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MISSION STATEMENT

The Undergraduate Law Review at the University of Minnesota produces semi-weekly blog posts and a semesterly longform law review, composed of 6-8 articles focused on various pressing topics within the legal and policy spheres. In its first semester of operation, this organization has grown a team of curious and dedicated writers eager to challenge complex legal questions from spheres of technology to foreign policy and everything in between.

This organization aims to provide a community for undergraduate students at the University of Minnesota interested in law and policy pathways to dive into topical issues, develop analytical writing and critical thinking skills, and access networking opportunities with fellow interested students and professionals in the field.

The Undergraduate Law Review accepts applications for the academic year at the end of spring semester and the beginning of the fall semester. Writers will be assessed and placed on the longform article and blog teams accordingly. All writing must be original and focused on a legal issue, or several. For inquiries, please contact us at umnlawreview@gmail.com. For more information, find our website at https://umnundergraduatelawreview.godaddysites.com/

LETTER FROM THE EDITOR

On behalf of the Executive Board of the University of Minnesota's first Undergraduate Law Review, we are excited to present our Spring 2025 issue. In our first semester of publication, we worked with brilliant writers whose scholarship thoughtfully reflects on and analyzes the most pressing and prominent legal issues of our time. We enthusiastically present:

In "Data Privacy & Childhood Screen Addiction: An Analysis of California Senate Bill 976", Kira Newcomer explores how efforts to mitigate negative impacts of childhood screen usage have created paradoxes in California data privacy regulation.

In "The Pillars of the Right to Privacy", Jacob Hong examines the role of the 9th Amendment, the Bill of Rights, and the due process clause in creating the modern-day framework of the right to privacy, specifically in respect to abortion.

In "Take it Down: Deliberating the Dangers of Deepfakes", Dawit Gebremaryam studies the rise of deepfakes, the failures and successes of existing regulatory efforts, and establishes a set of recommendations to guide future policy.

In "Cartels & Capital: the Trump Administration and Counternarcotics on the Southern Border", Beck Sosa dives into the structure of the cartel system, before analyzing the unique failures of the Trump administration to effectively combat the flow of narcotics.

In "Constitutional or Cultural Consequences? Streamlining Approaches to Hate Speech", Katherine Krogstad compares regulatory approaches to hate speech between nations, their implications, and their challenges.

In "Moving Backward: Attacks on the CBP One App", Bemnet Tessema examines the recent crackdown on the CBP One App and its implications for broader approaches to end migration by the current presidential administration.

We hope you enjoy the incredible work facilitated by the writers, editors, and collaborators of the Undergraduate Law Review. We are eager to continue advocating for student-produced legal scholarship and analysis through our organization. Thank you for your readership.

Sincerely,
Abiha Kashif
Editor-in-Chief

Data Privacy & Childhood Screen Addiction: An Analysis of California Senate Bill 976

By Kira Newcomer

Abstract:

As concern about children's online safety grows, legislators have increasingly moved to restrict minors' access to addictive digital content. California's Protecting Kids from Social Media Addiction Act[1] (SB 976) exemplifies these efforts, targeting algorithm-driven feeds and imposing restrictions on platform notifications to minor users.

However, while designed to mitigate social media's harms, the law also introduces significant privacy challenges by requiring platforms to verify user ages and modify content delivery accordingly. This article examines SB 976's framework alongside federal protections like the Children's Online Privacy Protection Act[2] (COPPA), highlighting the tension between efforts to shield minors from harmful content and the imperative to safeguard their personal data. Through analysis of the pitfalls of overcorrection and potential conflicts with other legislation, this analysis finds that SB 976 risks embedding invasive surveillance structures into children's digital experiences. These developments raise broader concerns about the future of online privacy, free expression, and the balance between digital protection and digital autonomy for young users in an increasingly regulated internet landscape.

Introduction:

In recent years, lawmakers across the nation have continued to adopt increasingly aggressive approaches at legislating children's access to addictive online content. This shift in regulation reflects the simultaneous growth of concern over the impacts of algorithms, endless feeds, and targeted content on minors' mental health, body image, attention spans, sleep, and consumption

[1] Cal. S.B. 976, 2023–2024 Reg. Sess. (Cal. 2024) (enacted).
[2] S. 2326, 105th Cong. (1998).
Later enacted as Children's Online Privacy Protection Act of 1998, Pub. L. No. 105-277, § 401, 112 Stat. 2681-728 (1998).

of information[3]. Social media is a primary vessel for these structures, and as companies, these platforms have a financial incentive to utilize them for all audiences.

In response to mounting social pressures and alarming research citing the harms of "social media addiction," many states, including Arkansas, Utah, Connecticut, and California, have introduced legislation aimed at mitigating these risks.[4] California's Protecting Kids From Social Media Addiction Act (SB 976) is of particular interest as it highlights the paradoxical dynamic between these preventative regulations and the protection of minors' data privacy, raising questions about age verification, surveillance risks, and the broader implications for children's digital rights. In examining this broader shift, it becomes clear that legislative momentum is increasingly directed not only at shielding young users from psychological harm but also at curbing the systemic data practices that enable platform-driven engagement loops. These laws attempt to recalibrate the balance between corporate interests in user monetization and social interests in child welfare, provoking inquiry into the permissible reach of state power in the regulation of digital environments.

Benefits and Harms of SB 976:

SB 976 functions as a safeguard to "addictive feeds" for children under the age of 18 and prohibits notifications to minor users between the hours of 12:00 AM to 6:00 AM, and 8:00 AM to 3:00 PM Monday through Friday during the school year months of September through May.[5] The bill defines addictive feeds as "multiple pieces of media that are recommended, selected, or prioritized for display to a user based on information provided by or associated with the device or account of a user". Children's online behaviors are increasingly shaped by sophisticated algorithmic technologies designed to maximize user engagement. Unlike traditional broadcast or mass media, social media leverages user-specific data to optimize content recommendations, leading to longer screen times and compulsive behavior patterns, especially among vulnerable youth populations.[6] Understanding this distinction is critical as it explains why regulation

[3] Nancy Costello et al., *Algorithms, Addiction, and Adolescent Mental Health: An Interdisciplinary Study to Inform State-Level Policy Action to Protect Youth from the Dangers of Social Media*, 49 Am. J.L. & Med. 135 (2023).
[4] Nat'l Conf. of State Legislatures, *Social Media and Children 2023 Legislation* (Dec. 15, 2023), https://www.ncsl.org/technology-and-communication/social-media-and-children-2023-legislation.
[5] Protecting Our Kids from Social Media Addiction Act, Cal. Bus. & Prof. Code §§ 22945–22945.7 (West 2024).
[6] Costello et al., *supra* note 1.

targeting "addictive feeds" is distinct from prior regulatory efforts focused solely on content moderation or data breaches.

Specifically, this legislation holds operators accountable for utilizing algorithms to target minors unless the operator had "no actual knowledge that the user was a minor," "has reasonably determined that the user is not a minor; or has obtained verifiable parental consent[7]." The language utilized to restrict operators marks a change in the previously accepted standard for age verification. Prior to the introduction of this bill, providing a date of birth was an acceptable form of filtering out children from internet or application usage. The self-declared age verification method was flawed in that there was little preventing users from simply selecting the birth year required by systems for access to their content. This underscores the central paradox to legal debates regarding this bill and others like it. While SB 976 intends to prevent large tech companies from harvesting minors' data to utilize digital targeting, the procedure requires companies to collect more data. Dylan Hoffman, representing TechNet, expressed apprehension about the bill's implications for user privacy: "The fact is, there isn't a reliable method for verifying age and identity without collecting users' personal information such as government IDs, birth dates, or other information. This is even more difficult when trying to verify minors who often don't have identification."[8]

Additionally, the language "has reasonably determined that the user is not a minor" exacerbates the issue by incentivizing tech companies to default to intrusive means of age verification to avoid liability and litigation. The law does not explicitly state by what methods these sites are to use to determine whether a user is of age, and therefore leaves companies to explore alternative and possibly detrimental ones. These could include facial age estimation using AI, behavioral profiling and digital fingerprinting, or third-party age estimation services which would require the submission of data to another player. An industry association representing TikTok, Instagram, and other social media sites in the Ninth Circuit against this bill asserts that "by creating a honeypot of Californians' sensitive data, SB 976 exposes all users,

[7] Protecting Our Kids from Social Media Addiction Act, supra note 3.
[8] Hearing on S.B. 976 Before the S. Judiciary Comm., 2023–2024 Leg., Reg. Sess. (Cal. Apr. 25, 2024),https://calmatters.digitaldemocracy.org/hearings/257774?f=ed44c74d77e5a997d29d0b21c096ff6f&t=614.

especially minors, to heightened risks of cybercrime and data breaches."[9] Issues of this nature were raised during oral arguments addressing the stall on the implementation of the law.[10]

Moreover, the ambiguity surrounding acceptable methods for compliance invites both over-collection and extended retention of data, exacerbating vulnerabilities for minor users. Without clearly defined technical standards or time-bound data destruction requirements, companies may be incentivized to retain age verification data indefinitely as a shield against potential future litigation. This not only compounds the privacy risks for minors but also contradicts emerging international best practices around children's data governance, such as those outlined in the U.K.'s Age Appropriate Design Code.[11]

The Paradox of SB 976:

To further understand the implications of California's Protecting Kids From Social Media Addiction Act, it is essential to consider how it interacts with existing federal protections – specifically, the Children's Online Privacy Protection Act (COPPA). COPPA, which regulates the data collection of children under the age of 13, finds its roots in the principle of data minimization.[12] While COPPA obligations are only triggered by an operator's knowledge that they are collecting children's data, it limits that collection as much as possible. It treats children's information as especially sensitive and worthy of heightened safeguards. In contrast, SB 976 risks undermining that foundational premise by requiring operators not only to determine whether users are minors, but also to report the portion of their user base that falls in that category, and then amend the experience of minor users to exclude addictive properties. This leaves companies to treat all users as children, or to harvest age data, behavioral data, and account histories to determine who is being impacted by the addictive features of their sites.

This compliance structure effectively mandates proactive data collection which directly contradicts the minimalist approach at the heart of COPPA. Conversely, SB 976 extends online concern for children past the age of 13 up to children below 18. Once again, the law's intent to

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[9] NetChoice, *NetChoice v. Bonta (California SB 976)* (Nov. 12, 2024), https://netchoice.org/netchoice-v-bonta-california-2024/.
[10] NetChoice, LLC v. Bonta, No. 25-146, 9th Cir., Jan. 28, 2025.
[11] INFO. COMM'R'S OFF., *Age Appropriate Design: A Code of Practice for Online Services* (2020), https://ico.org.uk/media/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-a-code-of-practice-for-online-services-1-0.pdf.
[12] Children's Online Privacy Protection Rule, 16 C.F.R. §§ 312.1–312.13 (2024).

protect young users combats its reliance on intrusive verification mechanisms. The expansion of regulatory concern to older minors reflects an important evolution in policymaking, recognizing that adolescents aged 13 to 17 are equally vulnerable to the addictive qualities of digital media.

However, this broader scope also raises difficult questions about the proportionality of surveillance practices and whether the same level of invasive verification is justifiable across a diverse age range. Policymakers must therefore consider whether alternative, tiered protections could better serve the varying developmental stages within the category of 'minors,' balancing risk mitigation with respect for emerging autonomy. What emerges from this conflict is the tension of efforts to shield children from addictive content requiring the very surveillance that privacy law seeks to avoid. As the landscape around these issues evolves, policymakers and the public are left to confront whether the priority should be protecting children from harmful content or protecting their data from becoming an additional source of harm.

Implications of SB 976:

To protect children, lawmakers are pushing platforms to change their designs, but to enforce these laws, companies may need to collect more data. If platforms must verify the age of every user, a system ultimately arises in which everyone is tracked or profiled in some manner, and anonymity becomes nearly impossible. This, at extreme, turns the internet into a place where you must show identification to participate, minimizing free expression and opening the door to abuse by companies, governments, or hackers seeking user data.

Additionally, by compelling platforms to identify, sort, and monitor minor users, SB 976 inadvertently sets the precedent for normalizing data surveillance from a young age. Children, who often lack the understanding or agency to consent meaningfully, may find their digital profiles permanently shaped by age verification systems that rely on facial recognition, digital fingerprinting, and the like. These methods can generate digital footprints outliving the childhood usage of platforms with risk of being misused by third parties or data breaches. [13] Moreover, the assumption that minors must be visible or traceable in order to be protected undermines the concept of privacy. This is especially true and dangerous for vulnerable groups like LGBTQ+ youth or children in abusive, restrictive households. SB 976, while prioritizing

[13] Lindsey Barrett, *Ban Facial Recognition Technologies for Children—and for Everyone Else*, 26 B.U. J. Sci. & Tech. L. 1 (2020).

children's safety, could have the opposite unintended effect, grooming a generation of users accustomed to digital oversight, an outcome that could not only influence their digital safety but also their expectations for autonomy, privacy, and anonymity in the digital age.

The normalization of surveillance under the guise of protection also risks altering societal attitudes toward digital anonymity more broadly. If today's youth are conditioned to view constant verification as the default state of online engagement, future generations may be less likely to demand or value digital privacy protections. This cultural shift would have profound implications for democratic participation, freedom of expression, and resistance to authoritarian misuse of personal information.

Conclusion:

California's SB 976 is currently unenforced as it resolves conflict over these issues and possible First Amendment violations.[14] However, bills of this nature have shown up on the floors of multiple state legislatures, containing language of similar stature.[15] This bill, and others like it, are rooted in genuine concern for children's mental health and well-being, but its execution demands data collection and identity verification that directly threatens the users it seeks to protect. When evaluated next to long-standing frameworks like COPPA, California's Protecting Kids From Social Media Addiction Act explicates situations in which data is both the problem and the solution. Future legislation should seek to create a balance between the values of data privacy and the importance of shielding the next generation from social media addiction. Doing so may entail formulating an age verification system with further restrictions on the longevity of information storage and the extent of user profiling. Possible alternatives might include the adoption of non-invasive age estimation techniques that rely on contextual or behavioral signals rather than biometric or government-issued identifiers. Legislators could also explore the implementation of strict data minimization mandates that prohibit the long-term retention of any age verification data beyond a single-session confirmation. Such measures would preserve the protective intent behind laws like SB 976 while reducing the significant privacy risks they

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[14] Chris Kirkham, *California Pushes Ninth Circuit to Lift Block on Its Law Protecting Children from Social Media Addiction*, COURTHOUSE NEWS SERV. (Apr. 2, 2025), https://www.courthousenews.com/california-pushes-ninth-circuit-to-lift-block-on-its-law-protecting-children-from-social-media-addiction/.

[15] NAT'L CONF. ST. LEGISLATURES, *supra* note 2.

currently entail. Lawmakers must uphold safety without sacrificing privacy, especially for those least able to advocate for themselves.

The Pillars of The Right to Privacy

By Jacob Hong

Abstract

This article examines the ways in which a right to privacy is established through three primary "pillars". The pillars explored are the Ninth Amendment, penumbras in the Bill of Rights, and the Due Process Clause of the Fourteenth Amendment. These pillars are established in *Griswold v. Connecticut* (1965), where Justice William Douglass utilized these pillars to argue for a right to privacy. However, the foundation by which the right to privacy was established is coming under scrutiny with the *Dobbs v. Jackson* (2022) decision which ruled that abortion is not a constitutionally protected right. I will examine common arguments for and against how each of these pillars were used to uphold a right to privacy, particularly abortion, in order to determine the validity for a Constitutional right to privacy.

Introduction

Activists and movements in today's world often lay claim to a certain right. This includes assertions such as a right to an education or a right to basic essentials such as food and water. Often, activists contend to change the mindset of citizens to view these rights as fundamental with the ultimate goal of obtaining legal recognition. On the federal level, the Constitution lays out the most fundamental rights in the Bill of Rights which include freedoms such as speech and press. However, within the Bill of Rights, the Ninth Amendment states that, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[16] The Ninth Amendment implies the existence of rights that are protected by the Constitution beyond those explicitly stated in the Bill of Rights. From this principle, the Supreme Court of the United States has recognized and upheld various implied rights. Some examples of these implied rights include the right to raise children without government interference (*Pierce v. Society of Sisters* (1925)), the right to marry (*Loving v. Virginia* (1967)), and the right to

[16] U.S. Const. amend. IX.

association (*NAACP v. Alabama* (1958)). Throughout the history of the court, more rights have been recognized beyond that listed in the Bill of Rights.

However, there is one right that has become the center of public interest in recent years: the right to privacy. The right to privacy was first established to have constitutional protections in the landmark case of *Griswold v. Connecticut* (1965), where the court ruled that Connecticut could not pass a law that forbade the use of contraceptives among married couples. This was based on the right to privacy that individuals hold in marital relationships. It was here that Justice William Douglas, writing for the majority, wrote about the idea of penumbras that are contained within the Bill of Rights. Douglas claimed that the penumbras were "formed by emanations from those guarantees that help give them life and substance."[17] Douglass found these emanations from several different amendments in the Bill of Rights to constitute Constitutional protection of the right to privacy. The Third Amendment's protection against quartering soldiers implies a right to privacy because of the personal business that takes place in one's own home. In a similar vein of reasoning, the Fourth Amendment's protection against unreasonable search and seizure also implies protection of privacy from the government. Douglass also points to how the Fifth Amendment's protection against self incrimination creates a "zone of privacy", as one has the right to withhold personal information from the government. Taking these penumbras and the Ninth Amendment, the Supreme Court established that there are additional fundamental rights that are implied in the Constitution, including the right to privacy. Douglas also invoked the Due Process Clause of the Fourteenth Amendment in order to incorporate the right to privacy to all states, defining this implied right as fundamental to liberty.

However, the topic of implied rights, particularly related to the right to privacy, has come to the forefront of public policy because of a landmark ruling that the Supreme Court made in *Dobbs v. Jackson Women's Health Organization* (2022). The Court ruled that the right to abortion is not a constitutional right and overturned the precedent established in *Roe v. Wade* (1973). This has implications for privacy because the right to privacy was utilized as the basis for *Roe*, as abortion was considered a personal and intimate decision, which the government could not to an extent infringe upon. However, *Dobbs* challenges the idea of a right to privacy to make personal decisions with Justice Clarence Thomas writing in his concurrence that the court should review

[17] *Griswold v. Connecticut* 381 US 479 (1965).

decisions related to substantive due process, including *Griswold*.[18] This paper will examine the validity of a constitutional right to privacy by comparing arguments for and against different avenues of justifying privacy, particularly as it relates to a right to abortion.

History of Right to Privacy

Justice Douglass's rhetoric in *Griswold* would continue to be the basis for the expansion of a constitutional right to privacy under the penumbras present under the Bill of Rights. The Supreme Court would reinforce and expand the right to contraceptive use in *Eisenstadt v. Baird (1972).* In a 6-1 vote, the court expanded the right to contraceptive use to unmarried people. They did so through the Equal Protection Clause of the Fourteenth Amendment because providing a constitutional right to only married couples would be discriminatory to singles. It was here that Justice William Brennan writes what he considered to be the basis of the right to privacy: "it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."[19] And while it may seem like a stylistic choice to describe it as "fundamentally", this is intentional because it is intended to allude to the idea of the right to privacy being a fundamental right to be protected under the due process clause of the Fourteenth Amendment.

