that the 1905–07 campaign for universal male suffrage was the turning point in the self-perception and self-presentation of workers in Habsburg Austria. The third chapter, titled “Storms of November,” suggests that mobilization for political rights radically changed how socialists related to their ethnic nationalities. As Beneš demonstrates, the Social Democrats managed to convince the masses to take an interest in politics and public affairs and grasp the power to determine the future of the state and the nation. The labor movement started to integrate nationalist accents into its street demonstrations in order to compete with the impressive promises of the bourgeois parties. But articulating the national question accentuated the dissimilarities between Czech- and German-speaking worker activists. Czech workers came to believe that their suffering and exclusion could be explained in both social and national terms. They embraced the memory of the Hussites and the battle of Lipany to justify socialist claims on Czech national culture. For their part, German workers were unable to find any iconic rebel personalities comparable to Jan Hus. Thus, they associated themselves with the poets and thinkers of German high culture (Friedrich Schiller, Richard Wagner) in their communications with the masses. The fourth chapter of the book, “Socialist Hussites, Marxist Wagnerians,” concludes that Czech-speaking working people were radicalized under the influence of militant models, while their German-speaking comrades were confirmed in their German cultural superiority.

The last two chapters present the breakdown of the labor movement along nationality lines that took place in the last years of the Habsburg monarchy. In his chapter titled “The Logics of Separatism,” Beneš maintains that the institutional division of the Czech- and German-speaking labor movements was unavoidable in light of practical difficulties in communication among the trade unions and in leisure activities. The Czechs, together with representatives of other non-German nationalities, insisted on the federalization of the workers’ organizations. However, the Social Democratic Party leadership in Vienna, and other representatives of German-speaking Austria, argued for centralization and a return to socialist internationalism. The chapter, “War and Revolution,” addresses the growing contradictions between the leadership and the grass roots within the party. During World War I, the political representatives of social democracy all concurred in supporting the government’s war effort because they expected that cooperating was the only way not to lose their pre-war gains. It was, moreover, the only way they saw to strengthen their future influence over the state. The lower levels of the movement, experiencing the suffering of war directly, were disappointed by such an approach. They demanded radical solutions in the form of militant revolution and Bolshevism. After 1918 it became apparent how powerful that stream was. While social democratic politicians were leading players in the establishment of the successor states of Czechoslovakia and Austria, an influential group of workers opposed the new governments. In both countries, bourgeois parties held the majority and sought to prevent the establishment of socialist

regimes. Later, the left-wing critics left the labor movement for the newly founded communist parties.

The author presents social democracy in Habsburg Austria as a very dynamic political force, which successfully involved the masses in politics by associating itself with national cultures. He redefines the concept of “embourgeoisement” (*Verbürgerlichung*) coined by Czech historian Lukáš Fasora, who argued that workers adopted the practices of middle-class culture and transformed them for their own purposes.⁴ Contrary to Fasora, Beneš does not read this process as the convergence of the classes into a homogeneous national community. He rather emphasizes the centrifugal dynamic of interclass relations. Instead of presenting workers as passive followers of the political leadership, Beneš calls attention to the active, competitive approach that the masses took to their interactions with the elites.

Beneš provides evidence that labor was not indifferent to nationality but created its own national discourse, which cannot be reconstructed through study of the documents produced by the middle-class intelligentsia that are preserved in official archives. His approach challenges the so-called constructivist theory of nationalism advanced by Benedict Anderson, Ernest Gellner and Miroslav Hroch, which has dominated scholarship on the nationalizing of the multi-ethnic societies of Central and Eastern Europe, which continued until the end of the twentieth century. The constructivists saw the origin of the nation-building process in the well-educated and politically engaged middle class, which attempted to attract the support of the masses to their ideas of nationhood.⁵ Beneš refutes the idea that the masses were indifferent to nationality that was put forth by the American historian Tara Zahra, who argues that nationalist politics did not matter to the majority of the region's population.⁶

From the perspective of ordinary workers, ethnicity was a flexible concept in the everyday life of the multi-ethnic worker settlements, but it gradually came to influence their political thinking and led to both emancipation and exclusionary national projects. The assumptions that Beneš makes correspond with the theories of the American sociologist Rogers Brubaker, who suggests that we must take into account the fluid character of individual identities and understand that the manifestation of ethnicity is primarily the result of particular social and economic conditions in everyday life.⁷ Brubaker's approach

⁴ See Lukáš Fasora, *Dělník a měšťan: vývoj jejich vzájemných vztahů na příkladu šesti moravských měst 1870–1914* (Brno: Centrum pro studium demokracie a kultury, 2010).

⁵ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983); Ernest Gellner, *Nations and Nationalism* (Ithaca: Cornell University Press, 1983); Miroslav Hroch, *Social Preconditions of National Revival in Europe: A Comparative Analysis of the Social Composition of Patriotic Groups among the Smaller European Nations* (Cambridge: Cambridge University Press, 1985).

⁶ Tara Zahra, 'Imagined Noncommunities: National Indifference as a Category of Analysis', *Slavic Review* 69, No. 1 (2010): 93–119, <http://www.jstor.org/stable/25621730>.

⁷ See Rogers Brubaker, *Ethnicity without Groups* (Cambridge: Harvard University Press, 2004); Rogers Brubaker, Margit Feischmidt, Jon Fox, Liana Grancea, *Nationalist Politics and Everyday Ethnicity in a Transylvanian Town* (Princeton: Princeton University Press, 2006).

provides Beneš with an innovative perspective on the nationality problem, which allows him to do more than simply report the societal divisions between nationalists and nationally indifferent people that were introduced in the nineteenth century by the players in the nation-building process.

The book not only offers a good insight into the development of Czech- and German-speaking socialism in Bohemia, but also demonstrates the socialists' relationship with the workers' movement in Lower Austria. This geographical framework is relevant because Vienna, like Prague and other cities, was the target destination of labor moving from the rural areas of Bohemia, making it the home of a significant Czech minority. Moreover, Vienna was the capital of an empire in which the leadership of Austrian social democracy was a key actor. That adds a further dimension to Beneš's study and enables the author to present his conclusions in a broader context. His conclusions offer an inspiring perspective on the history of the Austrian monarchy, but at the same time, they open up many new questions that remain unanswered. A situation in which only two ethnicities lived together in a city was rather the exception in the region. Therefore, it would be desirable to take more ethnic groups into consideration. How did the working class perceive the Jews and increasing anti-Semitism at the turn of the century? How much did the motivation of Slavic solidarity matter to non-German workers?

These suggestions for deepening Beneš's analysis should be seen as a starting point for subsequent research rather than as an attempt to expose gaps in the book. One of the book's main qualities is maintaining a balance between its compact page count and its presentation of a complex problem, keeping it coherent for the reader who is not familiar with the details of the history of the labor movement in Habsburg Austria. The author assists the reader with very accessible language as well as with his clear organization of the text and its headings, which allows for easy orientation in his main arguments. Besides that, his study is illustrated with a number of images depicting manifestations of socialist culture.

To conclude, the book here reviewed deserves the attention of historians and history students for its inspirational, methodical approach. The author brings a new perspective to nationalism and interethnic coexistence in the years before the collapse of the Habsburg monarchy, as well as to the early history of the labor movement in the region.

Šárka Navrátilová

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Volodymyr Holovchenko and Mykola Doroshko: **Hibrydna viina Rosii proty Ukrainy: istoryko-politychne doslidzhennia**. Kyiv: Nika-Tsentr, 2016. 184 pages. ISBN 978-966-521-689-6

Russia's attempted annexation of Crimea, its occupation of Donbas, and the protracted conflict in the east of Ukraine have given impetus to an expansion of the study of contemporary Russia and Ukraine, the history of Russian-Ukrainian relations, and related topics. This monograph, *Hibrydna viina Rosii proty Ukrainy: istoryko-politychne doslidzhennia* (*Russia's Hybrid War Against Ukraine: A Study in History and Politics*), written by Ukrainian authors Volodymyr Holovchenko and Mykola Doroshko, is evidence of the growing interest in the subject matter. It adds to the available literature, some of which has already been reviewed in this journal.¹

The authors of the book are well-known as research fellows at the Taras Shevchenko Kyiv National University, Ukraine. Holovchenko, a historian by education, was a professor of political science at the university's Institute of International Relations until his death in 2017. His fields of research included the history of Ukraine's diplomacy, political thought, and social movements. Doroshko is a professor of history at the same institute. He focuses primarily on the history of the Soviet Ukraine of the 1920s and 1930s. In their jointly authored book, the authors have set the goal of unveiling the political component of what they regard as a "hybrid war" being waged by Russia against Ukraine. They place their emphasis on the underlying historical and root causes of that war.