Initially, the Bill of Rights applied only to the federal government because the people believed that a federal government would be more capable of violating their liberties than a local government such as the states. Thus, while state governments did ensure rights under their state constitutions, they did not have to guarantee rights of the federal constitution. The Supreme Court upheld this difference between federal and state governments in *Barron v. City of Baltimore* (1833), where Chief Justice Marshall argued that the Fifth Amendment's protection from government seizure of private property for public use without just compensation was not applicable to the case because it was executed by a local government.[20] However, after the ratification of the Fourteenth Amendment, the Supreme Court has been involved in the process of incorporation, where they have ruled that the rights guaranteed by the Constitution are also

[18] *Dobbs v. Jackson Women's Health Org.* 597 US ___ (2022) (Thomas, J., concurring).
[19] *Eisenstadt v. Baird* 405 U.S. 438,453 (1972).
[20] *Barron ex rel. Tiernan v. Mayor of Balt.,* 32 U.S. (7 Pet.) 243 (1833).

protections from state and local governments. In cases such as *Palko v. Connecticut* (1937), the court set a high standard of what was considered a fundamental right, as the court ruled that Fifth Amendment protection from double jeopardy is not fundamental because it is not necessary for "the very essence of a scheme of ordered liberty."[21] However, as time progresses, the court has continued to expand the set of rights in which they classify as fundamental. Today, almost all provisions in the first eight amendments have been incorporated to the states under the idea of substantive due process under the Fourteenth Amendment. Additionally, several implied rights have been considered fundamental such as in *Griswold* and *Eisenstadt*, where the mere emanations of penumbras within the Bill of Rights is sufficient for incorporation.[22]

All of these rulings eventually culminated into one of the court's most famous and debated cases in *Roe v. Wade*, where the Supreme Court ruled in a 7-2 decision that there existed a right to privacy related to abortion, particularly in the first trimester of pregnancy.[23] Despite a 7-2 vote, *Roe* was an extremely nuanced case with six out of the nine justices writing their opinions about the case. Justice Harry Blackmun delivered the majority opinion of the court, however, there were also three concurrences written, each adding nuance particularly on the grounds to justify a right to abortion. Additionally, two dissents were written by Justices White and Rehnquist that challenged the validity of the legality and constitutionality of the creation of a right to abortion from penumbras in the Bill of Rights. However, from *Roe v. Wade*, the foundation by which the right to privacy is established is explored in the majority and concurring opinions. *Roe* dealt with a Texas statute that criminalized abortion unless the mother's life was in danger. Within his majority opinion, Blackmun lays out three possible, although related ways, in which the court could justify the idea of a right to privacy for an abortion. These three ideas are the same arguments that Justice Douglass employed in *Griswold*. Blackmun lists these three justifications as the concept of personal liberties under the Due Process Clause of the Fourteenth Amendment, sexual privacy from the penumbras of the Bill of Rights, and the rights reserved to the people under the Ninth Amendment.[24] It's from these three pillars that the right to privacy rests upon and continues to be utilized by the court as precedent in the following years.

[21] *Palko v. Connecticut,* 302 U.S. 319, 325 (1937).
[22] *Eisenstadt v. Baird,* 405 U.S. 438 (1972).
[23] *Roe v. Wade* 410 U.S. 113 (1973).
[24] Id.

However, there was nuance added to this right because it was pitted against the compelling interest of the state to preserve the potentiality of human life. Thus, the trimester standard was created, in which the state could not regulate abortion in the first trimester of pregnancy but may place restrictions in the second and place more restrictive to a complete ban of abortion in the third trimester. It is the creation of this standard that shows the difficulty that the court grapples with in trying to balance two competing interests. Almost twenty years later, the trimester standard would be replaced with an "undue burden" standard in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992).[25] In a 5-4 decision, the court reaffirmed a right to abortion under the pretense of privacy derived from the Due Process Clause of the Fourteenth Amendment. Yet, despite reaffirming this right, the court upheld most of the regulations to abortion that Pennsylvania imposed such as requiring informed consent by providing information about the risks associated with abortion and requiring a minor to have parental consent to perform an abortion. The only regulation that the court strikes down is related to married women having to inform their husband about receiving an abortion because it "constitutes an undue burden and is therefore invalid."[26] From *Casey*, it is clear that the right to privacy did not completely protect the right to abortion because of competing state interests, but the court continued to utilize the reasoning in *Roe* and *Griswold* in order to uphold their previous rulings.

The court continued to utilize this same reasoning and referred to stare decisis for decades following *Roe*. However, the pillars by which the right to privacy was established was challenged in *Dobbs v. Jackson* (2022). It was in this case that the court rejected the emanations of implied rights under the penumbras contained in the Bill of Rights. Here, the court decided that a right to abortion can not be justified under privacy and questioned the methods by which the right to privacy is built through the Ninth Amendment, penumbras, and the Due Process Clause of the Fourteenth Amendment. The case itself centered around a Mississippi law that banned a vast majority of abortions after 15 weeks of pregnancy. The Jackson Women's Health Organization challenged this law in a federal district court, which granted a temporary restraining order on the law. The case made its way up to the Supreme Court, where Justice Samuel Alito delivered the majority opinion. In his opinion, Alito scrutinizes the concept of

[25] *Planned Parenthood of Southeastern Pennsylvania v. Casey* 505 U.S. 833 (1992).
[26] Id. at 837.

liberty as used in the Fourteenth Amendment, labeling it a "capricious term"[27] because groups seem to use the concept of liberty in different ways such that it does not provide a strong standard to determine if something is a fundamental right. Rather, Alito distinguishes the concept of liberty from ordered liberty. Alito argues that within ordered liberty, competing interests have to be properly balanced and that the determination of what is considered more compelling is defined through democracy rather than the judiciary. And since the court found that the right to abortion is not a constitutionally protected right, state governments were to determine if abortion is a compelling enough interest to lighten restrictions or to impose much greater restrictions to a complete ban. Today, 21 states protect abortion at least in part by state law.[28] However, *Dobbs* leaves questions for the right to privacy in general, particularly the three pillars laid out. In the following sections, I will analyze common arguments against the use of these pillars in supporting a right to privacy, particularly as it pertains to abortion.

Pillar I: The Ninth Amendment:

The Ninth Amendment served as one of the earliest bases for determining the existence of implied rights such as the right to privacy. However, the court has always had difficulty in determining how exactly the Ninth Amendment was intended to be utilized. Many legal scholars are critical of the vagueness in the wording of the Ninth Amendment in terms of what sort of rights are retained by the people. Many textualists claim that the Ninth Amendment is supposed to protect natural rights such as the rights outlined in The Declaration of Independence of life, liberty, and the pursuit of happiness. However, the Supreme Court and judiciary do not have the power to determine what actually ought to constitute a natural right.

Justice Antonin Scalia gives a good outline of a textualist's view to the Ninth Amendment in an interview with editor Don Franzen of the Los Angeles Review of Books. During the interview, Mr. Franzen asks Justice Scalia about the Ninth Amendment and its applicability to decisions. Justice Scalia responds by claiming that the Ninth Amendment was simply intended by the framers as a statement to the existence of natural law. He compares the Ninth Amendment to how the Tenth Amendment is a statement about the existence of federalism. For Scalia, he

[27] *Dobbs v. Jackson Women's Health Org.,* 597 U.S.___, 13 (2022).
[28] Center for Reproductive Rights, *Abortion Laws by State*, (2025, February 28), https://reproductiverights.org/maps/abortion-laws-by-state/.

believed that the Ninth Amendment suggested the existence of additional natural rights. In reference to the right of abortion, he states: "If people want to argue there is a natural right of a woman to have an abortion, that's fine. The mere fact that it's not included in the Bill of Rights doesn't mean that it doesn't exist. But just don't ask me to enforce it."[29] The impact of Justice Scalia's claim that the court should not enforce natural rights reveals the concept of judicial power in relation to the other branches of government. For Scalia, the Ninth Amendment is not so much as requiring the court to uphold natural rights, as it is a restriction of preventing the court from denying rights that may be recognized by states as being fundamental.

The reasoning for this is well seen in Justice Hugo Black's dissent of *Griswold.* In his dissent, Black labels the use of the Ninth Amendment to protect a right to privacy as a "day to day constitutional convention." [30]For Justices such as Black and Scalia, the use of the Ninth Amendment to protect implied rights is an overextension of judicial power that circumvents democracy because of the court's ability to determine that a legislature's regulation or action is void on the grounds that it violates the Ninth Amendment. The question of what is a natural right is subjective and arbitrary to different perspectives and backgrounds, which may allow for the court to consolidate a dangerous amount of power by determining actions as unconstitutional according to policy preference. For instance, one may consider living in an environmentally sustainable world as a natural right. This right could be considered a right that is reserved to the people and should not be denied or disparaged by the court, but a justice may decide to strike down a bill that may infringe upon this right such as a bill that seeks to increase coal mining. The justice does not have any constitutional basis to do so (unless the mining violates a pre-existing regulation), but they do so purely based on their own convictions and justifies it with the Ninth Amendment. Despite the legislature, which is elected and representative of the will of the people, the judiciary can override policy decisions that have a democratic basis. Such an abuse of the Ninth Amendment would be detrimental to the functioning and checks and balances of the government. Additionally, the bright line of abuse and legitimate protection of natural rights is non-existent, leading to a grey area that Black asserts would lead to the court being used as a weapon against state legislatures.

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[29] Antonin Scalia, interview by Don Franzen. *Los Angeles Review of Books*, October 1, 2012.
[30]*Griswold v. Connecticut,* 381 U.S. 479, 520 (1965) (Black, J., dissenting).

In many ways, the arguments made by Scalia and Black depend heavily on the Founding Fathers' intent in adding the Ninth Amendment. For them, they believed that the Ninth Amendment is strictly for the purpose of restraining the powers of the federal government. However, there are alternative theories to the original intent of the Ninth Amendment. Justice Arthur Goldberg wrote a concurrence in *Griswold*, in which he relied heavily on the Ninth Amendment to justify defending a right to marital privacy. In his opinion, he refers to the Federalist Papers to give greater insight to the original intent and history of the Ninth Amendment.[31] He specifically alludes to Federalist Papers No. 37 and No. 84. In particular, Goldberg focuses on Federalist No. 84, where Alexander Hamilton argues that the Bill of Rights are not only unnecessary but also dangerous, because an explicit list of rights could permit the government to infringe on any other personal right, as it is impossible to encompass all possible liberties.[32] From this, the Ninth Amendment was created to address this concern so that additional personal rights and freedoms not explicitly mentioned would still be protected. And since the responsibility of the judiciary is to uphold and protect these rights, it follows that the court ought to recognize rights such as marital rights and enforce these rights. Otherwise, the court neglects their duty to uphold the protections of the citizenry and leave state and local officials unchecked to regulate and obstruct the rights of the people.

However, for the reasons outlined earlier about the difficulty in determining what exactly ought to constitute natural rights and if the court can justly interpret these rights, the Ninth Amendment has dwindled in use as a justification for protecting a right to privacy. Even in *Dobbs*, the Ninth Amendment is hardly mentioned. The majority opinion only briefly mentions the Ninth Amendment in reference to the logic behind *Roe*. Rather, the court focuses far more on the use of penumbras and the Due Process Clause of the Fourteenth Amendment because after *Griswold*, the Ninth Amendment has not been heavily utilized as a primary basis for defending the right to privacy. However, the Ninth Amendment is still relevant in that it affirms the possibility of additional rights such as marital privacy.

[31] *Griswold v. Connecticut* 381 U.S. 479, 488 (1965) (Goldberg, J., concurring).
[32] The Federalist No. 84 (Alexander Hamilton) (Clinton Rossiter ed., 1961)

Pillar II: Penumbras

In many ways, the establishment of the idea of penumbras in the Bill of Rights was Justice Douglass's attempt to link implied rights directly with the Constitution. He was perhaps attempting to mitigate accusations of overstepping judicial power that permit justices to judge according to their own convictions of fundamental liberty. A strong argument that Douglass makes is by referring to precedent of the court establishing penumbras prior to *Griswold*. In particular, he references the cases such as *Pierce vs. Society of Sisters* (1925) and *Meyer v. Nebraska* (1923), where in both cases, the court affirms the idea that there is a fundamental liberty in a parent's control of choosing the sort of education that their children deserves. In *Pierce,* the court upholds a parent's right to choose the educational institution to send their children, including private schools over public schools.[33] Similarly, in *Meyer*, the court upheld a parent's right to have their children educated in foreign languages such as German.[34] Both were based on the Due Process Clause of the Fourteenth Amendment and justified their rulings based on fundamental liberty, "which all governments in this Union repose."[35] However, Douglass makes an explicit link between these rulings and the rights established with the First Amendment describing how knowledge is necessary to having free speech and press. In this way, the rights affirmed in *Pierce* and *Meyer* are peripheral rights of the First Amendment, which if not upheld, would undermine the explicit rights. Douglass makes a compelling argument that the rights that ought to be thought of as fundamental are those that would undermine the explicit rights listed in the Bill of Rights. If a justice is able to make this link directly back to the Bill of Rights, then the application of the Ninth Amendment and Due Process Clause would not be completely arbitrary and at the will of the personal bias of unelected justices. This is the strength of the idea of penumbras in the Bill of Rights.

This is especially relevant when considering the contemporary world, where technology is capable of altering the way that people are able to interact with society. Justice Stephen Breyer particularly points out how the court has to ensure that the Bill of Rights can continue to be applicable to a rapidly changing world in his book *Active Liberty: Interpreting Our Democratic Constitution.* While Brennan recognizes the importance of not asserting one's own personal bias

[33] *Pierce v. Soc'y of Sisters,* 268 U.S. 510 (1925).
[34] *Meyer v. Nebraska,* 262 U.S. 390 (1923).
[35] *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925).

into deciding cases, he also warns against being "wooden", which is a formulaic and rigid way of interpreting the law.[36] Rather, Brennan suggests interpreting the law in a more pragmatic way that takes into account the effects of different laws and regulations. He utilizes digital privacy as an example of a privacy right, which showcases the rapid technological change. This is because the Founding Fathers could not have predicted that there would be surveillance cameras or that we would carry around a device that is capable of storing all of our personal information and data. Despite the Bill of Rights not explicitly protecting our information online, if the government was permitted to infringe on online privacy, this would clearly make the Fourth Amendment's protection from search and seizure obsolete. Brennan emphasizes that the court needs to be careful in applying "eighteenth-century details to the point where it becomes difficult for a twenty-first-century court to apply the document's underlying value."[37] This is a huge part of the idea of "active liberty" because the judicial system has an integral part of preserving people's freedoms, which may include being able to adapt and consider the effect that their decisions may have.

Brennan also emphasizes the importance of creating narrowly tailored rulings for ongoing issues in society such as the question of privacy. He utilizes the example of *Bartnicki v. Vopper* (2001), where the court ruled that privacy concerns are not sufficient to override the First Amendment's free speech for information related to public matters.[38] However, this is because of the circumstances surrounding the case, which Justice Breyer outlines in his concurrence of the case as the broadcasters "acted lawfully" and "the information publicized involved a matter of unusual public concern, namely, a threat of potential physical harm to others."[39] The importance of this is that regulations to privacy require narrowly tailored reasons to do so because provisions to the Bill of Rights and due process are threatened when privacy is regulated. When the rulings can have unknown consequences to rapidly developing social landscapes, the effects can have a chilling effect on the fundamental liberty held by the people. This is why Brennan argues that broad and sweeping rulings are dangerous for cases related to disputed rights such as privacy. This is one of the concerns with *Dobbs* in that it overturned the entirety of *Roe* without consideration of the potential impacts that it could have, not on just abortion, but to a whole host

[36]Stephen G. Breyer, *Active Liberty: Interpreting Our Democratic Constitution* 11 (2005)
[37] Id. at 43-44.
[38] Id. at 42-43.
[39]*Bartnicki v. Vopper*, 532 U.S. 514, 536 (2001) (Breyer, J., concurring).

of rights linked to the Fourteenth Amendment's Due Process and penumbras in the Bill of Rights. This threatens a whole host of peripheral rights, which in turn, will uproot the liberties which, we the people, hold to be of fundamental importance.

Now interestingly, the dissent in *Roe v. Wade* makes an argument related to broad and sweeping rulings for the opposite result. Justice William Rehnquist argues that the use of penumbras to establish a right to abortion is too broad of an application to be ranked as fundamental. Rehnquist argues that privacy as it relates to the Bill of Rights, specifically the Fourth Amendment's protection from search and seizure, is completely irrelevant to the question of abortion. Rather, the court is mischaracterizing the reference to privacy in the Bill of Rights as "the claim of a person to be free from unwanted state regulation of consensual transactions." [40]In this case, the "transaction" is the agreement between a woman and doctor to undergo an abortion. However, Rehnquist's point is that this can open the door to allow for any agreement between two parties to be protected by a "right to privacy." This includes some extremely controversial and sensitive "transactions". Some examples that come to mind are assisted suicide or transactions with organ trafficking. If the zone of privacy emanated from the penumbras of the Bill of Rights may include the right to abortion because it is a highly personal decision, then it may extend to other highly personal and controversial but consensual decisions.

As of now, the Supreme Court of the United States has not ruled that these examples are constitutionally protected (such as *Washington v. Glucksberg* (1997) for assisted suicide).[41] Yet, these are worth pointing out because they are very real issues, especially in other parts of the world. In Canada, the Canadian Supreme Court ruled that laws completely banning physician assisted dying infringes upon the security of the person because "the prohibition denies people in this situation the right to make decisions concerning their bodily integrity and medical care and thus trenches on their liberty." [42]While not explicitly listing out a right to privacy, the parallel in reasoning between *Carter* and *Roe* can be observed, where the courts recognized a right for people to make private decisions about their own bodies. In *Carter,* the court focused primarily on those with serious and/or terminal medical conditions, but these programs may in the future extend to everyone, which will have serious ramifications for the mental health and depression epidemic that is becoming increasingly prevalent. Thus, the question for the court becomes how

[40] *Roe v. Wade,* 410 U.S. 113, 172 (1973) (Rehnquist, J. dissenting).
[41] *Washington v. Glucksberg,* 521 U.S. 702 (1997).
[42]*Carter v. Canada (Attorney General),* 2015 SCC 5, [2015] 1 S.C.R. 331

far can a penumbra reach to protect a consensual "transaction" until the state can no longer ignore an obligation and duty to protect life.

Thus, while zones of privacy exist from emanations of penumbras in the Bill of Rights, it is not completely clear that the concept of privacy defined can encompass a widening range to include that of abortion. However, this pillar does establish a path for determining what ought to be considered fundamental in that it encourages the idea of peripheral rights, which if infringed, would inhibit the primary right. From this, a right to privacy can be established, particularly because of the Fourth Amendment's protection from search and seizure. This legitimizes a right to digital privacy, for example, because this is directly linked to one's personal property and information. However, the use of privacy is not as clear cut in the context of abortion. To obtain this, the third pillar must be examined.

Pillar III: Due Process Clause

The final pillar that the right to privacy has been built upon is from the foundation of the Due Process Clause of the Fourteenth Amendment: "nor shall any State deprive any person of life, liberty, or property, without due process of law."[43] While this may be in reference to procedural due process, many justices have interpreted this clause to include substantive due process, which protects actual fundamental rights rather than just the procedures that the government is required to take. This is the justification that is the most relied upon and utilized in protecting the right to privacy and a whole host of unenumerated rights. In fact, Justice Harlan in his concurrence of *Griswold* condemns the use of penumbras and asserts that the correct method by which to establish a right to privacy is through the Due Process Clause of the Fourteenth Amendment.[44] This is because the use of penumbras limits the court's ability to protect liberties that may be considered fundamental, as these liberties have to be found in the Bill of Rights. Professor Erwin Chemerinsky (now dean of UC Berkeley School of Law) gave a lot of insight into substantive due process at the Practicing Law Institute program on the Supreme Court, which was transcribed by the Touro Law Review. Professor Chemerinsky argued that substantive due process is controversial, but it is used "any time the government takes away life, liberty or

[43] U.S. Const. amend. XIV, § 1.
[44] *Griswold v. Connecticut,* 381 U.S. 479 (1965) (Harlan, J., concurring).

property." [45] This is an outline of the most fundamental rights that are not explicitly stated laid out in the Bill of Rights. This shows how the basic premise behind substantive due process is that the Fourteenth Amendment protects rights that are considered fundamental, unless there is a narrowly tailored regulation that has a *compelling* state interest. And in order to determine if a state interest is compelling, the court applies a test of strict scrutiny. On the other hand, if a right is not fundamental, then the court applies a rational basis test, where the state only needs to show that there is a rational connection between a law and a legitimate state interest.

However, similar to how the Ninth Amendment had ambiguity to what rights can not be denied or disparaged by the court, the Fourteenth Amendment struggles in determining which rights are fundamental. The court has turned primarily to the idea that fundamental rights are those that are "rooted in the traditions and conscience of our people to be ranked as fundamental."[46] This is a statement that is often referenced in many substantive due process clauses by a variety of different justices, particularly as a dissent to the expansion of rights that they may not consider fundamental such as Rehnquist's dissent in *Roe v. Wade* and Scalia's majority opinion in *Michael H. v. Gerald D.* However, this in turn leads to the court having to find rights that are rooted in traditions and conscience. The result is history papers.

A very prominent pattern can be observed in cases related to substantive due process in that the opinions will almost always try to place the substantive right in historical context. *Roe* is an excellent example of this, where Blackmun gives thorough insight into the legal and medical history surrounding abortion all the way to the times of Ancient Greece and Rome, which he indicates had little protection for unborn children. He also looks at English common law surrounding the concept of "quickening", which was the decisive line utilized in determining if an abortion was permissible.[47] However, the point in Blackmun invoking history is to show that there was no tradition of criminalizing abortion until later in American history around the second half of the 19th century. Rather, the Due Process Clause can be invoked because the court has previously recognized that Americans have a right to make highly personal decisions in private without governmental interference. This is because there is a deep rooted tradition of personal autonomy within American society.

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[45] Erwin Chemerinsky, Substantive Due Process, 15 Touro L. Rev. 1508 (1999).
[46] *Snyder v. Massachusetts,* 291 U.S. 97, 105 (1934).
[47] *Roe v. Wade,* 410 U.S. 113, 130-147 (1973).

However, the same history is utilized in *Dobbs* to deny a right to abortion. Justice Alito invokes how all the states had criminalized abortion at some stage and point in history and that advocacy for a right to abortion had not been popularized until the 20th century. He also invokes English common law and certain documents such as Henry de Bracton's 13th-century treatise, where if someone assaults a pregnant woman and causes an abortion after quickening, then that person is charged with homicide. Similar documents from English common law that Alito references include Sir Edward Coke and Sir Matthew Hale.[48] He also emphasizes that just because there is an absence of criminalizing abortion prior to quickening, this does not equate to affirming abortion as a right. For Alito, the Due Process Clause can only protect fundamental rights, which have to have undeniable historical or traditional backing. It is not enough to suggest that because history did not exclude a right, that the right is fundamental.

Alito also denies that abortion can be justified under other related fundamental rights that have deep roots in history or tradition. Alito claims that such applications of rights related to personal autonomy are too broadly applied to abortion, and that there is a clear distinction between abortion and other fundamental rights such as marriage and contraceptive use. Namely that there is a "critical moral question posed by abortion."[49] It is this difference that makes abortion so prominent among privacy rights because from certain perspectives, it pits the idea of liberty against life. In this way, Alito and a majority of the court conclude that a right to abortion is not fundamental and therefore, is subject to the rational basis test. And since the preservation of potential life constitutes a rational state interest, a state may impose regulations on abortion. Yet note that the court does not go a step further to affirm that there is a fundamental right of life for the fetus because of the deeply philosophical and debated question of when life begins. They leave this question to the state legislatures, which is how different states have widely different policies and positions on abortion today.

From the majority opinion of Dobbs, a lot can be uncovered in relation to the Due Process Clause and the right to privacy in general. Firstly, it shows the problem with defining fundamental rights through the history and tradition of the people because history can be construed to fit a narrative, whether that be pro choice or pro life. This is in particular to the time frame and priorities given to certain historical facts. The central role of quickening in English

[48]*Dobbs v. Jackson Women's Health Org.,* 597 U.S., 16–20 (2022).
[49]Id. at 32.

common law was invoked in both *Roe* and *Dobbs,* yet, the decisions came to very different conclusions. Rather, history was used to justify a policy preference in both cases. However, the overall ability for a justice to determine what constitutes a fundamental right without taking the role of a legislature is frequently invoked. Some justices such as Clarence Thomas suggest that this is near impossible, which is why the use of substantive due process through the Fourteenth Amendment is not judicially sound.

However, as Professor Chemerinsky mentions, the Fourteenth Amendment explicitly lists that a state may not "deprive any person of life, liberty, or property, without due process of law."[50] This implies that there must be some standard or reasoning by which the court can protect liberties that are not explicit in the Bill of Rights. However, in the case of abortion, it seems that the most established criteria of history and tradition is not concrete enough to discern abortion as fundamental. From here, the dissent of *Dobbs* turns to what are essentially the principles outlined in Justice Breyer's *Active Liberty*. This is particularly interesting when seeing that Justice Breyer helped write the joint dissent with Justices Sotomayor and Kagan. One can clearly see the principles laid out of supporting *stare decisis* and being careful to consider the pragmatic impacts of overturning certain rulings. Breyer's influence is clearly seen, as the dissent lays out the impacts that overturning *Roe v. Wade* will have on women's rights, as women will have to bear the children from rape and potential criminalize abortion against women seeking abortion rather than just the physician. He also points to how ignoring stare decisis in *Roe* will have to result in a chain reaction of overturning other precedent because *Roe* is inherently embedded in the reasoning of *Griswold* and other privacy rights.[51] This is the primary concern of *Dobbs*, which is the overturn of all privacy rights because there is no direct historical tradition of the use of contraceptives or same sex marriage at the passage of the Fourteenth Amendment but from a practical stand point, have become important topics in an individual's personal autonomy and decisions. And this is the crux of what Justice Breyer is arguing about in Active Liberty, which is that the world is ever evolving and that to truly preserve liberty as mandated in the Fourteenth Amendment, the court needs to consider the realistic impacts of their decisions rather than just have a formulaic and rigid approach.

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[50] U.S. Const. amend. XIV, § 1.
[51] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ___ (2022) (Breyer, Sotomayor & Kagan, JJ., dissenting).

This approach is appealing because of the flexibility that it provides to a whole host of different scenarios. It can help the court adopt rights that may never have been considered before, especially with the advancement of technologies. However, this approach to judicial review comes with a lot of criticism in that it may overstep the bounds of the power of the court. The recurring theme of opposition to a right to privacy and abortion is that it is not within the purview of the court to make decisions according to how they think policies will impact people. The idea of substantive due process being utilized in a legislative capacity is what necessitates some sort of restraint and criteria to what is ordered liberty. This is because it is dangerous to leave determinations of what is liberty to nine unelected justices. Scalia gives a rather extreme but thought provoking example in his dissent of *Casey*, where he claims that the use of substantive due process can be analogous to the reasoning in *Dred Scott,* where the justices invoked their own consideration of liberty, which was that of property for slave owners.[52] There is certainly merit by which the abstract idea of liberty can leave the court susceptible to make drastic mistakes that constrain liberty by preventing mechanisms of democracy. This is because practical considerations have to be placed within the perspective of certain groups, as disputes almost always involve conflicting parties. In *Dred Scott*, the court made their discernment of liberty in the perspective of slave owners and held that Dred Scott could not bring his case to court because he was not a citizen, resulting in an upholding of the premise of slavery. In doing so, the court upheld a form of horrible, unaccountable liberty for slave owners but massively undermined the freedoms and guarantees of the Constitution for others.[53] This is not to compare slavery with abortion or privacy in any way, shape, or form, as this is the most extreme example, but it is simply to demonstrate that leaving interpretation of what constitutes liberty based on a judge's own considerations of societal impacts leaves the door open for unjust opinions. As such, this brings us back to our starting point of the use of history and tradition to determine what may be fundamental.

While the use of history may be flawed in that it can be conformed to certain narratives in order to create or deny rights, it requires at least some finesse to do so. This helps prevent the greater relative arbitrariness that the alternative may bring. Additionally, it provides a way to expand rights beyond those explicitly stated in the Bill of Rights such as a right to marriage or

[52]*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 998 (1992) (Scalia, J., concurring in part and dissenting in part).
[53]*Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857) (Curtis, J., dissenting).

freedom to raise children, which have long rooted histories. While such a criteria may not be as far extending as some may want, it is not a completely rigid standard that has been utilized to apply the Due Process Clause to protect a whole sleuth of privacy rights. Unfortunately, if we are to accept this approach, then it is the criteria that Alito's uses in Dobbs, which without a court majority, leaves abortion as not a fundamental right that is subject to rational basis rather than strict scrutiny.

Abortion Equals Privacy?

The three pillars of the Ninth Amendment, Penumbras, and the Due Process Clause seemingly fail to discern definitively that abortion is a fundamental right protected by the Constitution. Additionally, it may be that additional privacy related rights such as contraceptive use and same sex marriage are threatened because of their reliance on the same pillars, particularly of substantive due process. However, as the court has acknowledged in many cases, abortion is different. This is because of the compelling state interest in preserving life. This is perhaps the most compelling state interest. While there is ambiguity to the legitimacy of such claims, the weight and risk associated with life sets abortion apart from other privacy rights. Compare this to same sex marriage in *Obergefell v. Hodges*, where Justice Kennedy writes about how the court has long held that a right to marry is part of the history and tradition of the country.[54] This is a far more direct connection to a right held to be part of history than perhaps *Roe* or *Casey* was able to make, as a right to marriage is a direct affirmation of its practice rather than a history of it not being heavily punished as *Roe* laid out. Additionally, Kennedy lays out four principles that establish the right to marry to extend to same sex marriage. These points were that marriage is inherently in the concept of individual autonomy, marriage is a fundamental right because it is the union of two people in a unique relationship, protects children, and the state provides benefits to those with marital status.[55] Note that the first principle, connecting same sex marriage to individual autonomy is an argument that is made in *Roe* but can be contended by the idea that the fetus may be thought of as a seperate individual. Such a claim can not be made with regard to *Obergefell* or *Griswold*. Additionally, the last principle invokes the Equal Protection Clause of the Fourteenth Amendment, showing that other

[54] *Obergefell v. Hodges*, 576 U.S. 644 (2015).
[55] Id.

privacy rights can stand on other provisions of the constitution beyond substantive due process. Such arguments are hardly made in relation to abortion.

Additionally, almost every justice acknowledges that the Due Process Clause protects rights that are fundamental, and that at least some aspects of privacy are deeply rooted in the nation's history and tradition. The only justice that seems to seriously suggest the end of substantive due process in its entirety is Justice Clarence Thomas, who wrote in his concurrence of *Dobbs* that "we should reconsider all of this Court's substantive due process precedents, including Griswold, Lawrence, and Obergefell."[56] While perhaps a point of concern in the upheaval of precedent, it should be comforting that no other justice signed with Thomas's concurrence. It should be found doubtful that any court in the near future (or perhaps ever) will be willing to completely destroy the framework of privacy and reproductive freedoms. This is because there is a lack of state interest beyond making a moral argument in other instances of privacy, which by itself is not a satisfying legal argument. While privacy and abortion may have come to be synonymous in the US, this is not necessarily the case, and it is possible to uphold privacy while not upholding abortion.

However, this still leaves the question of abortion. Does the Constitution provide steps for a right to abortion from *Dobbs*?

There is one further avenue that the Constitution provides. One long and tedious road that leads to the firmest and undisputed of pillars. That is Article V: Constitutional amendments. This is perhaps not the most practical or efficient method of upholding a right. However, it is a path that is always viable. People are skeptical about such steps and rightly so. There have only been 27 amendments, including the 10 Bill of Rights, that have been ratified in the almost 250 year history of the United States. Yet, what was once thought impossible has been done across the Atlantic. On March 4, 2024, France passed a Constitutional Amendment with a vote of 780-72 to make abortion a guaranteed freedom.[57] The implications of France's decision is that it provides a roadmap for Americans. Already in the world, many countries protect abortion by law rather than judicial decisions, and this process has already begun at the state level. Currently, 11 states protect abortion in their state constitution.[58] Even in a fairly conservative state such as Florida, a

[56] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. ___ (2022) (Thomas, J., concurring).
[57] *Constitution of the French Republic*, art. 34.
[58] Center for Reproductive Rights, *State Constitutions and Abortion Rights,* (May 24, 2024), https://reproductiverights.org/maps/state-constitutions-and-abortion-rights/.

majority of voters voted in favor of amendment 4 in the 2024 election, which would have recognized a right to abortion before vitality in the state constitution. The amendment was just shy at 57.17% of the vote rather than 60% to be ratified.[59] Article V is not as easy of a pillar as the others mentioned in this paper, but the work to fulfill Article V will create real lasting change by appealing to the hearts and minds of the American people. From the Thirteenth Amendment's abolition of slavery to the Nineteenth Amendment's protection of women's suffrage to the Twenty Sixth Amendment's right to vote for all people 18 years of age, change has had to appeal to We the People to change attitudes and societal beliefs because people believed such change to be necessary to the promise of life, liberty, and the pursuit of happiness written by Jefferson, a slave owner. If *Dobbs* shows anything, it is the uncertainty that the establishment of rights through nine unelected figures causes rather than the mechanisms of democracy afforded to the people. Article V allows We the People to establish Amendment XXVIII as the supreme law of the land. It is simply waiting to be written.

Conclusion

Dobbs v. Jackson (2022) overturned almost half a century of precedent established in *Roe v. Wade* (1973) that protected a woman's right to abortion. This right to abortion was established under its relationship to privacy in *Griswold v. Connecticut* (1965). As such, many people are concerned about the protections to privacy in the United States as ambiguity arises as to the Constitutional protections afforded to the people. In order to determine the potential validity of *Dobbs,* it is important to examine the way in which a right to privacy was established and how this relates to abortion. There are three primary "pillars" by which the right to privacy is potentially built upon: the Ninth Amendment, penumbras in the Bill of Rights, and the Fourteenth Amendment's Due Process Clause.

The Ninth Amendment is able to establish the idea of implied rights beyond those explicitly stated in the Constitution. These rights are the product of natural law, but the Ninth Amendment is difficult to apply because of how broad its wording is. In many ways, it can be considered to be a statement of the existence of natural rights like the Tenth Amendment is a

[59] Florida Amendment 4, Right to Abortion Initiative (2024), *Ballotpedia,* (n.d.), https://ballotpedia.org/Florida_Amendment_4,_Right_to_Abortion_Initiative_(2024).

statement of federalism than it is to practically be used. This is perhaps the reason it is not addressed in *Dobbs* because it alludes to additional rights but has little applicability. The second pillar of penumbras in the Bill of Rights are able to expand upon the Ninth Amendment by creating a more tangible standard by which to establish implied rights. Zones of privacy can be directly linked to several of the amendments in the Bill of Rights, which permits for a right to privacy to be established. However, a right to privacy is an extremely broad term, which makes it difficult to argue that a right to abortion falls within this zone of privacy because abortion is not directly related to provisions such as search and seizures or quartering soldiers. The third pillar is the Due Process Clause, which protects fundamental rights and liberties. This can also be broad, so the court looks to the rights that are deeply rooted in the nation's history and tradition. This invokes substantive due process, which is the primary way in which privacy and abortion is defended, as rights such as a right to marriage and bodily autonomy have been held to be fundamental liberties. This is potentially the best constitutional argument for a right to abortion, especially when considering the impacts that overturning *Roe* would have for women that depended upon it for being able to make decisions about their own body. However, this application of active liberty can be dangerous in circumventing the boundaries and limitations of judicial review, as it can lead to policy decisions that have the adverse impact of undermining other liberties. Thus, while an application of history can potentially justify a right to abortion as done in *Roe*, such history is not definitive in an establishment of abortion as demonstrated by Alito's majority opinion in *Dobbs* that argues deeply rooted in history is not the same as an absence in preventing the right.

However, abortion is a special case because of the moral arguments surrounding a compelling state interest that clearly overrides the rational basis test. But since abortion is unique, other privacy rights such as same sex marriage and contraceptive use are unlikely to be overturned, as they have a stronger basis in other fundamental rights and there is a lack of a competing state interest. Additionally, while it may appear that there is no path for securing a right to abortion, the utilization of Article Five can enshrine a right to abortion and reproductive freedoms. Thus, while abortion may not have a decisive argument to be constitutionally protected, the Constitution provides a difficult but clear way to uphold reproductive freedoms.

Take It Down: Deliberating the Dangers of Deepfakes

By Dawit Gebremaryam

Abstract:

Artificial intelligence is quickly becoming more prevalent, powerful, and public. As the technology evolves rapidly, it raises urgent legal and ethical concerns surrounding the technology and its applications. Deepfakes are one of these applications. Deepfakes are AI-generated content that modifies or entirely synthesizes media. This technology has already been used for many purposes, such as entertainment, but unfortunately has also been utilized to spread misinformation. Careful thought must be put into how to best regulate this technology in order to protect the image and reputation of individuals, while also protecting the First Amendment right to freedom of speech.

This article will examine the successes and failures of existing legal frameworks regarding deepfakes such as the DEEPFAKES Accountability Act, as well as international examples. It will also explore the intersection of this technology with defamation law, privacy rights, and fraud statutes. Ultimately, this article will seek to balance the protection of free speech with the growing need for protection of the public from the threat posed by synthetic media.

Introduction:

Artificial intelligence is quickly changing how media is created and consumed in America. While it does so in a variety of ways, one of its most provocative applications is the development of “deepfakes”: AI generated or modified content that is meant to simulate an individual’s likeness. While there are many harmless potential uses of this technology, they also pose significant legal and ethical challenges in areas like defamation, privacy, and fraud. These concerns also interact with the First Amendment’s broad protections of speech in the United States. For this reason, laws regarding deepfake technology must strike a careful balance: they must protect individuals from the potential harms of the technology, while also not stifling freedom of expression. This article will explore the development of deepfakes, the areas of law

the technology intersects with, existing regulatory efforts, and recommendations for future policy.

The first attempts at deepfakes can be traced back to the 1990s in the form of using CGI to create realistic images and videos of humans. It wasn't until the 2010s when innovations in machine learning and computing power led to major advances in the field. In 2014, computer scientist Ian Goodfellow developed a machine learning concept called the Generative Adversarial Network (GAN).[60] This model trained two neural networks to compete with each other in order to develop the best output. One network created new data by taking an input data sample and modifying it in the way the user wanted, then the other network attempted to predict whether the generated data is real or fake. The system then generates multiple versions of the data until the predicting network can no longer identify the fake.[61]

The actual term "deepfake" was coined in 2017 by a Reddit user under the same username, and exactly on websites like Reddit did deepfakes explode both in quality and use.[62] Some uses are harmless – like editing yourself into a movie scene – but more malicious applications have risen since the inception of the technology. One thing is clear: no one is safe from deepfakes.

For instance, in the UK, the CEO of a major energy firm was tricked into transferring $243,000 into the bank account of a Hungarian supplier because he believed he was on the phone with an executive working for his firm's parent company. High-level executives are not the only target either. One infamous use of deepfake technology is to alter adult videos, grafting another face on top of the actor or actress. This isn't a niche activity, existing solely in some filthy digital alleyway in the corner of the internet, it's extremely prolific. In 2023, 98% of all deepfake videos online were adult material, and 95% of all online deepfake videos were nonconsensual.[63] The issue is obvious. As access to deepfake technology becomes more accessible, so too does the risk of misuse. For these reasons, it's important to think about what kinds of legislation can be put in place to protect people while also not treading on the rights of others.

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[60] Gabe Regan, *A Brief History of Deepfakes*, 1, (2024).
[61] Amazon Web Services, *What Is a GAN?*, AWS, https://aws.amazon.com/what-is/gan/ (last visited Aug. 2, 2025).
[62] Meredith Somers, *Deepfakes, Explained*, MIT Sloan Sch. of Mgmt. (July 21, 2020), https://mitsloan.mit.edu/ideas-made-to-matter/deepfakes-explained.
[63] Madyson Fitzgerald, *States Race to Restrict Deepfake Porn as It Becomes Easier to Create*, Wash. St. Standard (Apr. 11, 2024), https://washingtonstatestandard.com/2024/04/11/states-race-to-restrict-deepfake-porn-as-it-becomes-easier-to-create/.