To fulfill their stated goal, the authors have structured their book into eight thematically defined chapters. After a short preface, Chapter One of their narrative opens with a review of the currently available literature dealing with the phenomenon of "hybrid wars." The authors understand the term in its broadest sense, as an innovative form of warfare that engages the full spectrum of a state's war-making capabilities, with increasing reliance on non-military means and methods. To begin, the authors trace the genesis of the concept of hybrid war and describe its defining features. They identify the conditions that are necessary for a hybrid attack to succeed. Next, they outline the individual phases of a hybrid war campaign. In Chapter 2, the authors provide historical examples of twentieth-century conflicts that employed rudiments of this military strategy. The authors argue that while hybrid war is by no means a solely Russian invention, certain elements of hybrid warfare, such as spreading disinformation and ideological discord, sabotage, and sponsoring militant insurgencies that have subverted governments across the globe,

¹ See the reviews of Peter Pomerantsev's *Nothing is True and Everything is Possible: The Surreal Heart of the New Russia*, Elina Lange-Ionatamishvili's *Redefining Euro-Atlantic Values: Russia's Manipulative Techniques*, David Satter's *The Less You Know, the Better You Sleep*, Mikhail Zygar's *All the Kremlin's Men: Inside the Court of Vladimir Putin*, Karen Dawisha's *Putin's Kleptocracy: Who Owns Russia?*, Mark Galeotti's *Spetsnaz: Russia's Special Forces*, and Yury Fedorov's *Hybrid War à la Russe*, in *Acta Universitatis Carolinae – Studia Territorialia* No. 1 (2017), No. 2 (2017), No. 1 (2018) and No. 2 (2019), respectively.

have been an inherent part of Russia's (and the Soviet Union's) foreign policy toolbox ever since the Bolshevik coup of 1917.

Chapter 3 is concerned with the political preconditions and ideological foundations of Russia's war on Ukraine, placing them in historical perspective. The aim of this part of the book is to juxtapose the tenets of Russia's nationalist historiography with a fact-based, international historical view of Russia's relationship with Ukraine. The authors show how much the Russian state distorts historical memory for its policy goals. Its purpose can be downplaying its own crimes or quasi-legitimization of its imperial claims to territory in Ukraine, other nations in Russia's neighborhood, and beyond. The authors critically scrutinize Russia's most common historical myths and narratives, which systematically seek to downgrade Ukraine to a mere historical construct at best, starting with the Muscovites' claim to the legacy of Kievan Rus. In Chapter 4, the authors specifically discuss the mainstream Russian interpretations of the history of the Crimea peninsula, to which Vladimir Putin's ruling ideology has ascribed the status of "sacred Russian soil."

Chapter 5 is devoted to the Kremlin's "natural gas wars," highlighting the role of economic warfare in Russia's foreign policy. The chapter provides a chronological account of Russian-Ukrainian energy relations since 1991. In particular, the authors focus on Ukraine's inherited dependence on Russia for supplies of that strategic commodity. The authors illustrate the ramifications of the Ukraine's persisting vulnerability to Russia with regard to its energy security, using the example of two gas crises in 2006 and 2009 that both entailed a cut-off of gas supplies to Ukraine.

In Chapter 6, the authors focus on how Russia instrumentalizes its "fifth columns" abroad. They use the word "fifth column" in a figurative sense, as a metaphor denoting Russia's networks of agents of influence that work to disrupt a targeted state from within. The authors demonstrate how the contemporary Russian regime increasingly relies on local proxies in its foreign operations aimed at interference in the politics of other countries. The Kremlin thus exercises its malign influence, inciting civil unrest and disinformation campaigns to legitimize its aggressive foreign policies. The chapter sketches out the networks of influence the Kremlin has created in Ukraine and Western Europe to justify its ongoing war on Ukraine. It highlights the great variety of these proxy agents, who include anti-immigration activists, Euro-sceptics, anti-establishment and anti-system parties and movements, Russia's own ethnic diaspora, and the institutions of the Russian orthodox church abroad. Corruption facilitates the establishment of Russian criminal networks in the target territory.

Chapter 7 recounts the evolution of political relations between Russia and Ukraine from 1991 to now. The authors regard the period up to 2014 in Russia's Ukraine policy as a preparatory phase, followed after 2014 by the attack phase in a hybrid war that epitomizes the model they outlined in the book's first chapter. They proceed from the assumption that "gathering in the Russian lands" has been part of the Kremlin's agenda ever since the Soviet Union collapsed. Only momentary weakness and the general backwardness of the Russian state prevented the Kremlin from pursuing these plans before 2014. Moscow limited itself to soft pressure and non-military coercion in its policies *vis-à-vis*

Ukraine. Russia launched diplomatic initiatives aimed at making Ukraine's integration into European and Euro-Atlantic structures impossible, ran massive campaigns to discredit Ukraine internationally, and torpedoed its attempts at reform, to name just a few tactics. Last but not least, delaying the process of state and nation-building in Ukraine, including discouraging the use of the Ukrainian language, served Russia's interests as well.