Deepfake Legislation:

On April 28th of this year, Congress passed the TAKE IT DOWN Act with bipartisan support. The bill, introduced by Senator Ted Cruz and Senator Amy Klobuchar, criminalizes the nonconsensual distribution of intimate images or NDII. This act includes AI-created deepfakes, stating:

"The term 'digital forgery' means any intimate visual depiction of an identifiable individual created through the use of software, machine learning, artificial intelligence, or any other computer-generated or technological means, including by adapting, modifying, manipulating, or altering an authentic visual depiction, that, when viewed as a whole by a reasonable person, is indistinguishable from an authentic visual depiction of the individual."[64]

It also requires covered platforms to establish reporting channels where content can be brought to regulatory attention – which ideally should increase moderation. Despite overwhelming support, the bill has been the target of critics who argue that it is dangerously broad, citing First Amendment concerns. One such group is the Cyber Civil Rights Initiative, which agrees with the creation of legislation prohibiting nonconsensual distribution of intimate images (NDII), but argues that since the Act requires platforms to remove reported content within 48 hours, platforms will likely not be able to check each piece of media on a case-by-case basis, instead resorting to deleting the video. The dangers of false reporting pose a threat to First Amendment protections.[65]

Attempts to legislate deepfakes are also visible on the state level, specifically in California. In September 2024, the Golden State passed eight laws all aimed at addressing different harms potentially caused by AI deepfakes. These laws can be grouped into four categories: promoting transparency in the use of AI, protecting creative rights, protecting against threats in the context of elections, and mitigating privacy harms perpetuated by sexually explicit deepfakes.

As far as the first category, some of the new laws are designed with the goal of making sure that individuals interacting with AI or deepfake content know that the content is synthetic. For example, California Assembly Bill 2355 requires that political advertisements that use

[64] Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks (TAKE IT DOWN) Act, S. 146, 119th Cong. (2025).
[65] Cyber Civil Rights Initiative, *CCRI Statement on the Passage of the TAKE IT DOWN Act (S. 146)* (Apr. 28, 2025), https://www.cybercivilrights.org/ccri-statement-take-it-down-act/.

synthetic media include a disclosure.[66]Additionally, California Senate Bill 942 states that All publicly accessible AI generative sites with over a million monthly visitors are required to make a free AI detection tool to allow users to assess whether content was made or edited by GenAI's system. These laws can help promote transparency, protecting the privacy and likeness of individuals while allowing the synthetic media to still be created.

As far as creative rights, [67]California's Assembly Bill 1836 makes anyone who creates a replica of a deceased personality's voice or likeness in an audiovisual work or sound recording without prior consent liable to any injured party. California's Assembly Bill 2602 protects individuals from being digitally cloned without their consent, and makes contract clauses using generated versions of someone's face or likeness unenforceable unless the contract clearly explains how the replica will be used and the person had representation during negotiations. This helps protect creative freedom and rights of artists and individuals using AI for expressive purposes. In the context of elections, California has passed two laws to prevent deepfakes from interfering. [68]Assembly Bill 2839 prohibits entities from knowingly distributing an advertisement or other election material containing deceptive AI generated or manipulated content 120 days before an election, and in some cases even 60 days after. [69]The other law, California's Assembly Bill 2655 requires large online platforms to identify and remove materially deceptive content related to elections during specific periods, and to label any reported content at least 72 hours after a report is made.

For the last category, mitigating privacy harms perpetuated by sexually explicit deepfakes, two laws also apply. California's Senate Bill 926 criminalizes the creation and distribution of AI generated explicit deepfake content if a person suffers distress and the distributor should know or does know that it would cause distress. California's Senate Bill 981 requires social media platforms to establish a way for users to report sexually explicit digital identity theft. Then once reported, the platform must temporarily block the content, then investigate and remove it if it's found to be NDII.

[66] Assemb. B. 2355, 2023–2024 Reg. Sess. (Cal. 2024).
[67] Cal. Assemb. B. 1836, 2023–2024 Reg. Sess. (2024).
[68] Cal. Assemb. B. 2839, 2023–2024 Reg. Sess. (2024).
[69] Cal. Assemb. B. 2655, 2023–2024 Reg. Sess. (2024).

Challenges to Deepfake Regulation

The law is playing catch-up with technology, and deepfakes are one of the clearest examples of that race. As AI-generated media becomes more common and convincing, lawmakers are scrambling to find the right way to regulate it. But like most content-related issues, it isn't just a matter of creating rules. It's about finding balance: protecting people from serious harm while not shutting down free speech in the process. Critics like the Cyber Civil Rights Initiative warn that without strong safeguards, laws like these could be misused, silencing legitimate expression and encouraging platforms to over-remove content just to avoid trouble. The reality is, deepfake tech is moving fast. Tools to create hyperrealistic videos are already accessible to regular users, and detection tools are struggling to keep up. This means that platforms like Twitter, TikTok, YouTube will need to step up regulations and monitoring. If they don't act quickly, they risk allowing real harm. But if they act too fast, they risk silencing creators, satirists, journalists, and anyone creating free speech content that people might not like.

The first challenge is speed. Innovation always advances faster than laws do. Deepfake generators are getting easier to use, and they're getting better at fooling even the sharpest-eyed viewers. Detection tech, meanwhile, is locked in a race, always one step behind. And with generative models being open-source and distributed globally, there's no stopping the technology itself. That means laws have to become more comprehensive, fast, to mitigate the harms of synthetic media without silencing speech.

The second is jurisdiction. A deepfake made in one country can go viral in another within seconds. U.S. laws can't prosecute bad actors overseas unless there is some kind of global cooperation in place. But if the United States doesn't move towards international cooperation, any laws passed will be based in theory and not practice.

Finally, there's the problem of consent and norms. The law hasn't caught up to the idea that someone's face or voice can be stolen and used in new contexts. Public figures, especially, are vulnerable to having statements misconstrued, and the courts still haven't drawn consistent lines on what counts as defamation or emotional harm in this space. That ambiguity leaves too much to chance. Any future regulation aimed to mitigate dangerous uses of synthetic media must follow a certain framework to be put in place without causing more harm than good.

1. Specific Language: Lawmakers must stop using broad, vague terms like "deepfake" without specifically targeting harmful use of synthetic media. Good law starts with precise language.
2. Share responsibility fairly: A teenager reposting a fake video on Instagram shouldn't be held to the same standard as the person who created it. Regulations should distinguish between creators, platforms, and passive users.
3. Set up independent review panels: Platforms shouldn't be the only ones deciding what content gets removed. A non-partisan, unbiased review board holds less stake in the outcome and increases the chances of prioritizing accountability over profit.
4. Support the victims: Offer real resources—reporting tools, legal support, education—for people affected by malicious deepfakes. It shouldn't take an extensive, expensive legal team and significant time to remove harmful content from the internet. Deepfakes affect everyday people, and any solution should acknowledge that.
5. Work with platforms, not just against them: Set best practices for transparency—like labels for AI-generated content or tools that let users test whether a video was AI-made — and make those practices industry standard.
6. Think globally: If the U.S. wants to lead on AI regulation, it needs to be in the room where international standards are being written. Otherwise, we'll end up with a digital Wild West.

Conclusion:

Deepfakes aren't just a harmless internet trend. They raise real questions about who we are, what we consume, and what it means to live in a world where seeing isn't always believing. These tools warp with our sense of truth, and that makes them legally and culturally dangerous. But overcorrection is just as dangerous.

Good regulation isn't reactive. It's smart, clear, and flexible. We urgently need laws that hit malicious actors where it hurts while protecting the people who are experimenting, reporting, and creating. While that's a difficult balance to manage, it's necessary. The answer to deepfakes isn't to ban or fear them – it's to understand them, regulate them wisely, and build a digital culture where both truth and expression can survive.

Cartels & Capital: The Trump Administration and Counternarcotics Policy at the Southern Border

By Beck Sosa

Introduction

Since his inauguration in January, President Donald Trump has already signed 162 executive orders. This marks the onset of a multifaceted transformation with long term implications extending beyond the next four years. Drugs coming from the United States' Southern border have been a controversial rallying point for the Trump Administration in the past, serving as a justification for harsher border penalties that regularly fail to tackle the root issue: cartels.

Historically the United States has used a "kingpin strategy" in the "War on Drugs" that focuses on attacking drug trafficking organizations from the top down. Many Americans hold a disillusioned view of cartels; imagining coordinated drug trafficking efforts perpetuated by one high level cartel member. In reality, they are much more than their prominent figure heads. They operate with a decentralized power structure and are the structure of legitimate economies. More than 50 years after the Nixon administration called for the War on Drugs, many high level traffickers have been captured, but American drug use is at an all time high. The kingpin strategy clearly doesn't work. This article explores the current business strategy and power dynamics of criminal organizations in Mexico and explains why recent US policy, while straying from the kingpin strategy, is unlikely to make a notable impact on US drug addiction.

Who Are The Cartels?

Cartels are conspiring groups of criminals with a common goal: profit. Historically, they have made most of their money from drug trafficking. Today they're diversified into a wide variety of

income streams: human trafficking, extortion[70], fuel theft [71], illegal mining, logging[72], avocado monopolies[73], counterfeit pharmaceuticals, and much more. Many cartels also operate with a form of parallel governance, especially in areas which the Mexican government is not able to control or fund[74].

It is important to note that without political corruption, cartel operations would not be possible. At every level, government officials cooperate with cartels whether by accepting bribes or succumbing to threats. Even Andrés Manuel López Obrador, the previous president of Mexico, has well documented affiliation with the Sinaloa Cartel. Corruption is well-documented, even when only assessing publicly-available information.

As Mexican criminal economies have grown, so has their propensity for violence. Mexican transnational crime organizations (TCOs) have been documented using means of advanced paramilitary warfare including but not limited to drone airstrikes, rocket and grenade launchers, and javelin missiles [75].

A photo of Cartel Jalisco Nueva Generación (CJNG), a cartel known for their militarism, is depicted below. In 2015, they shot down a Mexican Armed Forces helicopter[76], and even have armored vehicles with their logo on the door (see exhibit 1). The scale of cartel violence in Mexico is hard to comprehend. In 2021, leading up to Mexico's midterm elections, more than 100 politicians were killed. In 2022, more than 100,000 were reported missing in Mexico.

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[70] The International Institute for Strategic Studies, *The Expansion and Diversification of Mexican Cartels: Dynamic New Actors and Markets*, Armed Conflict Survey 2024 (2024), https://www.iiss.org.
[71] June S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations*, Cong. Rsch. Serv., R41576 (2022), https://crsreports.congress.gov.
[72] Nathan P. Jones et al., *A Social Network Analysis of Mexico's Dark Network Alliance Structure*, 15 **J.** Strategic Security76 (2022), https://doi.org/10.5038/1944-0472.15.4.2046.
[73] Morgan A. Broadway, *Mexican Drug Cartels and Their Effects on Society* (Murray State Univ. 2022) (Integrated Studies Thesis), https://digitalcommons.murraystate.edu/bis437/388.
[74] Lindsay Cotton, Charles Dorff & Rafael Valencia, *Organised Criminal Groups in Latin America: The Economics of Political Influence* (Int'l Inst. for Strategic Studies, 2024), https://www.iiss.org/online-analysis/online-analysis/2024/12/organised-criminal-groups-in-latin-america-the-economics-of-political-influence iiss.org.
[75] The International Institute for Strategic Studies, *The Expansion and Diversification of Mexican Cartels: Dynamic New Actors and Markets*, Armed Conflict Survey 2024 (2024), https://www.iiss.org.
[76] Morgan A. Broadway, *Mexican Drug Cartels and Their Effects on Society* (Murray State Univ. 2022) (Integrated Studies Thesis), https://digitalcommons.murraystate.edu/bis437/388.

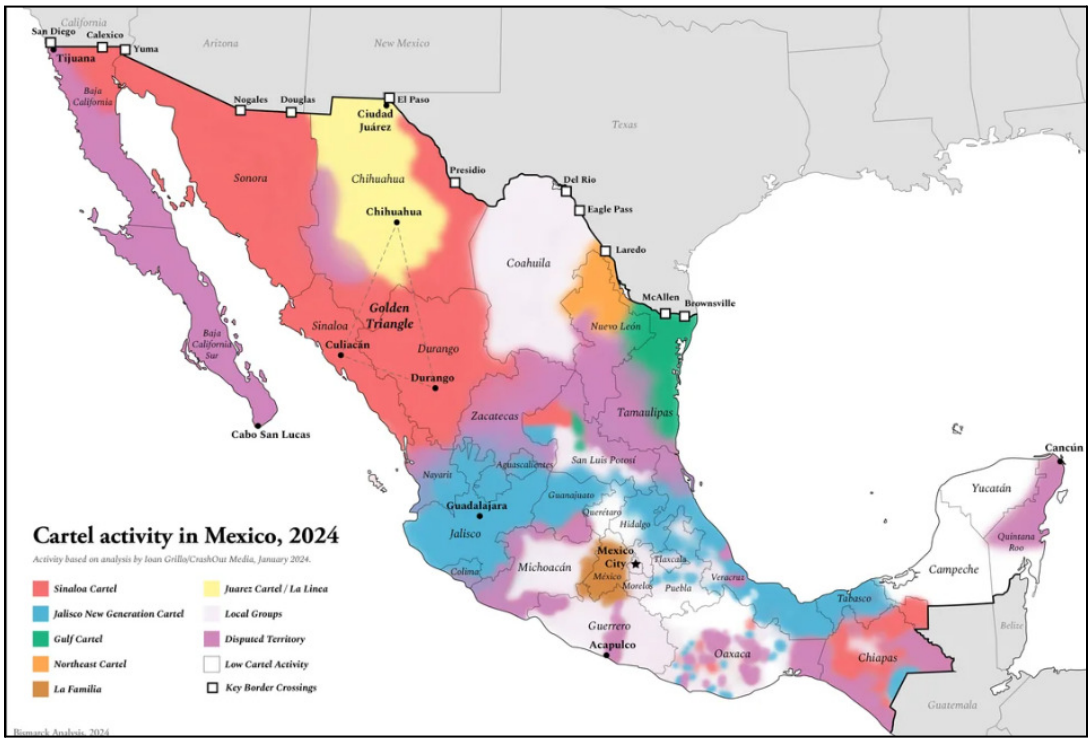
Today in Mexico there are two major TCOs which control a large portion of territory and trafficking routes: the CJNG, and the Sinaloa Cartel. They are constantly involved in turf wars with each other, and even within their own organizations.

The Sinaloa Cartel has been active for decades; formerly headed by Joaquin “El Chapo” Guzman in collaboration with Ismael “El Mayo” Zambada. In its prime the Sinaloa Cartel was essentially operating with the help of both the Mexican and American government. El Chapo was able to manipulate the US government into targeting his enemies through an “informant” working on his behalf, while also having the Secretary of National Defense on his payroll. This allowed him to expand Sinaloa Cartel operations in Mexico with an unprecedented manner of impunity. In 2017, El Chapo was captured and extradited to a supermax prison in the USA[77] and his faction of the Sinaloa Cartel passed on to four of his ten sons: “Los Chapitos.” Since 2017, the Sinaloa Cartel has devolved into a cartel civil war between El Mayo Zambada faction: “La Mayiza” and Los Chapitos. Because of these internal conflicts the Sinaloa Cartel is a shell of its historical monopolistic position.

In the heat of this internal Sinaloa conflict, the CJNG rose to rival Sinaloa as the top cartel in Mexico[78]. The CJNG is led by Nemesio “El Mencho” Oseguera Cervante. The CJNG

[77] Nina Lakhani, *El Chapo Extradited to the US*, The Guardian (Jan. 19, 2017), https://www.theguardian.com/world/2017/jan/19/el-chapo-extradited-to-the-us.
[78] The International Institute for Strategic Studies, *The Expansion and Diversification of Mexican Cartels: Dynamic New Actors and Markets*, Armed Conflict Survey 2024 (2024), https://www.iiss.org.

originated from Jalisco around 2010-2011[79]. It began as an offshoot of the Milenio cartel which was actually a former ally of the Sinaloa Cartel. It has further expanded its control to a number of other states in central Mexico with a focus on the Tierra Caliente region. The map below depicts territories of cartel activity as of 2024. As you can see, the CJNG and Sinaloa cartels are the two groups with the largest territorial presence.



The CJNG and Sinaloa Cartel operate very differently, and are viewed differently by Mexican citizens. The Sinaloa Cartel is perceived as the lesser of two evils. This is part of what allowed them to operate with such impunity during the late 2000s and early 2010s. In many regions working for a cartel like Sinaloa is a relatively good option because they provide a means to financial freedom which is otherwise unavailable. The line law abiding citizens and cartel employees is blurred because cartels are so immersed in legitimate economies and operations. Cartels are the 5th largest employer in Mexico[80].

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[79] June S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations*, Cong. Rsch. Serv., R41576 (2022), https://crsreports.congress.gov.

[80] Edward Helmore, *Mexican Cartels Are Fifth-Largest Employer in Country, Study Finds*, The Guardian (Sept. 21, 2023), https://www.theguardian.com/world/2023/sep/21/mexico-cartels-fifth-largest-employer-study.

The Sinaloa Cartel garners favor with local populations using "narco charity." For example, building infrastructure like roads, hospitals and schools[81]. One of El Chapo's sons was documented giving locals expensive Christmas gifts like cars[82]. The Sinaloa Cartel has also paid for Mexican citizens to go to school and become doctors, lawyers, etc. Narco charity helps the Sinaloa Cartel's public image and provides them influence through the support of indebted white collar individuals. Narco charity is a strategy used to garner public support, not a selfless act of philanthropy. Conducting illegal operations is easier when locals stand to gain from it because they are less likely to take action against it.

In contrast, the CJNG is much more exploitative and negatively perceived. That's not to say that residents of Mexico all support the Sinaloa Cartel, but citizens are naturally more supportive of the one that harms them the least. The CJNG extracts human and financial capital from residents with force. There are documented cases of migrants being kidnapped and forced to traffic drugs, serve as lookouts, and work in synthetic drug labs[83]. The CJNG replaces governance with fear and violence. They extort local business owners and citizens for a percentage of their profits in return for the privilege of not being violently attacked by cartel hitmen[84]. In 2020 the CJNG murdered local families and left their bodies on display in a village, claiming it failed to "pay tribute" to them[85].

The CJNG is more hierarchical than the Sinaloa Cartel, with a violent pyramid of top-down control. This allows the CJNG to be more coordinated, but at times less efficient. Both groups have significant decentralization, but this phenomenon is more visible in the Sinaloa Cartel, which operates more like a vast matrix of criminal relationships than a centralized and coordinated enterprise.

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[81] Morgan A. Broadway, *Mexican Drug Cartels and Their Effects on Society* (Integrated Studies Thesis, Murray State Univ. 2022), https://digitalcommons.murraystate.edu/bis437/388.
[82] *El Chapo's Son Gives Away Cars, Gifts at Mexican Christmas Bash: Report*, New York Post (Dec. 26, 2019), https://nypost.com/2019/12/26/el-chapos-son-gives-away-cars-gifts-at-mexican-christmas-bash-report/.
[83] Morris Panner, *Latin American Organized Crime's New Business Model*, ReVista: Harvard Review of Latin America(Dec. 28, 2012), https://revista.drclas.harvard.edu/latin-american-organized-crimes-new-business-model.
[84] Morris Panner, *Latin American Organized Crime's New Business Model*, ReVista: Harvard Review of Latin America(Dec. 28, 2012), https://revista.drclas.harvard.edu/latin-american-organized-crimes-new-business-model.
[85] InSight Crime, *Cárteles Unidos* (May 25, 2021, updated Aug. 29, 2024), https://insightcrime.org/mexico-organized-crime-news/carteles-unidos/.

There are also a number of regional criminal powers in Mexico. One of these is the Northeast Cartel. They operate near the southern Texas border controlling the Nuevo Laredo trafficking corridor[86] (as depicted in the map above). They are a faction of the now defunct group "Los Zetas", a heavily militarized group founded by former Mexican military officers known for their extreme violence and brutality. They are very powerful in this region, but have a limited capability to project their power beyond it[87]. Their tendencies for militaristic violence can't be overstated. They have even been known to intercept military radio frequencies to advertise the economic benefits Mexican military officers could receive by defecting to their cartel[88].

Los Carteles Unidos is a coalition of several smaller criminal organizations that are also aligned with the Sinaloa Cartel. The organization was formed in order to help combat the spreading influence of the CJNG in the Tierra Caliente region. It included groups like La Nueva Familia Michoacana, Los Viagras, La Nueva Empresa, Los Arreola, and Guardia Michoacana. They exert significant influence in their territories, especially Michoacan[89]. They are involved in drug trafficking as well as activities like avocado farming, illegal mining, and local taxation/extortion. Their operations are often centered around the control of strategic regions and ports for trafficking.[90]

The Gulf Cartel is one of Mexico's oldest trafficking groups. They are located in Northeast Mexico with territory on the Gulf Coastline. They were formerly aligned with Los Zetas but this alliance deteriorated and resulted in tension and loss of territory for both organizations.

There are countless DTOs in Mexico, and it's important to realize that trade between organizations is highly decentralized and dependent on local operations. Even the CJNG and Sinaloa Cartel do business with each other in some areas despite being rivals on a large scale. Many criminals operate as independent contractors and provide services to whoever will pay the

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[86] Nathan P. Jones et al., *A Social Network Analysis of Mexico's Dark Network Alliance Structure*, 15 J. Strategic Security76 (2022), https://doi.org/10.5038/1944-0472.15.4.2046.
[87] Nathan P. Jones et al., *A Social Network Analysis of Mexico's Dark Network Alliance Structure*, 15 J. Strategic Security76 (2022), https://doi.org/10.5038/1944-0472.15.4.2046.
[88] Viridiana Rios Contreras, *How Government Structure Encourages Criminal Violence: The Causes of Mexico's Drug War*(Ph.D. dissertation, Harvard Univ. 2013), http://nrs.harvard.edu/urn-3:HUL.InstRepos:11156675.
[89] N.P. Jones, I.A. Chindea, D. Weisz Argomedo & J.P. Sullivan, A Social Network Analysis of Mexico's Dark Network Alliance Structure, 15 J. STRATEGIC SEC. 76 (2022), https://doi.org/10.5038/1944-0472.15.4.2046.
[90] Nathan P. Jones et al., *A Social Network Analysis of Mexico's Dark Network Alliance Structure*, 15 J. Strategic Security76 (2022), https://doi.org/10.5038/1944-0472.15.4.2046.

most. Local gangs might fight or work together in territory that is controlled by a larger group. Rivalries and partnerships are always changing. Mexico's criminal networks are an “industry” with no regulation besides money and violence. Adaptability is essential.

Understanding The Business

To understand the implications of incoming US counternarcotics policy, we must first understand the motivations and dynamics of cartels. Traditionally, Porter’s Five Forces are used to analyze a clearly identifiable industry. Due to the nature of an illegal, unregulated market it is harder to define what “industry” is being analyzed. The line between economic strategy and violence is blurred; one can’t be discussed without the other. Rather than focusing on one “product” which is provided by Mexican criminal syndicates, this article will focus more broadly on the struggle for power in Mexico between these groups, and use the 5 forces model to help explain the dynamics between them.

Threat of New Entrants - Low

Currently in Mexico, the two most powerful organizations are the Sinaloa Cartel, and Cartel Jalisco Nueva Generación (CJNG). They compete economically as well as in violent wars. It’s more likely that they would lose power at the hands of another high powered organization, or as a result of political intervention. The idea of a completely new entrant being able to challenge them is simply unrealistic. Even the idea of a cartel “losing its power” is a bit misleading. Today, cartels operate with an increasingly decentralized model, resembling something comparable to a franchising system.[91] Smaller regional powers pay big name cartels for the right to operate under their name, and in their territory.[92] Because of this decentralized model, if one leader, or even faction of a cartel is taken out the network is able to continue operation.

In Mexico’s criminal economy, the traditional concept of 'new entrants' does not function the way it does in legal markets. Most major cartels today did not get their start as a new entrant. The Sinaloa and Juarez Cartel both originally splintered from the Guadalajara Cartel[93], the CJNG

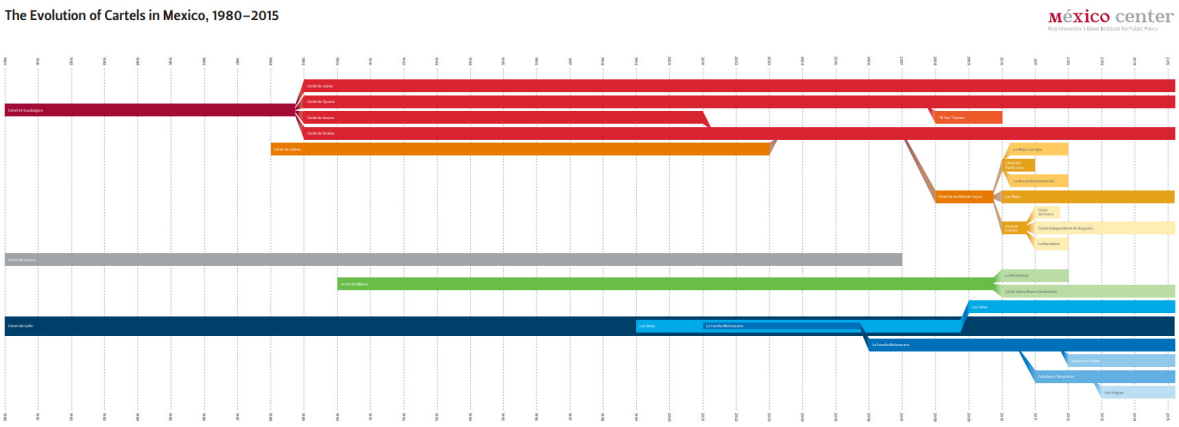
[91] INT’L INST. FOR STRATEGIC STUD., *The Expansion and Diversification of Mexican Cartels: Dynamic New Actors and Markets*, in *Armed Conflict Survey 2024* (2024), https://www.iiss.org.
[92] DEA Threat Assessment Finds Cartel Presence in Every U.S. State, MEX. NEWS DAILY (2024), https://mexiconewsdaily.com/news/dea-threat-assessment-cartel-presence-every-u-s-state/.
[93] M.A. Broadway, *Mexican Drug Cartels and Their Effects on Society* (Murray State Univ. Integrated Studies Thesis, 2022), https://digitalcommons.murraystate.edu/bis437/388.

originally was a part of the Milenio Cartel, and the Northeast Cartel was originally a faction of Loz Zetas, which was originally a part of the Gulf Cartel.[94] Power structures are complex, but most organizations with power started off as another organization which fell apart due to power struggles and fragmentation.

When taking this into consideration, is a "new entrant" like the CJNG even really a new entrant? One of its biggest rivals is "La Resistencia/Carteles Unidos", a group that splintered from Milenio Cartel just like the CJNG. This highlights the nature of new entrants in the Mexican criminal world as a constantly splintering and growing tree that gets more complex the farther you get from the original root. The threat of one of these splintering internal "new entrants" is greater looking further down the cartel power hierarchy, but they're not new entrants in the same way an aspiring corporate entity would be in efforts to gain market share in an industry it lacks involvement. New entrants in the criminal underworld are more akin to a company like Apple splitting into two separate companies and then engaging in fierce competition. The violent and lawless nature of criminal operations creates a constant struggle for power. This developing tree-like structure is depicted in Exhibit 3, which illustrates a developmental timeline of different cartels and their factional relations.

Barriers to entry for an actual new entrant, with no current standing in the cartel "industry" are very high. An entity with wealth that doesn't come from crime would have the barrier of illegality. Why make clean money dirty? A new entrant would also lack access to distribution channels. Distribution channels are not just shipping logistics for criminal traffickers, but highly valued, and highly protected assets. A large portion of the value an organization holds comes simply from the territory and trafficking routes they control. Competing cartels also have technology and proprietary knowledge a new entrant would have difficulty accessing: weapons, precursor supplies for drugs, etc.. Lastly, there are no antitrust laws to deter DTOs from monopolistic business practices . In fact, the Mexican government prefers to work with a cartel that has a clearly identifiable monopolistic kingpin because it is more predictable and controllable regarding violence.

[94] J.S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations*, CONG. RSCH. SERV., R41576 (2022), https://crsreports.congress.gov.



Bargaining Power of Suppliers - Low

There are many important suppliers for Mexican criminal organizations with varying levels of power. An overall trend is that suppliers based in Mexico have less bargaining power simply because they live in territory controlled or influenced by the Cartel. Some Cartels have been known to utilize forced and exploitative labor, especially from migrants. Although he wasn't from Mexico, Pablo Escobar's motto of "Plata o Plomo" (money or bullets) is a pretty religiously followed ideology for Mexican crime groups. Different suppliers include:

Precursor chemical suppliers (typically imported from China) have a relatively average level of supplier power.[95] Cartels don't have the capability to source the precursors themselves. China is the largest chemical exporter in the world, so the accessibility of laboratory equipment necessary for precursor production is much more readily available.[96] It would raise too many red flags, and be much more expensive for a Cartel to backward integrate and start making its own precursor in Mexico. Chinese suppliers also pose no threat in forward integrating into the manufacturing and sale of fentanyl, as Mexico is arguably the best location in the world for drug trafficking organizations due to its proximity to the world's largest market: the USA. Overall, this supplier buyer relationship appears to be very mutually beneficial. China and Mexico are both essential in the supply chain of synthetic drugs because they each possess an essential resource in

[95] U.S. DEP'T OF STATE, *International Narcotics Control Strategy Report*, Vol. 1 (2014), https://2009-2017.state.gov/j/inl/rls/nrcrpt/2014/vol1/223172.htm.
[96] *Which Country Exports the Most Chemicals?*, EAST HARBOUR GROUP (2025), https://www.eastharbourgroup.com/news/which-country-exports-the-most-chemicals.

their production. Fentanyl especially is so profitable that there is plenty of money to keep both parties feeling fairly compensated.

Methamphetamine and fentanyl cooks act as independent contractors for cartels.[97] Cartels deliberately fragment and outsource the cooking process of fentanyl. The cartel doesn't rely on any individual cook. Methamphetamine cooks are also usually small scale, sometimes protected by local enforcer groups. Cooks rely entirely on cartel provided logistics. Cartels bring the precursor, and distribute the product, so cooks couldn't use the fentanyl cooking skills they gained elsewhere anyway. Additionally, wages in Mexico are low, so cooks don't have many other options.

Especially after the wave of cartel hyper militarization fueled by Los Zetas, weapons suppliers have been a critical input for cartels. Mexican gun laws are much stricter than US gun laws.[98] Due to this fact, a lot of guns sold to the cartels are smuggled from US states with lax gun regulation. Another source of weapons supply is from defected Mexican military officers. Individuals like this are especially valuable because they can bring extensive weapons knowledge along with the weapons they bring in upon their defection from the Mexican military. The CJNG are even believed to be manufacturing some of their weapons themselves.[99] Guns are not the only weapon cartels use, they also have things like machine guns, armored vehicles, rocket/grenade launchers, and even engage in the use of drone warfare and IEDs.[100] Military grade weapons have often been sourced from the United States or stolen from government stockpiles, but in recent years, the CJNG and Sinaloa cartel have increasingly relied on foreign partnerships to obtain weapons, utilizing criminal networks in South America and even Europe. This comes from a place of territorial and financial strength in Mexico. Giving them a lot of power as buyers simply because they are well established, dangerous, and wealthy.[101] Despite weapons being essential for cartel operations, they do not face much bargaining power from

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[97] J. Mitchell, *Inside the Fall of Mexico's Most Powerful Drug Empire: The Truth About El Mayo & the Sinaloa Cartel*(manuscript on file with author).
[98] *Firearms Regulation in Mexico*, WIKIPEDIA (last visited Aug. 1, 2025), https://en.wikipedia.org/wiki/Firearms_regulation_in_Mexico.
[99] M.A. Broadway, *Mexican Drug Cartels and Their Effects on Society* (Murray State Univ. Integrated Studies Thesis, 2022), https://digitalcommons.murraystate.edu/bis437/388.
[100] *A Look at the 8 Latin American Crime Groups Designated as Terrorist Organizations by the U.S.*, AP NEWS (Feb. 19, 2025), https://apnews.com/article/gangs-cartels-sinaloa-aragua-trump-terrorist-organizations-b223f4eb513105fb8d965f80a6cecfeb.
[101] INT'L INST. FOR STRATEGIC STUD., *The Expansion and Diversification of Mexican Cartels: Dynamic New Actors and Markets*, in *Armed Conflict Survey 2024* (2024), https://www.iiss.org.

suppliers. They can force favorable negotiations through violence, are well funded, and have diversified their supply chains so as to avoid dependency on one single weapons supplier.

No cartel can have successful operations without cooperation from corrupt government, law enforcement, and military officials. This strategy was a key component of the competitive advantage El Chapo used to orchestrate the meteoric rise of the Sinaloa Cartel.[102] Government officials are frequently arrested for corrupt behavior and accepting bribes, and the confidence of the Mexican population in the integrity of public officials is very low. Interestingly, government members may actually be incentivized to help particular drug lords because of their own political aspirations. When one organization holds a majority of the power it allows the government to negotiate with traffickers easily. They turn a blind eye on criminal activity as long as criminals keep violence to a minimum and avoid harming Mexican citizens . Bribes are also larger when there is one monopolistic cartel in power.

Cartels are also known to just put their members in positions of political power rather than attempting to bribe an already elected official. Public officials have very low supplier bargaining power. They are paid handsomely by the cartels, and if they are unwilling to accept bribes cartels have not hesitated in committing torture, public assassinations, kidnapping and even attacking with weaponized drones to get their way.[103] Public officials are not even really suppliers, they are just victims of extortion, actual cartel members, or somewhere in between.

But money launderers are arguably the most essential component of cartel operations. Without clean money how can bribery be paid? How can supply chain logistics be organized? How can precursors be purchased? Cartels derive their power from wealth and money launderers are irreplaceable in the process of gaining wealth. Many cartel actors from countries all over the world are involved with money laundering activities: China, Italy, Ecuador, Argentina, Chile, Paraguay, Uruguay, Brazil.[104] One key difference in this operative division of criminal organizations is that it is much less inclined to be decentralized. High level operators want to be in charge of the large sums of money so laundering duties are executed higher up the hierarchy

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[102] Chapitos, INSIGHT CRIME (Aug. 13, 2024), https://insightcrime.org.

[103] *A Look at the 8 Latin American Crime Groups Designated as Terrorist Organizations by the U.S.*, AP NEWS (Feb. 19, 2025), https://apnews.com/article/gangs-cartels-sinaloa-aragua-trump-terrorist-organizations-b223f4eb513105fb8d965f80a6cecfeb.

[104] L. Cotton, C. Dorff & R. Valencia, *Organised Criminal Groups in Latin America: The Economics of Political Influence*, INT'L INST. FOR STRATEGIC STUD. (Dec. 11, 2024), https://www.iiss.org/online-analysis/2024/12/organised-criminal-groups-in-latin-america-the-economics-of-political-influence/.

than other activities. When independent actors are used for laundering services, it's clear that they have a lot of power as suppliers. Chinese money laundering (and fentanyl trafficking) organization Clan Zheng works with both the Sinaloa and CJNG cartels. The fact that this is allowed by the two rival groups suggests that the service is so essential that neither group can afford to do anything about it, or they just simply don't care because the service is so good.[105] Money launderers have high power as a supplier, so cartels prefer to do it themselves, or put it in the hands of trusted and high capability partners. This contrasts their strategy for other more replaceable activities.

Cartels have been known to outsource violence, turf wars, and control of street level operations to local gangs/enforcers, as well as individuals. Many local gangs operate under the CJNG name despite being their own entity, operating almost like a franchise of CJNG; given permission to operate in their territory provided they pay for the "licensing" of the CJNG brand.[106] Groups like MS-13 contract their services to cartels, essentially acting as mercenaries, hitmen, and smugglers. Cartels are also known to create their own private armies, a form of vertical integration in which they can have more direct control over violence and avoid paying local gangs. Los Zetas was an example of this for the Gulf Cartel until this (Los Zetas) began to fragment and partially disaffiliate from the Gulf Cartel. Some cartels have a more centralized structure of violence than others. In the CJNG, sub contracted groups don't make their own alliances without orders from their boss. In the Sinaloa cartel, subcontracted groups operate more freely with complex internal webs of alliances within the Sinaloa Cartel.[107] Freelance sicarios are also used to outsource more targeted small scale operations. Overall the groups supplying this street level activity to the big cartels don't have very much power. They are highly dependent on cartels to pay them and allow them to use their territory. Often, these gangs are not even paid in cash, but paid in drugs, and promises of impunity from being killed/arrested. Essentially, they are paid with the "privilege" of being able to work for the cartel. For many low level sicarios the

[105] N.P. Jones, I.A. Chindea, D. Weisz Argomedo & J.P. Sullivan, A Social Network Analysis of Mexico's Dark Network Alliance Structure, 15 J. STRATEGIC SEC. 76 (2022), https://doi.org/10.5038/1944-0472.15.4.2046.
[106] Pablo Ferri, From Fentanyl to Avocado: The Many Faces of the Mexican Cartels Targeted by Trump, EL PAÍS (Feb. 20, 2025), https://english.elpais.com/international/2025-02-20/from-fentanyl-to-avocado-the-many-faces-of-the-mexican-cartels-targeted-by-trump.html.
[107] N.P. Jones, I.A. Chindea, D. Weisz Argomedo & J.P. Sullivan, A Social Network Analysis of Mexico's Dark Network Alliance Structure, 15 J. STRATEGIC SEC. 76 (2022), https://doi.org/10.5038/1944-0472.15.4.2046.

opportunity of upward mobility can be a huge motive for becoming indirectly employed by a cartel. Sub-contracted gangs rely on cartels for product, political protection, and connections. Subcontracted gangs have essentially no supplier power over large scale cartel operations. They are abundant, seen as dispensable labor, and deliberately paid enough so that they will work for cartels (as opposed to less lucrative legal work), but not enough to be able to begin their own independent operations.

The overarching theme of cartel strategy is limiting the power of buyers. The top of the hierarchy handles the money and derives power from it, and then seeks to limit the possibility of lower level operators accessing the same power. They use strategies like fragmenting lower level operations (ex: the cooks), limiting opportunities for upward mobility, and threats of violence. This almost mirrors aspects of legitimate economies where bankers and financiers control wealth at a large scale and avoid the lower level labor that comes with generating such wealth. In both legal and illegal markets; control of capital is control of power.

Bargaining Power of Buyers - Very Low

Low level drug users obviously have very little bargaining power as buyers. They are addicted to the product and don't have anywhere else to get it except from criminal groups. The market for drug consumers has very low price elasticity simply because the customer *needs* the product. When considering buyers in a broader sense, there are many more players because high level cartel operators are not very vertically integrated. The bosses at the top handle the large shipments and deals, which are then further distributed in a pyramid like structure with the relative price increasing the closer the product gets to the consumer.

The most notable trend for power among buyers is that the closer you get to the user, the less power a buyer has. In violent illegal markets, the buyer does not have the same discretion when selecting a product. For example, if a regional distributor goes to their supplier and does not like the product, it is a lot harder to walk away. It's hard to find a new supplier, and as a regional distributor your supplier has an expectation of you to provide them with the service of distribution. In a market regulated by violence you can imagine what might happen if you refuse. Especially at a low level, distributors are seen as disposable. A mid level buyer doesn't negotiate, they simply comply and pass along the price increase or decrease to the next level of buyer.

Threat of Substitute Products - Low

The drug industry is dominated by those who control the assets: trafficking routes, ports, important territory, and corrupt officials. In the past drug traffickers were moving products like heroin and cocaine. This put part of the power in the hands of coca and poppy growers. This was eventually threatened by the substitute of synthetic drugs like fentanyl, which is now one of the most trafficked drugs into the USA. Despite this shift in product supply, the same organizations are trafficking drugs. While substitutes may arise, they will simply be adopted by existing organizations. DTOs are highly adaptable and adapting to a new product is something they are highly capable of. It should also be noted that because drug trafficking is not regulated users may not even know they're substituting a product. Plenty of pills branded as expensive opiates like percocet are actually laced with fentanyl.[108]

To take a different perspective, you could consider the threat of substituting trafficking routes. If one organization is able to find a new trafficking route this could harm the market share of other groups. However this is not much of a significant threat because the best trafficking routes are those with a high volume of vehicles passing through them.[109] These are all already controlled by existing groups. It is possible that groups could substitute trafficking on interstates with other methods. El Chapo was known for using elaborate tunnels which went under the border, and some DTOs have been documented using "narco-subs" for trafficking purposes.[110] While these are viable substitutes, the only organizations with enough capital to actually execute them are the ones that are already in power, so it is not much of a threat.

Intensity of Rivalry Among Competitors - Very High

As mentioned previously, the only regulation in the criminal economy is money and violence. Especially with the increasing militarization of DTOs, the intensity of rivalry is very high. Organizations go to great lengths to undermine and get ahead of their competitors: paramilitary tactics, targeted assassinations, targeted government cooperation, violent messaging, displays of public violence, weaponization of intelligence, etc.