The book's eighth and concluding chapter presents a synthesis of the authors' findings. The authors conceived the chapter as an overall review of Russia's aggressive revanchism *vis-à-vis* Ukraine, which culminated in overt military aggression against Ukraine in 2014. The authors conclude by arguing that Ukraine's importance to Russia lies in Russia's quest for its national identity. The Kremlin views control of Ukraine as the key to renewal of the Russian empire.

Holovchenko's and Doroshko's book has all the formal attributes of an academic publication, including endnotes, a final bibliography, and an index. The authors' choice of topic is perhaps the book's strongest side. The book covers a broad, yet by no means exhaustive, range of the aspects of Russia's ongoing war on Ukraine. The authors have intuitively succeeded in picking out the topics that are of the utmost relevance, but which are not necessarily always seen in the literature through the prism of the revisionist agenda that underlies Putin's foreign policy. However, a strong, interdisciplinary approach is required for deeper understanding. Regrettably, the authors mainly skim the surface in their analysis. They excessively emphasize the supposed historical roots of Russia's latest aggressive act, but their numerous excursions into the past only demonstrate Russia's longstanding imperial designs. To imply that Russia invaded Ukraine simply because it has always behaved that way borders on determinism and tautology. Moreover, the authors focus too much on refuting the Russian state's countless distorted narratives without showing how its discursive themes fuel Russia's information warfare. The Kremlin's propaganda alone is only of limited value for understanding how Russia's hybrid war machine works.

The concept of hybrid warfare the authors have taken as the conceptual framework for their analysis is also problematic. Russia's aggression against Ukraine has sparked an intense debate in Western academia over the meaning of hybrid war. Russia's new generation warfare has yet to be satisfactorily defined. The concept of "hybridity" is easily stretched, redefined, and filled in with different substance. Many scholars question its appropriateness when applied to Russia's aggression against Ukraine, given the manner in which its military operations have been conducted. Since the invasion of Donbas by Russian regular forces in summer 2014, the war has primarily been a conventional conflict. Likewise, the annexation of Crimea was largely a covert operation by Russian special forces, which is not necessarily the same as a hybrid attack. The authors use the term without attempting to reflect this debate. The sources cited in this part of the book are rather weak and do not suffice to explain the premises of the debate.

To conclude, despite the authors' claimed desire to keep the focus of their book narrow, the book's overall concept is much looser. That may not be all bad, because the book clearly appeals to a broad readership. I see the book's target group as being lay

readers who seek historical context for the fragmentary data they are fed by the daily press, and who would like a fuller picture in line with the prevailing Ukrainian national narrative. The book may well satisfy the expectations of those readers. Its accessibility, readability and clear arrangement may make it their book of first choice. Unfortunately, the book has little new to say to a reader who already has knowledge of the problems that stand behind the recent tragedy in Russian-Ukrainian relations. A solid library of similarly conceived books has appeared in Ukraine in the last few years, many of which have higher informational and analytical value.² Nevertheless, Holovchenko's and Doroshko's book addresses a topic that is of the utmost relevance today, both politically and academically. Every serious attempt to illuminate the Ukraine-Russia conflict and hybrid war, which this book definitely is, must be welcomed.

Jan Šír

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² For perhaps the best Ukrainian books on this topic, see the publications by Volodymyr Horbulin and his collaborators of the National Institute of Strategic Studies, in particular their *Svitova hibrydna viina: ukrains'kyi front* (Kyiv: Natsional'nyi instytut stratehichnykh doslidzhen', 2017). In addition, there are some insightful journalistic accounts documenting the individual phases of the Russian-Ukrainian conflict. See, for example, Taras Berezovets', *Aneksiia. Ostriv Krym. Khroniky hibrydnoi viiny* (Kyiv: Bright Books, 2015); and Dmitrii Tymchuk, Yurii Karin, Konstantin Mashovets and Viacheslav Gusarov, *Vtorzhenie v Ukrainu: Khronika rossiiskoi agresii* (Kyiv: Bright Star Publishing, 2016).