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[108] M.A. Broadway, *Mexican Drug Cartels and Their Effects on Society* (Murray State Univ. Integrated Studies Thesis, 2022), https://digitalcommons.murraystate.edu/bis437/388.
[109] *Kingpin Reveals How the Cartel Really Works…* (YouTube video, 1:18:41), uploaded by *Inside True Crime*, YouTube (Jan. 1, 2025), https://www.youtube.com/watch?v=7jPcYNtY0Kk.
[110] Gulf Cartel, INSIGHT CRIME (Aug. 20, 2024), https://insightcrime.org/mexico-organized-crime-news/gulf-cartel-profile/.

It is astonishing how intense warfare between cartels can be. In some regions, groups even line roads with IEDS (32). There are no limits to the extent of violence in the cartel world. Drone warfare has even been used on Mexican citizens as a method of extortion.[111] The caliber of weapons possessed by cartels makes them almost indistinguishable from real government sponsored military wings.[112] At this point the National Guard has begun patrolling the areas between organized crime groups in an effort to limit cartel-on-cartel violence rather than attempting to remove the groups from their territory.[113] Violence is fueled not only by the desire for profit, but also by the desire for revenge. If you are working in the cartel odds are you have lost many associates to your rivals, so what alternative is there but to seek revenge. Each act of violence only resets a countdown to the next inevitable sadistic act of brutality in a never ending cycle of vengeance and greed.

While violence is the most obvious method of competition between DTOs, it goes deeper than just mindless brutality. Use of violence is strategic. In targeted assassinations, it is not just the level of cartel members who are targeted, but also their family members who might not even be involved in criminal activity. In the late 1970s a cartel boss named Hector Palma had his wife decapitated and his children killed by rivals.[114] In a legitimate economy, rivalries can be settled with lawyers and bureaucracy. For someone like Hector Palma there is simply no option but to respond with violence. Politicians are also subject to being killed and threatened by cartels, and the same goes for their families.

DTOs are also known to use violent messaging to incite fear. Bodies are left in public view to intimidate rivals, often accompanied with identifying banners or symbols to claim responsibility for killings.[115] The CJNG is known for using social media to show off its displays of high caliber weaponry and capability for violence. They have also placed bodies in strategic

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[111] *Trump Administration Labels 8 Latin American Cartels as "Foreign Terrorist Organizations"*, AP NEWS (Feb. 19, 2025), https://apnews.com/article/eb35567b69fc66f13f7f79fb90906a50.
[112] Gulf Cartel, INSIGHT CRIME (Aug. 20, 2024), https://insightcrime.org/mexico-organized-crime-news/gulf-cartel-profile/.
[113] N.P. Jones, I.A. Chindea, D. Weisz Argomedo & J.P. Sullivan, *A Social Network Analysis of Mexico's Dark Network Alliance Structure*, 15 J. STRATEGIC SEC. 76 (2022), https://doi.org/10.5038/1944-0472.15.4.2046.
[114] *Héctor Luis Palma Salazar*, WIKIPEDIA (last visited Aug. 1, 2025), https://en.wikipedia.org/wiki/H%C3%A9ctor_Luis_Palma_Salazar.
[115] N.P. Jones, J.P. Sullivan & R.J. Bunker, *Mexican Cartel Strategic Note No. 30: "El Marro" – José Antonio Yépez Ortiz, Leader of the Cártel Santa Rosa de Lima (CSRL), Arrested in Guanajuato*, *Small Wars Journal* (Aug. 18, 2020), https://smallwarsjournal.com/jrnl/art/mexican-cartel-strategic-note-no-30-el-marro-jose-antonio-yepez-ortiz-leader-cartel-santa

locations with the intent of drawing media coverage. The lengths to which these criminal organizations will go to simply show off how grotesquely violent they can be are astounding, and it will only get worse as each group tries to top the last group.

Another form of competition is the use of targeted government cooperation. Contrary to the popular belief of a "street code" that prohibits criminals from becoming government informants, high level cartel members have been documented strategically providing governments with intelligence. As mentioned previously there is ample evidence which suggests that El Chapo had Mexican and American authorities fighting his enemies for him (whether knowingly or unknowingly). He had a "snitch" lawyer named Humberto Loya who fed information to the US government, leading them to raid and capture his enemies.[116] He also had the Mexican Secretary of Public Security (the man in charge of the military) on his payroll. This allowed him to send his own troops and the Mexican government after his enemies.[117]

In summary, the two most important forces affecting Mexican criminal networks are the intensity of rivalry, and the low bargaining power of suppliers. The low bargaining power of suppliers comes from DTOs strategically limiting their power through fragmentation, fear, and control of capital. Rivalry is fueled by the cartel mission statement– profit, as well as a never ending cycle of bloodlust and revenge. Because buyers and suppliers have such little power, rivalry only comes from the struggle for who will get the privilege to benefit from the huge profit margins. The threat of new entrants is so low simply because of the intensity of rivalry. Nobody is willing to give up their power, so the only "new entrants" are fragments of previously powerful groups.

The Future of US Counternarcotics Policy

Historically, the United States has used a "kingpin strategy" to fight the War on Drugs. This strategy involves targeting the individual at the very top of DTOs in an effort to fragment them and disrupt drug trafficking into the US.[118] This strategy relies on the assumption that these

[116] *Kingpin Reveals How The Cartel Really Works...* (YouTube video, approx. pre-recorded 1 hr 21 min), uploaded by Inside True Crime, YouTube (June 20, 2024), https://www.youtube.com/watch?v=7jPcYNtY0Kk.
[117] J.S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations*, CONG. RSCH. SERV., R41576 (2022), https://crsreports.congress.gov.
[118] *The Kingpin Strategy: More Violence, No Peace*, SHOC (Strategic Hub for Organised Crime Research, RUSI) (date unavailable), https://www.rusi.org/networks/shoc/informer/kingpin-strategy-more-violence-no-peace.

kingpins are irreplaceable. After watching the War on Drugs be waged for decades, it's clear that the kingpins are very replaceable. As mentioned previously El Chapo's arrest was part of the catalyst for the beginning of the Sinaloa Cartels downfall. Since then, the Cartel has devolved into a civil war with the Chapitos faction battling the El Mayo faction. While the Kingpin strategy surely hurt the Sinaloa Cartel, there are still plenty of drugs being trafficked into the United States. Why? Because opportunistic groups like the CJNG began filling the void that the fragmented Sinaloa Cartel couldn't.

In September 2024, El Mayo was arrested by the US government and charged with 17 counts related to drug trafficking, firearms offenses, and money laundering.[119] Now both of the Sinaloa Cartel's founders are in prison in the United States, yet nothing has changed. Drugs are still flowing in through the border and the CJNG is likely in the position to take even more territory from what once belonged to the Sinaloa Cartel. Even if they don't, someone else will. It's clear that going for the kingpins doesn't stop drug trafficking, and on top of that it incentivizes violence in Mexico.

The Trump Administration has made it clear that they are not going to tolerate the criminal activities of Mexican DTOs. Out of the many executive orders passed since inauguration day, there have been (insert number here) that take steps to fight Mexican DTOs. This section will explore what these policies mean for Mexico's criminal economy, and if they might work.

EO 14148 - Initial Rescissions of Harmful Executive Orders and Actions

The second executive order President Trump signed after inauguration, this bill revoked over 100 executive orders which were signed during the previous Biden Administration, many of which included policy regarding the southern border. The bills that were revoked took a very different approach to immigration, prioritizing the preservation of immigrating families.[120] This is significant because it highlights the Trump Administrations harmful zero tolerance policy regarding the border.

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[119] *Ismael "El Mayo" Zambada García, Co-Founder of the Sinaloa Cartel, Arraigned in Brooklyn on International Drug Charges* (Press Release, U.S. Dep't of Justice, E.D.N.Y., Sept. 13, 2024), https://www.justice.gov/archives/opa/pr/ismael-el-mayo-zambada-garcia-co-founder-sinaloa-cartel-arraigned-brooklyn-international

[120] Exec. Order No. 14148, Initial Rescissions of Harmful Executive Orders and Actions, 90 Fed. Reg. 8237 (Jan. 28, 2025).

Proclamation 10888 - Guaranteeing the States Protection Against Invasion

This proclamation declares the situation at the southern US border an "invasion" under article IV, section 4 of the Constitution. This gives the United States authority to suspend the entry of migrants, especially those entering unlawfully. The proclamation states that US government organizations are ill equipped to screen all of the immigrants crossing in the best interest national security risks.[121]

Executive Order (EO) 14159 - Protecting the American People Against Invasion doubles down on this stance, claiming that the previous administration invited and oversaw an unprecedented flood of undocumented immigration. It revoked a number of previous EOs which dealt with civil immigration matters and called for civil processes and infrastructure to handle mass deportations. Funding towards NGOs that assist undocumented immigrants was halted in favor of expanding ICE operations.[122]

These two bills significantly increase the difficulty of migrant smuggling across the border as an income stream for cartels. Exploiting migrants to move drugs across the border is a practice often used by cartels, weaponizing debt bondage, forcing them to travel with fake loads, or to serve as drug mules. Since the Trump Administration has taken office, encounters with migrants along the southern US border have decreased by 76% and the price to be smuggled across the border into the US for migrants by cartels has increased, sometimes reaching prices higher than $30,000 dollars.[123] Although policy like this is affecting cartel operations, it is not significantly affecting profits because the demand for smuggling services remains high, with more and more migrants willing to pay the price.

Proclamation 10886 - Declaring a National Emergency at the Southern Border of the United States

This proclamation claimed that America's sovereignty is under attack due to a southern border that is overrun by cartels, criminal gangs, terrorists, human traffickers, and narcotics. It states that large majorities of the border are controlled by cartel operations rather than official

[121] Proc. 10888, Guaranteeing the States Protection Against Invasion, 90 Fed. Reg. 8333 (Jan. 29, 2025).
[122] Exec. Order No. 14159, Protecting the American People Against Invasion, 90 Fed. Reg. 8443 (Jan. 29, 2025).
[123] Procl. 10888, *Guaranteeing the States Protection Against Invasion*, 90 Fed. Reg. 8333 (Jan. 29, 2025).

government efforts from either the United States or Mexico. It calls for armed forces to take all appropriate action to assist the Department of Homeland Security in obtaining full operational control of the southern border.

Bringing armed forces to the border would ideally have some impact on cartel operations. But cartels are very adaptive and they will always find a way to traffic goods and people. Think back to El Chapo's tunnels under the border and narco-subs. Either way it was evident that cartel forces were not happy about this influx of troops to the border when the US border patrol was involved in a shootout with cartel members in the Rio Grande Valley in Texas.

While closing off the entire border with military force might be effective, it is simply not feasible. The border is 1,954 miles long. In the short term sending military force to important ports of entry might make a slight difference, but cartels will just find new routes. Additionally this opens the door to diplomatic trouble with Mexico. Mexico has vehemently opposed US military activity on their soil, and lining the border with US troops is about as close as you can get without really doing it. Almost like the US is just sticking their toes over the country line to test the waters.

EO 14157 - Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists

Designating cartels as FTOs opens up the possibilities of what the United States can do to fight them. Under 18 U.S.C. § 2339B it is a federal crime to knowingly provide material support or resources to designated FTOs. This includes things like financial services, lodging, training, weapons, transportation, etc. As mentioned previously, cartels are highly integrated in legitimate economies. Even industries like avocado cultivation are helping support cartel operations. All of these legitimate companies which are involved with cartels become vulnerable to freezing or seizing of assets under this executive order.

A notable example of a corporation working in tandem with the cartel is HSBC; one of the world's largest global banks. In 2012 they were hit with a $1.9 billion dollar fine for laundering approximately $881 million dollars for the Sinaloa Cartel.[124] For cartels, control of

[124] *Investing News for Jan. 29: HSBC's Money Laundering Scandal*, INVESTOPEDIA (Jan. 29, 2013), https://www.investopedia.com/stock-analysis/2013/investing-news-for-jan-29-hsbcs-money-laundering-scandal-hbc-scbff-ing-cs-rbs0129.aspx

capital is control of power. For the United States the ability to seize large sums of money like this would surely hinder cartel operations.

The Mexican government has filed numerous lawsuits against United States gun manufacturers including Smith & Wesson, Colt, and Barrett Firearms. They have alleged that negligent practices on the part of these companies contribute to illegal firearms trafficking into Mexico.[125] Roughly 70% of firearms recovered in Mexico and traced by authorities originated from the United States. Were the US to take extreme action against companies who are selling these weapons it may have some effect on violence in Mexico. However, cartels are highly adaptable so it is likely that they would find another way to get guns. Some groups have even been documented manufacturing their own weapons.

Taking financial action against cartel affiliates would be a good first step if it is possible, the question is simply if the United States is capable of doing it at the scale necessary to do real damage to Mexican DTOs. Mexican criminal networks are so decentralized that this would be a very difficult thing to achieve. There is not just one cartel bank account, money is hidden everywhere and because of the transnational nature of Mexican DTOs they have no problem getting their money to tax havens with little to no banking transparency. At the very least, hopefully this designation will scare large corporations from doing business with cartels because of the consequences that could come with it. This also begs the consequences of if this could have negative impacts for the whole of the Mexican or even American economy because of the high level of integration of Mexican DTOs in legitimate business activities.

8 U.S.C. § 1182(a)(3)(B) and § 1227(a)(1)(A) outline that members or representatives of designated FTOs are inadmissible to the US, and can be deported if they are already present.[126] Individuals suspected of being associated with an FTO are still entitled to due process to defend themselves against in admission and deportation, but it allows for the FTO association to be used as reason for deportation. This goes hand in hand with **EO 14161 - Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats** which enhances standard procedure and capabilities for agencies involved in the screening of immigrating foreign nationals with a focus on high risk regions/countries.

[125] Foreign Governments Are Taking on the U.S. Gun Industry, *Time* (Oct. 25, 2022), https://time.com/6224806/mexico-us-gun-industry/
[126] 8 U.S.C. § 1227 (2024).

The USA Patriot Act of 2001 greatly expanded the ability of the United States in combating FTOs. It facilitates greater information exchange between intelligence and law enforcement agencies, provides tools to deter and prosecute terrorist activities, and even allows the US to use roving wiretaps. The most important aspect of capabilities brought to the US through the Patriot Act and Cartels being designated as FTOs will be information sharing with Mexico. If there is going to be successful action taken against DTOs, it needs to be in collaboration with Mexico. Cartels are not just a Mexico problem, the US provides the weapons, and Mexico provides the drugs. To make any real impact there needs to be effort from both sides of the border.

Another important policy regarding the FTO designation is the US-Mexico Extradition Treaty of 1980 facilitates the extradition of individuals charged with serious offenses including terrorism.[127] This does not seem as impactful as the financial, or immigration limiting implications of an FTO designation for cartels simply because it's already been made clear that extraditing kingpins does nothing to actually hinder the flow of drugs into the United States.

EO 14194 - Imposing Duties To Address the Situation at Our Southern Border

This executive order declares a national emergency due to the failure of the Mexican government to stop undocumented border crossing and drug trafficking. It accuses Mexico of enabling cartels and failing to prevent their operations. This is cited as a national security threat, used to justify a 25% tariff on all Mexican goods. This tariff would be removed in the event of sufficient counter narcotic action by the Mexican government.

On February 3rd, two days after the executive order was signed Trump announced a 30 day pause on the tariff with **EO 14198** because Mexico agreed to enhance border security measures.[128] In late February Mexico sent 29 drug cartel figures from Mexican prisons to the United States in what appeared to be an attempt to appease Trump's demands.[129] Despite this, on March 4th the 25% Tariff which Trump had paused for the previous month was put into effect as

[127] ILC, *The Obligation to Extradite or Prosecute (aut dedere aut judicare): Comments and Information Received from Governments*, A/CN.4/579 (2007), https://legal.un.org/ilc/documentation/english/a_cn4_579.pdf.
[128] Exec. Order No. 14194, *Imposing Duties To Address the Situation at Our Southern Border*, 90 Fed. Reg. 9117 (Feb. 7, 2025).
[129] Mexico Sends Drug Lord Rafael Caro Quintero and 28 Others to U.S., Including DEA Agent's Killer, AP NEWS (Feb. 28, 2025), https://apnews.com/article/mexico-drug-lord-rafael-caro-quintero-extradition-ad769ef1f2addd8530f4b8b96d00bb4c.

initially planned, and then on March 6th the US announced that goods compliant with the USMCA would be exempt from the Tariff.

Mexico's sovereignty from the US has historically been a tense topic. They are willing to comply with the US in aiding Mexico's stability and attempting to minimize the role it plays in the US's drug problem but they are resistant to operations from the US in Mexico. After Trump labeled cartels as FTOs, current Mexican president Cluadia Sheinbaum said "This cannot be an opportunity for the U.S. to invade our sovereignty, with Mexico it is collaboration and coordination, never subordination or interventionism, and even less invasion."[130]

Using tariffs as a strategy to combat DTOs has its faults. A large reason for Mexican citizens working alongside or for the cartel is simply because of the economic benefits it can provide.[131] A 25% tariff on Mexico from the US would be devastating for the Mexican economy, further encouraging individuals to seek cartel employment out of financial necessity.

Despite this, US tariffs are in full effect. It appears that they are not an attempt at economic strategy, but an attempt to force the Mexican government to comply with Trump's militaristic counter narcotic strategy. As of April the Trump administration has reportedly been considering drone strikes on Mexican cartels, and has already deployed a navy destroyer equipped with Tomahawk cruise missiles to the Texas-Mexico border near the Gulf coast.[132] It is impossible to predict how this feud will play out, but if the US is to move forward with military action on Mexican soil it is likely that American-Mexican diplomatic relations will reach their lowest point of the century. The last time there was US military activity in Mexico was the Mexican Border War in the 1910s.

On an additional note: in EO 14193 Mexican cartels are mentioned as part of the reason for a 10% tariff on Canada because they are setting up shop in Canada and using the northern border as a weak link for trafficking fentanyl into the United States, further exemplifying the adaptable qualities of Mexican DTOs.[133]

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[130] Mexico's President Warns U.S. Against Invading to Fight Cartels After Washington Designates Them as Terrorist Groups, CBS NEWS (Feb. 20, 2025), https://www.cbsnews.com/news/mexico-president-warns-us-invasion-cartels-terrorist-group-designation/.
[131] Morris Panner, *Latin American Organized Crime's New Business Model*, ReVista (Harvard Rev. Lat. Am. Pol'y) (Dec. 28, 2012)
[132] Pete Hegseth & J.D. Vance, Pentagon Deploys Navy Destroyer to Texas–Mexico Border to Combat Drug Cartels, *Houston Chronicle* (Mar. 18, 2025).
[133] Exec. Order No. 14194, 90 Fed. Reg. 9,117 (Feb. 7, 2025) (Imposing Duties To Address the Situation at Our Southern Border), signed Feb. 1, 2025

EO 14195 - Imposing Duties To Address the Synthetic Opioid Supply Chain in the People's Republic of China

In this executive order China is accused of subsidizing chemical companies that export fentanyl precursors and providing a safe haven for TCOs involved in drug trafficking and money laundering. In retaliation to China's involvement as precursor suppliers to Mexican DTOs, The US imposed a 10% tariff to all Chinese goods on February 4th. These tariffs will persist until China takes adequate cooperative enforcement measures. These claims of China subsidizing companies exporting fentanyl chemical precursors are not unfounded, in April 2024 a US committee found that China is subsidizing certain chemicals involved in fentanyl manufacturing with a 13% rebate. These chemicals do not have any industrial or pharmaceutical purpose apart from being used for fentanyl manufacturing.[134] China denies that they have been part of causing the US fentanyl crisis and suggests that the US make more effort to curb domestic demand.[135]

While Chinese criminal organizations are not as closely involved in the fentanyl trafficking business as Mexico, it wouldn't be possible without their interaction. The globalized nature of today's drug trade makes combatting it even harder, and it doesn't look like the US is going to have any luck using tariffs as a bargaining chip with China. When the original tariff was put in place China did not hesitate to retaliate with 15% tariffs on a select few goods. After this the United States retaliated further by raising the tariff on China to 20% with EO 14228. This process repeated a few more times and as of today the US tariff on Chinese goods sits at a 145% rate on general goods, with rates on certain products reaching 245%.

While the Trump Administration may be correct that China is likely involved in the fentanyl trade on more than a surface level, it does not appear that using tariffs as a bargaining strategy will be an effective strategy in addressing this.

Conclusion

It is clear that the Trump Administration is all hands on deck in addressing the threat of Mexican DTOs and TCOs. In contrast to previous US counternarcotics strategies which targeted prominent criminal figure heads, President Trump's executive orders have taken a broad strategy in combating illicit trafficking and immigration. Most notably designating multiple Mexican

[134] 85 Fed. Reg. 20,822 (Apr. 15, 2020)
[135] Michael Martina, *US Committee Finds China Is Subsidizing American Fentanyl Crisis*, Reuters (Apr. 16, 2024).

criminal syndicates as foreign terrorist organizations, followed by executive orders focused on limiting illegal traffic into the US and enhancing government arms like ICE's ability to regulate immigration. Measures inside of the US regarding immigration include a mass deportation effort to help reverse the effects of the Biden administration "inviting, administering, and overseeing an unprecedented flood of illegal immigration." Additionally, armed forces are actively deployed at the border.

Some of the most highly publicized actions taken through executive orders since President Trump's inauguration have been tariffs against Mexico, China and Canada. These tariffs have been portrayed as a bargaining chip to incentivize the governments of these countries to aid the US in its effort to crackdown on illegal drug trafficking. Mexico has been actively negotiating with the US, and has taken some action; for example extraditing 29 incarcerated cartel leaders to the US, and deploying the Mexican National Guard to their side of the border. China has not been receptive to these negotiations, claiming that any insinuation of progress in China-US trade negotiations has "no factual basis."[136]

The Trump Administration's efforts could be interpreted as an improvement from the historical kingpin strategy. That being said, the bar is low. Previous captures of cartel bosses have proven that removing the man at the top breeds increasing violence in Mexico and does nothing to stop the flow of drugs. Designating Mexican cartels as FTOs opens up easier avenues of attacking the cartel finances and supply chains. This would be the best place to attempt to make a concrete impact because the power held by cartels comes from their access to astronomical amounts of capital, which is derived from the profits of distributing illegal products through elaborate supply chains.

It is important to recognize that Mexican TCOs are operating in a decentralized manner on a global scale. Cartel supply chains and financial operations encompass much more than just the United States and Mexico. Even with a high powered US crackdown on drug trafficking, it is just that: a US crackdown. It's clear that China is not interested in collaborating with the US on this issue. Actions taken by Mexican President Claudia Sheinbeim give the appearance that Mexico is looking to work with the US but tensions are high, and frankly cooperation from the Mexican government should be interpreted with suspicion. Cartels are well connected politically;

[136] Paul Wiseman & Didi Tang, *China Says It's Not in Talks with U.S. Over Trump Tariffs*, AP (Apr. 24, 2025).

as recently as 2024 the Mexican President (AMLO) had well documented relations with the Sinaloa Cartel. Operations across the globe will be largely unaffected by recent US policies. FTO designations open the possibility of targeting cartel assets outside of US territory, but even this would require some level of cooperation from other countries, especially tax havens with less transparent banking practices. Recent US tariffs applied globally have not been well received by many countries across the globe. Alienating global partners does not put the US in a great position to negotiate cooperation in combating a drug problem which is most prominent in the US. On top of this, efforts against drug trafficking will take a backseat in negotiations with other countries because the Trump Administration is focused on trade deficits.

While the Trump administration's efforts do stray away from the historically unsuccessful kingpin strategy, it is unlikely they will make much impact on the US drug problem. Eradicating Mexican TCOs would require a highly nuanced and cooperative strategy by countries across the globe. A controversial solution which has gained a small bit of traction in recent years is drug legalization. Whether this would help eradicate demand for drugs is highly speculative, but it would shift market share of recreational drug supply towards taxable, regulated corporate entities and away from TCOs. Taking profits from TCOs on a large scale would be a good first step in reducing their political and financial power. With that being said, a complete strategic shift like this for the US would be highly controversial and require stellar execution to be successful.

Kay Krogstad

Constitutional or Cultural Consequences? Streamlining Approaches to Hate Speech

By Katherine Krogstad

Introduction

A man at a lectern raises his right arm in a lurid salute to a domineering executive, cheered on by an enthusiastic crowd below. In situations like these, the backlash seems near-unanimous - but the suggested responses could not be more disparate. This paper parses potential legal frameworks created in response, understanding their efficacy through a continued focus on reports of hate speech and hate crimes, situating each within their respective social context. Informed by three case studies of countries with varying legal penalties for hate speech, I argue that constitutional or other legal limitations on free speech do not serve as an effective deterrent, and as such, the remedy for hate speech is not to render it illegal, but to foster a societal standard by which such speech is not tolerated. This argument acknowledges the ongoing debate in the US surrounding restrictions on free speech and potential justifications for doing so (namely preventing or reducing rampant discrimination), while also recognizing the incongruence of regulations on hate speech with US law and the near-inescapable potential of any regulation for misuse. Ultimately, the lack of correlation between constitutional provisions and a decrease in reported instances of hate speech under Germany's direct bans, Canada's additional civil liability system, and incitement standards in the US demonstrates that legal intervention alone cannot mitigate hate speech. It must instead be coupled with a societal emphasis on education and public accountability to meaningfully counteract prejudice while protecting fundamental rights.

Background and Definitions

Hate speech is defined differently by each of the countries examined in this paper. The term is difficult to define by nature, since it must be actionable for more than one group, and that generalization inherently opens the door for individual interpretation as to what constitutes hate speech. It's interesting that the country commonly thought to have the strongest restrictions on hate speech does not define it as a legal term[137]. Germany has strengthened other longstanding actions to create an interlocking legal net intended to catch most instances of what would otherwise be considered hate speech[138] (Federal Ministry of Justice).

Only Nazi rhetoric is specifically prohibited under these laws, though their true intent is to prohibit various types of "hatred against a national, racial, [or] religious group. (Section 130(1)1.)"[139] Much of this relies on their charge of "Volksverhetzung," or "incitement to hatred."[140] Though nominally similar to another category to be discussed later, this version of incitement is quite broad, including specific provisions in Section 130 of their criminal code for disseminating Nazi propaganda and the display of swastikas, among other forms of speech[141]. Subsection 130(2)1.(c)(a) also criminalizes "attacks [against] the human dignity of one of the persons or bodies of persons referred to in letter (a) by insulting, maliciously maligning or defaming them," adding defamation to the net of charges[142]. Interestingly enough, the most well-known content of Section 130 ("Whoever publicly or in a meeting approves of, denies or downplays an act committed under the rule of National Socialism…[or] violates the dignity of the victims by approving of, glorifying or justifying National Socialist tyranny and arbitrary

137 Selma Partners, *Hate Speech in Germany: A Controversial Law Without a Legal Definition of the Term*, Hackinghate.eu (Feb. 1, 2019), https://hackinghate.eu/news/hate-speech-in-germany-a-controversial-law-without-a-legal-definition-of-the-term/.

138 Federal Ministry of Just., *German Criminal Code (Strafgesetzbuch – StGB) www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html*

139 *Id.* § 130(1)1.

140 *Id.*

141 *Id.*

142 *Id.* § 130(2)1.(c)(a).

rule..") is relatively new[143]. Rather than existing solely as a response to Nazism, this incitement charge in the German criminal code dates back to 1871, when it originated as a response to the incitement of class warfare following the spread of Communism[144]. It was only after offenses following WWII that it became clear that Germany needed charges specific to Nazism within their categories of prohibited speech[145]. This development is what led to the use and strengthening of preexisting charges for this purpose, rather than a blanket ban on vague or ill-defined "hate speech".

Canada also employs criminal penalties and civil remedies for the victims of such crimes. Their criminal code addresses it in section 319, stating in subsection (1) "Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty," continuing on to include the willful promotion of hate toward an identifiable group, and specifying even further to criminalise "denying or downplaying the Holocaust"[146] (section 2.1). They do outline a defense for religions that may run contrary to one another, stating that "No person shall be convicted of an offence…if, in good faith, the person expressed…an opinion on a religious subject or an opinion based on a belief in a religious text," (3.1(b)) but the more intriguing attribute of their system lies in their establishment of civil liability for perpetrators[147]. By offering this in Alberta, British Columbia, Saskatchewan, and the Northwest Territories, they allow victims to seek damages or injunctive relief, which - while intended more so as a compensatory measure for the victims - may also compound the deterrent effect of a criminal charge[148]. While not particularly

143 *Id.*

144 Dan Glaun, *Germany's Laws on Hate Speech, Nazi Propaganda & Holocaust Denial: An Explainer*, PBS (July 1, 2021), https://www.pbs.org/wgbh/frontline/article/germanys-laws-antisemitic-hate-speech-nazi-propaganda-holocaust-denial/.

145 *Id.*

146 *Criminal Code*, RSC 1985, c C-46, s 319(1)–(2.1).

147 *Id.*

148 C.E. Haupt, *Regulating Hate Speech—Damned If You Do and Damned If You Don't: Lessons Learned from Comparing the German and U.S. Approaches*, B.U. Int'l L.J. 299 (2003), https://www.bu.edu/law/journals-archive/international/volume23n2/documents/299-336.pdf.

anomalous (Germany allows civil suits for hate speech, though some other states - like the US - do not), it's certainly noteworthy given that the general difference between German hate speech law and others is the distinction between content-based and content-neutral restrictions on speech[149]. According to the Congressional Research Service:

> "A facially content-based law draws distinctions based on the message a speaker conveys. Such a law might define regulated speech by particular subject matter or…on the basis of the particular views expressed. By comparison, a law that is content neutral on its face still may be deemed content-based if the law cannot be justified without reference to the content of the regulated speech, or was adopted because of disagreement with the message [the speech] conveys."[150]

Besides the singular outlier of criminalizing Holocaust denial, Canadian restrictions generally fall into the latter category, meaning they are somewhat more similar to US restrictions than German regulations[151]. The US, as alluded to throughout, uses a variety of strictly content-neutral measures[152], each more limited in scope than either Germany or Canada. Hate speech in the US is generally tolerated, and for better or for worse, there is no special exemption for any group or viewpoint. That being said, there are a variety of categories of unprotected speech, including (but not limited to) defamation, true threats, fighting words, and - most importantly for this context - incitement. This last charge is quite different from its use in Germany and elsewhere, though, incitement in the US is strictly limited by the four-prong test established in *Brandenburg v. Ohio*

149 *Overview of Content-Based and Content-Neutral Regulation of Speech*, Congress.gov, https://constitution.congress.gov/browse/essay/amdt1-7-3-1/ALDE_00013695/#essay-13

150 *Id.*

151 *See generally* C.E. Haupt, *supra* note 12.

152 Geoffrey R. Stone, *Restrictions of Speech Because of Its Content: The Peculiar Case of Subject-Matter Restrictions*, 46 U. Chi. L. Rev. 81, 81 (1978).

(1969)[153], which means anything categorized as incitement must be in reference to a lawless act, specifically speech that advocated the act, reaching beyond "mere advocacy" and amounting to incitement, which is then directed to imminent action. In short, incitement is an extremely narrow charge - markedly different from its expansive German or even Canadian counterparts. Despite its narrow nature, this is still arguably the closest the U.S. gets to legislating hate speech, as SCOTUS has affirmed its constitutionality in several notable cases (especially *R.A.V. v. City of St. Paul (1992)*[154], in which they specifically ruled that "silencing speech on the basis of its content" is unconstitutional, explicitly reaffirming the rejection of content-based regulations)[155].

Foreword on Efficacy

The differences between measurements and qualifications of hate crimes based on country and source make it difficult to find directly comparable statistics. Moreover, this paper does admittedly rely on an implicit connection between hate speech and hate crimes, and while it may not be a causal relationship, it is significantly easier to compare statistics on hate crimes than hate speech based on the pure availability of data. There may also be other confounding variables beyond the scope of this paper, including the fact that nations with more stringent laws may be inclined towards more diligent or transparent reporting of related crimes. Accordingly, the statistics listed below are not intended for scientific reference, but rather for illustrative purposes as multiple countries are compared. Definite conclusions regarding causality cannot be drawn from this data.

Variance in measures aside, the benchmark for effective restrictions should not be any decrease. Rather, a modest increase may be expected; the UN notes a general increase in

153 Brandenburg v. Ohio, 395 U.S. 444 (1969).

154 R.A.V. v. City of St. Paul, 505 U.S. 377 (1992).

155 *Id.* at 382–83.

incidents of hate speech given the proliferation of social media, though they do not provide associated information on the scale of the increase.[156]

Comparative Efficacy

Proponents of German law argue that they are "protecting democracy and discourse by introducing a touch of German order to the unruly internet" and (in reference to a specific case) that "these words ha[ve] nothing to do with a political discussions or a contribution to a discussion (CBS),"[157] but Article 19, an NGO dedicated to promoting the freedom of expression, notes that the strength of their constitutional rights does not convey the complete reality.[158] German criminal law is inconsistently applied, and is so broad that it conflicts with international standards.[159] This raises the foremost concern among Americans: chilling free speech, especially without a measurable decrease in instances of hate speech and hate crimes as the legislation intends. Official statistics in 2022, as reported by the German government, explain more:[160]

> "Hate crimes saw a significant increase of around ten percent to 11,520. Three out of four of these offenses were attributed to "right-wing extremist" hate crimes. The number of violent crimes rose even more significantly, rising by 33 percent to 1,421."[161]

156 *Targets of Hate*, United Nations, https://www.un.org/en/hate-speech/impact-and-prevention/targets-of-hate

157 Sharyn Alfonsi & Aliza Chasan, *Germany Is Prosecuting Online Trolls. Here's How the Country Is Fighting Hate Speech on the Internet*, CBS News (Feb. 16, 2025), https://www.cbsnews.com/news/germany-online-hate-speech-prosecution-60-minutes/.

158 Article 19, *Responding to "Hate Speech": Comparative Overview of Six EU Countries*, Article 19 (2018).

159 *Id.*

160 *Neuer Höchststand Politisch Motivierter Kriminalität*, Bundesministerium Des Innern Und Für Heimat (Sept. 5, 2023), https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2023/05/pmk2022.html.

161 *Id.*

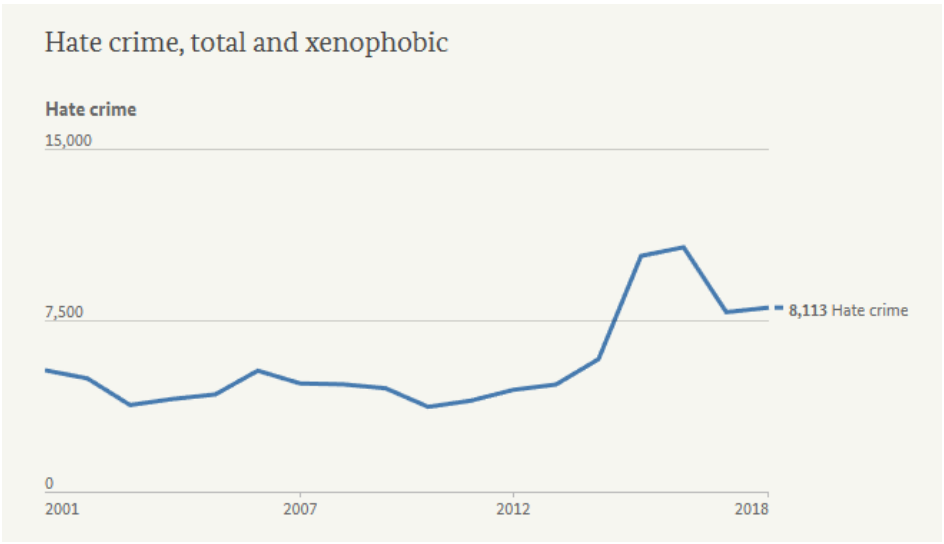

Fig. 1, published by the Bundesregierung, reflects statistics compiled by the Federal Ministry of the Interior.[164]

Despite the apparent ineffectiveness of the broad laws intended to curb such crimes, they implicitly reinforce their proposed solution by emphasizing the threat posed by perpetrators. Rinke and Melander quote German Chancellor Olaf Scholz as follows:[162]

> "Today's democracies in Germany and Europe are founded on the historic awareness and realisation that democracies can be destroyed by radical anti-democrats.And this is why we've created institutions that ensure that our democracies can defend themselves against their enemies, and rules that do not restrict or limit our freedom but protect it."[163]

Figure 1 depicts official statistics as of 2019, and it provides relevant historical context for those isolated above.[165] The central conclusion is that Germany's broad laws have failed to produce a

162 Andreas Rinke & Ingrid Melander, *Scholz Rebukes Vance, Defends Europe's Stance on Hate Speech and Far Right*, Reuters (Feb. 15, 2025), https://www.reuters.com/world/europe/germanys-scholz-rebukes-vance-defends-europes-stance-hate-speech-far-right-2025-02-15/.

163 *Id.*

164 German Federal Gov't, *Hate Crime and Politically Motivated Crime*, Gut-Leben-In-Deutschland.de (2019), https://www.gut-leben-in-deutschland.de/indicators/security/hate-crime/.

165 *Id.*

measurable decline in the crimes they target, as their classification of hate crimes continues to increase over the past decades. In fairness, advocates for the strict laws argue that the spike around 2014 was in response to an influx of migrants, and thus an extenuating cause, but at best the laws have mitigated some hate speech that may have otherwise occurred, which is unknowable, and at worst (which we know to be empirically true) the laws stifle freedom of expression across the board.

Proponents admittedly recognize while the laws have merit, they carry potential risks. In an interview specifically about a new law added in 2020, Professor Robert Khan says "It seems to be a fairly successful model of restricting speech"-referring to that which the law intends to target - but in the same interview he acknowledges that "the law…can also lead to unregulated speech being censored. (PBS)"[166]

Though Canada's restrictions attempted to balance both types of approaches, their results similarly fell short. Their government reports that "The number of hate crimes reported by police in Canada rose from 3,355 incidents in 2021 to 3,576 in 2022, a 7% increase. This followed two sharp annual increases, resulting in a cumulative rise of 83% from 2019 to 2022."[167] Like most other countries, the uptick centers around COVID, though it both began before and persisted after 2020.

166 Glaun, *supra* note 8.

167 Gov't of Can., Stat. Can., *The Daily — Police-Reported Hate Crime, 2022*, www150.statcan.gc.ca/n1/daily-quotidien/240313/dq240313b-eng.htm (Mar. 13, 2024).

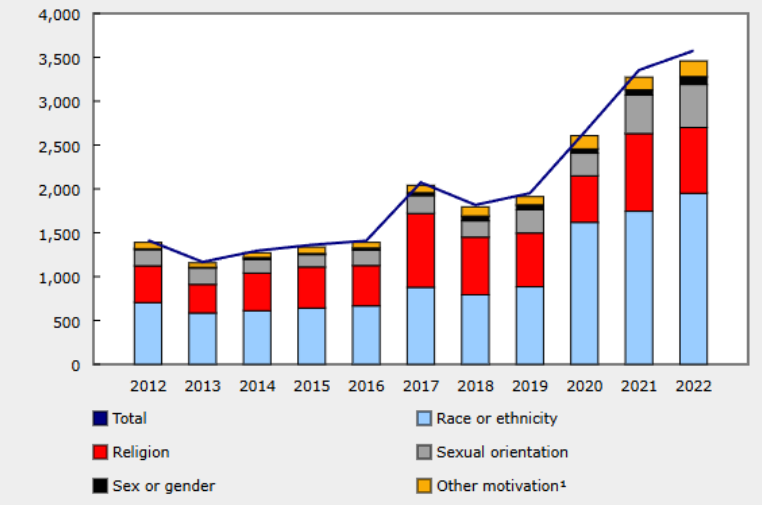

Fig. 2, "Police-reported hate crimes, by type of motivation, Canada, 2012 to 2022" from Statistics Canada.[168]

Despite their efforts, Canada shows a similar increase to the rest of the world. Their restrictions on speech are ineffective in preventing hate crimes.