REPORTS

The Herzl Center for Israel Studies at Charles University

Founded in 2018 at Charles University in Prague, the Herzl Center for Israel Studies (HCIS) is an interdisciplinary teaching and research institution dedicated to the enhancement of knowledge and awareness about the modern State of Israel. The Center is the first academic institution in the Czech Republic that is entirely dedicated to the study of Israeli society, politics, and history. To contribute to the expanding field of Israel Studies, the HCIS focuses on the historical and contemporary links between Central Europe and Israel. Dr. Irena Kalhousová is the first head of the HCIS.

The Center was created as a joint project of two institutes of the Charles University Faculty of Social Sciences, the Institute of International Studies and the Institute of Political Studies, and the Israel Institute in Washington, D.C., an organization that supports Israel Studies at leading academic institutions in the U.S. and abroad. Under the patronage of the Rector of Charles University, the Center aims to attract students interested in several different disciplines. One of the main goals of the HCIS is to expand the number of courses offered by the Faculty of Social Sciences related to Israel and the contemporary Middle East. For the academic year 2020–21, the HCIS has prepared six B.A. and M.A. courses on Israeli politics and society, EU-Israel relations, relations between Central European countries and Israel, Israeli national security, and the Israeli-Arab conflict. Offering high-quality instruction is important to the HCIS. HCIS courses are taught by lecturers who are graduates of world-class Ph.D. programs and who are both expert in their fields and experienced teachers. For example, in the academic year 2020–21, the HCIS team will include two senior fellows, Dr. Emmanuelle Blanc from the London School of Economics and Dr. Rob Geist Pinfold from King's College London/Hebrew University Jerusalem, who will teach the courses on EU-Israel relations and Israel security strategy, respectively.

The HCIS seeks to foster closer academic cooperation between Charles University and Israeli, European, and U.S. institutions of higher education. In the academic year 2020–21, the HCIS plans to join with the Jagellonian University in Krakow and the Ludwig Maximilian University in Munich in relevant academic projects. As digital education has expanded because of the Covid-19 pandemic, the HCIS is actively preparing digital-based educational activities in cooperation with its international partners.

An important goal of the HCIS is supporting students and young scholars who are interested in Israel studies. The HCIS offers doctoral fellowships and promotes international and interdisciplinary research opportunities for Ph.D. students in Israel studies. The Center also provides travel grants for M.A. students that enable them to study and do research in Israel.

Lastly, the HCIS holds public events, discussions, and workshops related to Israel that are open to the general public. For example, as part of the Forum 2000 conference in Prague in 2019, the Center organized two debates on Israeli democracy and Israeli-Palestinian NGOs' involvement in projects meant to foster cooperation between Israelis and Palestinians. In spring 2020, the Center organized a debate on U.S. President Donald

Trump's plan for Mideast peace, known as the "Deal of the Century." Furthermore, HCIS frequently provides commentary on events in Israel and the Middle East for the Czech media.¹ By involving itself in the public space, the HCIS aims to promote and cultivate greater knowledge about Israel in the Czech Republic.

Irena Kalhousová

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¹ More information about Herzl Center publications and events is available at <https://herzl.cuni.cz/HERZL-11.html> as well as <https://www.facebook.com/HerzlCenterPrague/>.

INSTRUCTIONS FOR AUTHORS

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Manuscripts for consideration are to be uploaded online through the AUC Studia Territorialia journal management system, or sent to the editorial team via the e-mail address stuter@fsv.cuni.cz, in a standard document format (.doc, .docx or .rtf). All correspondence between the author and the editorial team will take place via e-mail.

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5. Reference Examples

Books

One Author or Editor

Richard Sakwa, *Postcommunism: Concepts in the Social Sciences* (Buckingham: Open University Press, 1999), 51–58.

Two Authors or Editors

Roy Allison and Christoph Bluth, eds., *Security Dilemmas in Russia and Eurasia* (London: The Royal Institute of International Affairs, 1998).

Three Authors or Editors

Martha Brill Olcott, Anders Åslund, and Sherman W. Garnett, *Getting it Wrong: Regional Cooperation and the Commonwealth of Independent States* (Washington, DC: Carnegie Endowment for International Peace, 1999), 105–8.

More than Three Authors or Editors

Viktor N. Rudenko et al., eds., *Politicheskaia nauka i gosudarstvennaia vlast' v Rossiiskoi Federatsii i Novykh Nezavisimykh Gosudarstvakh* (Ekaterinburg: Uralskoe otdelenie Rossiiskoi Akademii Nauk, 2004).