As discussed above, the U.S.' incitement provisions are extremely narrow, and a predictable consequence of their limited nature is that they are typically not an effective remedy for hate speech beyond individual and extreme actions. The U.S. Department of Justice's available statistics for 2023 show 11,447 "single-bias incidents" and 415 "multiple-bias incidents", a slight increase from 2022 (11,634 total incidents) and a continuance of the increase seen in recent years.[169] Figure 2 includes more data, dating back to 1991.

168 Gov't of Can., Stat. Can., *Police-Reported Hate Crimes, by Type of Motivation, Canada, 2012 to 2022*, www150.statcan.gc.ca/n1/daily-quotidien/240313/cg-b001-eng.htm (Mar. 13, 2024).

169 U.S. Dep't of Just., *Hate Crime Statistics*, Justice.gov (Sept. 25, 2024), https://www.justice.gov/hatecrimes/hate-crime-statistics.

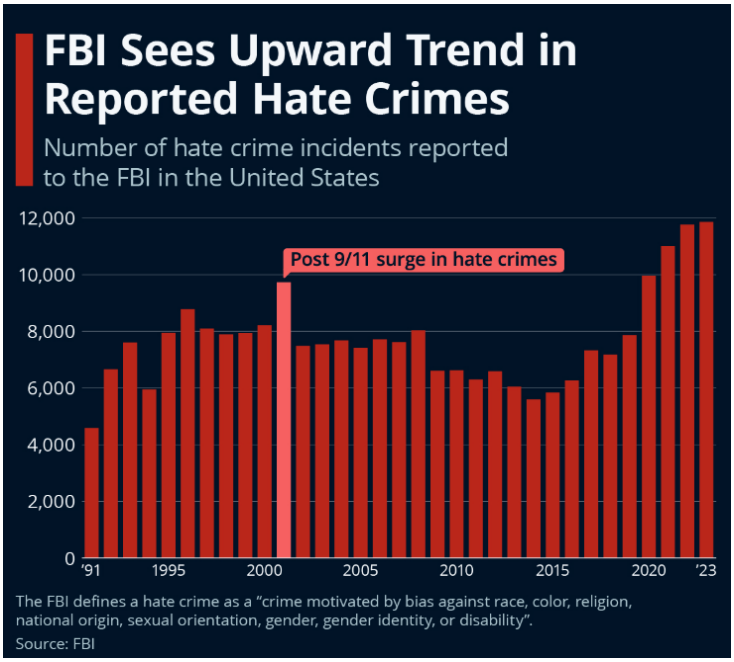

Fig. 3, showing FBI statistics compiled into a chart by Statista.[170]

Due to the nature of U.S. law, though, only hate crimes are consistently measured at the federal level, since hate speech is - at its core - legal. Other challenges to prosecution also exist, including the fact that hate crime charges are not standardized across states and both the crime and the motive must be proven beyond a reasonable doubt for the act to qualify as a hate crime.[171]

All three countries are visibly struggling with the global increase in hate speech and hate crimes, and while it's difficult to directly compare them based on different definitions, the pure statistics alone do not provide a compelling case for Germany's free speech restrictions, not to mention the wide variety of statistics provided depending on the author's perspective. Famously anti-censorship group the Foundation for Individual Rights and Expression cites that "in 2019, in the U.S., there were 2.61 hate crimes per 100,000 people; while conversely...in Germany, 10.34

170 *Id.*

171 Michael Lieberman, *Hate Crimes, Explained*, S. Poverty L. Ctr. (Oct. 1, 2024), https://www.splcenter.org/resources/reports/hate-crimes-explained/.

[per 100,000 people]" among other unsympathetic statistics.[172] Entorf and Lange, in their more limited study, note 923 offenses in Germany in 2015 against a population of 890,000 incoming asylum seekers.[173] Yet many in the U.S. are still looking to their model for answers in the face of the global increase. Why is this, despite the failure of both Germany's system and those modeled after it (including Canada)?

Broader Debate

The First Amendment is, needless to say, foundational in the U.S. The immediate revulsion against any restrictions on free speech dominates the narrative of those who oppose German policies. Canada's courts explicitly acknowledge their laws as restrictions on free speech, though a justifiable one under the Canadian Charter of Rights and Freedoms' section 1.[174] Analogous would be an argument along the lines of "Restrictions on free expression in the US could be justified insofar as the US government has a compelling interest in preventing discrimination and ensuring equal protection under the law," though the absence of an equivalent to the Charter's section 1 that allows rights to be overridden would render the implementation of this extremely difficult. The practicality debate devolves here into an is-ought issue, though - this form of opposition relies on its incongruence with current law, not ethical argumentation on whether it should exist regardless. Given both the ineffective nature of the regulations and the impossibility of implementing them, though, the best solution to hate speech in the U.S. is not legal penalties, but a stronger emphasis on social and interpersonal consequences.

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172 Nadine Strossen & Greg Lukianoff, *Hate Speech Laws Backfire: Part 3 of Answers to Bad Arguments Against Free Speech From Nadine Strossen and Greg Lukianoff*, Found. for Individual Rts. & Expression (Sept. 30, 2021), https://www.thefire.org/news/blogs/eternally-radical-idea/hate-speech-laws-backfire-part-3-answers-bad-arguments-against.

173 Horst Entorf & Martin Lange, *Refugees Welcome? Understanding the Regional Heterogeneity of Anti-Foreigner Hate Crimes in Germany*, 19 SSRN Elec. J. (Feb. 2019), https://doi.org/10.2139/ssrn.3390218.

174 Michel Rosenfeld & Benjamin Cardozo, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis Analysis*, Benjamin N. Cardozo Sch. of L., 2003.

There are five major reasons to oppose hate speech laws.[175] First among these is submergence; as observed in the global growth of the "redpill" and "manosphere" movements, discouraging forms or subjects of speech simply drives it underground, where it festers on the fringes and is harder to discourage. Second, the sentiment of the speech in question is rarely deterred. It may merely be camouflaged in more palatable rhetoric, as seen in Richard Nixon's election campaign which transitioned from the explicit racism of George Wallace to the softened yet still present racial undertones of modern "law and order" rhetoric. Third, the suppression of already radical speech both hardens the support of the followers and draws more attention to their ideas. This manipulation of "the Streisand effect" crafts the perfect image for the amplification of these groups: free speech martyrs at the hands of the state. Each of these three reasons finds real-world faults in these laws, but the fourth reason lies in the enforcement of these regulations. As Strossen and Lukianoff explain, "Hate speech laws are inherently likely to be enforced in ways that further entrench dominant political and societal groups, and that further disempower marginalized individuals and groups."[176] They also reference Germany as a specific example of issues both in theory and with enforcement, saying:[177]

> "There is no correlation between the enforcement of hate speech laws and the reduction of intolerance…during the Weimar Republic and in recent decades, Germany has strictly enforced strict hate speech laws. Yet Hitler and his Nazi party rose to power during the Weimar period, and today's explicitly racist AFD party has grown dramatically in the recent past.… [T]he reduction in intolerance accompanied the reduction in government

175 C.E. Haupt, *supra* note 12; Nadine Strossen & Greg Lukianoff, *supra* note 36; Michel Rosenfeld & Benjamin Cardozo, *supra* note 38; Wojciech Sadurski, *Freedom of Speech and Its Limits* (2002).

176 Strossen & Lukianoff, *supra* note 36.

177 *id.*

> power to suppress hate speech — not the opposite. In fact…robust speech protection — extending even to hate speech — was necessary for promoting the racial justice cause; local officials routinely wielded any speech-restrictive laws to stifle civil rights advocacy."[178]

The reasons listed above all coalesce into the final detriment, which is that the entrenchment of groups (achieved, of course, through the criminalization of speech) only reinforces modern trends of polarization. As Strossen and Lukianoff say, "Censorship doesn't generally change people's opinions, but it does make them more likely to talk only to those with whom they already agree."[179] Given the extent to which polarization underlies many other societal issues, it's incredibly counterproductive to reinforce it through the suppression of speech.

Conclusion

The global rise of hate speech is undeniable - the question is simply how to answer it. Germany's strict regulatory approach may seem more proactive on its face, but it is also facially unconstitutional in the U.S. Not only is it incongruent with existing law, but there is no compelling empirical proof of its efficacy, even in its secondary version as seen in Canada. Moreover, the argumentation against it is vast; even beyond the immoral nature of policing speech in general, it fails to deter hate speech, further entrenching both its supporters and the severity of the rhetoric in general. Hiding the problem doesn't make it go away, and attempts to do so may not hide it at all, instead drawing more attention to the group than before. This strengthening of group ties then exacerbates polarization, undermining any possibility of

178 *Id.*

179 *Id.*

deradicalizing discourse. Allowing the criminalization of speech will also inevitably be leveraged by those in power against minority groups, regardless of the morality of their cause, and in all both cases examined here, they are woefully ineffective deterrents for criminal behavior. Societies must turn away from an over-reliance on legal structures to combat speech deemed offensive, and instead focus on building a more resilient, informed, and empathetic public sphere. By fostering a cultural rejection of hate speech that respects the freedom of expression, communities can better counteract the dangers of extremism while preserving their most fundamental rights. In the end, the real cure for hate is found not in the courtroom, but in the court of public opinion, where social accountability, education, and dialogue shift attitudes and change the course of discourse.

Trump Administration's Attacks on Immigration Regarding the CBP One App

By Bemnet Tessema

Abstract:

This paper will analyze the current administration's attempts to mitigate attempts to cross the border without documentation through the lens of constitutionality. Specifically, it will assess the conditions at the border by focusing on the cancellation of asylum appointments and lack of essential resources. The CBP One app – since renamed CBP Home – was created to assist trucking companies in coordinating cargo inspections when entering the United States. This app was repurposed by refugees to assist with securing legal status, becoming instrumental to streamlining a notoriously difficult and hard-to-navigate process.

The Trump administration discontinuing the use of this app to schedule asylum appointments one day into the new presidential term ushered in a new era of immigration policy focused on an unlawful crackdown on migrants, risking civil and human liberties. This review will assess the CBP One app, immigration policy as a whole thus far, and the constitutionality of such measures.

Historical Background:

The CBP One app, created in October 2020, was originally intended to aid commercial trucking companies when scheduling cargo inspections at entry. Later under the Biden administration, the app was expanded to allow asylum seekers to schedule appointments at legal

ports.[180] As time went on, the Biden Administration later moved to expand CBP One to aid migrants without entry documents to be able to schedule appointments at the southern borders specific ports of entry. At these appointments, border agents would be able to inspect migrants and allow them to move forward and access the U.S. asylum system. This began the primary method of asylum seeking migrants to enter the U.S. at these points of entry starting in May 2023. The app was able to shift migration management from third parties entering information on behalf of the seekers, to individuals submitting their own applications, helping ease steps when attempting to get status.

Introduction

President Donald J. Trump, a day after his inauguration, shut down the CBP One app, immediately disposing of a critical tool to assist migrants in entering the country.[181] This removal of the CBP One app is not an unexpected act for this administration. Attempts to dismantle other other immigration protection initiatives and humanitarian immigration programs, such as birthright citizenship and temporary protected status are initiatives brought forth by the Trump administration to eliminate means of entering the United States in his 2017-2021 presidential term.

When Trump ended usage of the CBP One app, it canceled 30,000 existing appointments for individuals waiting to access points of entry. The administration also ended the CHNV parole program, which stands for Cuba, Haiti, Nicaragua, and Venezuela. This program was to help provide temporary stays for up to 2 years where refugees could seek humanitarian relief and other immigration benefits The Trump administration's efforts to end the use of the CBP One

[180] National Immigration Forum, *"CBP One: Fact Sheet and Resource Directory,"* August 31, 2023
[181] Elliott Davis Jr., "EXPLAINER: The CBS One App, and Why Trump Killed It," *US News and World Report,* January 24 2025

app, therefore eliminating another way for asylum seekers to lawfully schedule entry appointments at ports, shows an unconstitutional interference with the right to seek asylum under the Immigration and Nationality Act.

Impacts of the CBP One App

The CBP One app had many different uses. First, to increase access to Form 1-94. The 1-94 form is used to track the lawful entry of non-immigrant individuals arriving into the U.S. [182] The app also helped schedule inspection appointments for trucking companies and other cargo shipments. It helped international organizations that helped migrants enter the United states, later on it began to let migrants schedule their appointments for asylum on their own. On the app you could also check wait times at the border, specifically at the ports of entry. The app would also provide advance traveler manifest for buses. The app, when it first expanded to be of service to asylum seekers, was used for humanitarian reasons.

In the early stages, the Biden administration utilized CBP One as a tool for specific organizations.[183] Organizations like the UN Refugee Agency, the United Nations High Commissioner for Refugees, etc. These organizations would help identify and register those who had been placed in the Migrant Protection Protocols. This was also unofficially dubbed the "Remain in Mexico" policy. This act was created during the first Trump administration. Under this act, migrants who sought asylum at the Southern Border were sent to Mexico after making an asylum claim and were expected to wait close to the border throughout their process. So when

[182] National Immigration Forum, *"CBP One: Fact Sheet and Resource Directory,"* August 31, 2023

[183] National Immigration Forum, *"CBP One: Fact Sheet and Resource Directory,"* August 31, 2023

the organizations identified those who were sent back, they were able to be stateside when pursuing their pending cases.

When the pandemic began, the Biden administration used a new rule limiting who could qualify for asylum.[184] It was called the "Circumvention of Lawful Pathways" Rule. Under this new rule, there were only a handful of ways for migrants to request asylum status. So a prominent way to request asylum status was for migrants to request and receive an appointment to present at a port of entry though the CBP One app. If you showed up without an appointment more often than not, you would be considered disqualified and would have to start the process again.

Since the new introduction of the CBP One app, open to migrants with the appointment scheduling function, from January 2023 to the end of the app over 900,000 people have had successful appointments to present at points of entry ("CBP One: Fact Sheet and Resources Directory" 2023).[185] The top nationalities of those who have had appointments are Venezuelan, Cuban, Mexican and Haitian. The CBP One app had played a major role in the modernization of U.S. immigration processes, specifically at the southern border. Although the app was initially designed to assist border control with cargo and travel management, the app evolved to become so much more. The app evolved to be a critical humanitarian tool, especially for asylum seekers. From things like notifying international organizations to aid migrants, to individuals being able to schedule their own appointments at ports, the app had adapted to the modern world. Despite aiding over 900,000 migrants since January 2023, and serving as a vital tool in helping asylum seekers, the app was one of the first to go the day after the current administration was inaugurated.

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[184] Sarah Betancourt, "The End of CBP One App Leaves Families Divided", *GBH News, April 1, 2025*
[185] National Immigration Forum, *"CBP One: Fact Sheet and Resource Directory,"* August 31, 2023, accessed via National Immigration Forum website.

The Erasing of the App

A significant topic within the Trump administration both current and past terms has been immigration.[186] Within his first administration, Trump terminated the DACA program, but the U.S. Supreme Court overturned this act. We have seen his crackdowns on immigration in the past and the present from DACA to the promises of "mass deportation". So in a recent attempt to "secure the borders" as Trump has stated as his broad executive over, he has shut down the CBP One app.

During his recent campaign, Trump had referred to the CBP One app as the "Kamala phone app", claiming this app was used for "smuggling illegals". This claim is both offensive and factually untrue. If anything, the screening process through the app ensured legal entry through the designated ports. The misconceptions perpetuated by the current administration is that the app promoted unlawful entry into the United States. The app was used to identify individuals attempting to enter the United States, reduce repeat attempts of unlawful entry, and deny them entry, so it could be argued that it did the same work Trump's administration so heavily emphasizes.

The Trump administration has also taken the initiative to replace the CBP One app with "CBP Home", automatically updating the app on people's phones.[187] "The rebranded program is being marketed as a self-deportation app for 'individuals in the country illegally,' according to the CPB Home website. DHS is now urging migrants to report their departure the same way they

[186] Elliott Davis Jr., "EXPLAINER: The CBP One App, and Why Trump Killed It." *US News & World Report, January 24, 2025*
[187] Al Jazeera Staff, "Trump Administration Relaunches CBP One Asylum App for 'Self-Deportation'," Al Jazeerza, March 10, 2025

came in. The administration pushes messaging that those who used the old version of the app to enter the United States, must leave.

Immigration advocates contest that the change is a cruel joke that the administration has made. They argue the change is a ploy to trick people into leaving the U.S., a way for the administration to confuse those who believe the app is the same as it used to be. People were physically waiting on their appointments in the U.S. Mexico borders January 20th, but at noon the day of Trump's inauguration, all those future appointments were canceled. People now also live in fear of their current status and what it means for their future in the United States. "They have an app that's being used by the cartel leaders, people that are making billions of dollars. The cartel leaders — think of this — call the app and they say where to drop the illegal migrants, Trump said".

The inaccurate and harmful claims he has made are far from the truth. During the U.S. vice-presidential debate on Tuesday Oct. 1, now-Vice President J.D. Vance argued incorrect claims that the app allowed "waves in" Haitian and other migrants. He argued the app allows for bypassing of immigration laws. Both the President and Vice President have provided public explanations of the app that have warped public perception of how it functions. Border officials can still accept or deny applications. The app did not automatically grant asylum or legal status, but just made it so creating appointments were easier. Migrants still had to go through screening processes, be checked for if they had repeatedly tried to cross the border unlawfully, and meet legal requirements for that status. The app in no way bypassed immigration laws, but just helped create a more orderly process when scheduling appointments. The app met legal criteria and aided hundreds of thousands of migrants, legally enter the United States. The app provided a safer, structured way to seek asylum, but yet the administration seems to heavily spread

misinformation that the app allowed for open borders and easier accessibility to enter the United States.

The question from earlier still stands. Because this app was heavily relied upon for nearly 1 million migrants, and they went through the orderly process to get legal status, doesn't the elimination of this app do the complete opposite of what the Trump administration cares so much about? The administration has time and time again expressed vehement disregard for undocumented immigrants. From things like disrespectful and hurtful images regarding migrants posted on the POTUS account and White House official account, to incorrect states of migrants eating animals. The Trump administration has erased an app that helps asylum seekers legally enter the country, so once this app is gone, isn't this more means for more illegal migration? The app was the top method to seek status, and now that it is gone, people who want to enter the country to escape persecution have to now look for other courses of action. These ways could be illegal smuggling and overstayed travel and work visas. The Trump administration's attack on this app has only made their "illegal immigration problem" worse, because the removal of the app will lead to people entering the United States in different ways. The administration thinks because they got rid of the app people will stop entering the U.S., but that is completely untrue. So is the problem for the administration illegal entering of migrants through the Southern border, or is the problem just migration to the United States in general for Trump and his followers.

Conclusion

The dismantling of the CBP One app by the Trump administration marks a significant entity in the attempt to stop migration. It shows a reversion of the U.S.'s approach to lawful immigration, humanitarian relief, and granted asylum. The app, originally created for shipments,

cargo and other logistical purposes, evolved under the Biden administration to create appointments at ports of entry for migrants. It slowly turned into a vital tool for migrants to access the legal asylum process in an organized and secure way. The removal of the app canceled 30,000 appointments for migrants who had waited patiently for weeks and even months for their appointment. It took away a structured and lawful path to safely and legally enter the U.S. contrary to the administration's beliefs. By eliminating the app, the administration has inadvertently incentivized alternate and maybe even unlawful ways for people to enter. The erasing of the app fails to consider the humanitarian and legal frameworks that protect asylum seekers under the UDHR and the Immigration and Nationality Act. The spread of hurtful misinformation by people viewed as topic officials has deepened the public misunderstanding of the app, and has fueled more hatred towards undocumented immigrants. Ultimately, this review shows that the deconstruction of the app is a direct attack on migrants looking to seek legal status. It shows the arguably unconstitutional measures taken by undermining legal immigration pathways by discouraging the migration of people. If the goal by this administration is to eliminate illegal migration to the United States, and work to have more people enter the ways in what the administration may define as “legally”, then the suppression of tools like the CBP one app is a step in the wrong direction. The dismantling of the app shows how this administration destabilizes the legal immigration process, and contradicts the values that the asylum seeking system was built upon. The app simply facilitated a lawful way to asylum, so in reality the administration should have never had a problem with the app. It was never about the app, it was always about closing the door on people who the administration never welcomed in the first place.