Chapter or Other Part of a Book

Branislav Makyta, "Energetický dialóg EÚ a RF," in *Energie pro Evropu: energetická spolupráce Ruska a zemí postsovětského prostoru s Evropskou unií*, ed. Bohuslav Litera et al. (Praha: Eurolex Bohemia, 2006), 50–72.

Introduction, Foreword, or Similar Part of a Book

Anatol Lieven, Preface to *An Endless War: The Russian-Chechen Conflict in Perspective*, by Emil Souleimanov (Frankfurt: Peter Lang, 2007), 13–15.

Electronically-Published Books

Catherine Guicherd, *The Enlarged EU's Eastern Border: Integrating Ukraine, Belarus and Moldova in the European Project*, SWP-Studien 2000/S 20 (Berlin: Stiftung Wissenschaft und Politik, 2002), 31–32, http://swp-berlin.org/common/get_document.php?asset_id=319.

Repeated Citation

Makyta, "Energetický dialóg," 66.

Olcott, Åslund, and Garnett, *Getting It Wrong*, 80–84.

Consecutive Citation

Ibid., 66–69.

Journals

Article in a Print Journal

Zbigniew Brzezinski, "The Premature Partnership," *Foreign Affairs* 73, No. 2 (March/April 1994): 67–82, doi: 10.2307/20045920.

Article in an Online Journal

Farkhad Tolipov, "Uzbekistan and Russia: Alliance against a Mythic Threat?" *Central Asia-Caucasus Analyst* 7, No. 1 (January 11, 2006): 3–5, www.cacianalyst.org/files/20060111Analyst.pdf.

Item in an Online Database

Halford J. Mackinder, "Modern Geography, German and English," *The Geographical Journal* 6, No. 4 (1895): 367–79, <http://www.jstor.org/stable/1773888>.

Book Review

Cameron Ross, review of *Political Parties in the Regions of Russia: Democracy Unclaimed*, by Grigorii V. Golosov, *Slavic Review* 63, No. 4 (Winter 2004): 898–99.

Newspapers and Magazines

Svante Cornell, "The War That Russia Wants," *The Guardian*, August 8, 2008.

Markus Feldenkirchen and Horand Knaup, “Schulz Heads to Berlin. The Man Who Could Shake Up German Politics,” *Spiegel Online*, November 25, 2016, <http://www.spiegel.de/international/germany/eu-parliament-president-schulz-could-shake-up-german-politics-a-1123130.html>.

Theses and Doctoral Dissertations

Jeff Sahadeo, “Creating a Russian Colonial Community: City, Nation, Empire in Tashkent, 1865–1923” (Doctoral Dissertation, University of Illinois, 2000), 96–108, 116.

Presentations at Symposia, Meetings or Conferences

Jonathan Wheatley, “Democratization in Georgia since 2003: Revolution or Repackaging?” (Paper presented at the Third International Workshop for Young Scholars, Slavic Research Center, Hokkaido University, Sapporo, Japan, July 5, 2006).

Archives and Manuscript Collections

Sh. Z. Eliava and G. I. Broido to the People’s Commissariat of Foreign Affairs, V. I. Lenin, L. D. Trotsky and L. B. Krasin, telegram, Tashkent, December 27, 1919, file 588, fol. 13, container 4-39-43, Chicherin Papers, Foreign Policy Archive of the Russian Federation, Moscow.

Interviews

Published and Broadcast Interviews

Paris Hilton, Interview with Larry King, *Larry King Live*, CNN, June 28, 2007.

Unpublished Interview

Petr Šochman (EC Directorate General for Competition), interview with author, September 24, 2008.

Unattributed Interview

Interview with a Border Guard officer, August 28, 1998.

Website

“Growth of Welfare of Kazakhstan’s Citizens is the Primary Goal of State Policy. Address by the President of the Republic of Kazakhstan H. E. Mr. Nursultan Nazarbayev to the People of Kazakhstan,” Official Site of the President of the Republic of Kazakhstan, accessed October 2, 2008, http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=0793D9432423DDE5062573EC0048005B&lang=en&L1=L2&L2=L2-22.

Stephen Blank, “The Russian Balance Sheet at Hangzhou,” *Atlantic Council* (blog), September 7, 2016, <http://www.atlanticcouncil.org/blogs/new-atlanticist/the-russian-balance-sheet-at-hangzhou>.

Personal Communication

Hans-Uwe Stahlmann, e-mail message to author, December 29, 2007.

Adapted from *The Chicago Manual of Style*, 16th ed. (Chicago: Chicago University Press, 2010), 653–784.

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