From Helsinki to Strasbourg: Human Rights, Soft Power, and the Precarious Future of Liberal Institutions

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Abstract

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To fully appreciate the importance of Russia's continued participation in the Council of Europe and citizens' access to the European Court of Human Rights, it is vital to first understand the influential role the introduction of human rights through the Helsinki Final Act played in affecting foreign and domestic policy change in the Soviet Union. In this paper, I argue that the United States, by political design, instrumentalized human rights values as a mechanism of operationalizing its soft power resources to engage in an ideological competition with the Soviets for the hearts and minds of Soviet citizens during the Cold War. The signing of the Final Act by Brezhnev was a pivotal turning point in Soviet history because it obligated the Soviet Union to comply with human rights values, subjected the Soviets to international scrutiny for violations, and scheduled review meeting to assess member states' compliance with the Final Act. This paper demonstrates how the United States also weaponized human rights values as a bargaining chip, arguing that they would only honor other aspects of the Final Act if the Soviets liberalized.

In a sense, the Council of Europe preserves the spirit of Helsinki because it keeps the Russian Federation integrated in a pan-European liberal institution that values human rights and subjects the state to international scrutiny for violations of these rights in the European Court of Human Rights. Given the prominence of anti-Western and anti-Liberalism sentiments, Russia's continued membership in the CoE is an important avenue for liberal ideas and values to flow into the country, lest the country become isolated causing the resurrection of east and west divisions. With Brexit threatening the legitimacy of the EU, a Ruxit could threaten the legitimacy of the CoE.

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Introduction

With the current debate over Russia's participation in the Council of Europe and the controversies over decisions by the European Court of Human Rights, it is vital that we understand the major role human rights values have played in shaping the liberal world order and relative international stability we take for granted today. In this paper, I will compare two case studies that illuminate and assess the response of the Soviet Union and the Russian Federation to the employment of soft power mechanisms by political actors in the west, with a particular focus on the Unite States. The first section of this paper provides a soft power literature review. The second section provides a brief literature review on the Helsinki Final Act, and establishes a unique place for my research in the existing body of literature. The first case study depicts the Soviet's response to the soft power influence of western institutions advocating human rights values. This section traces how human rights values were adopted, converted into a soft power resource, institutionalized and morphed into a hard power resource, then established as a legitimate subject of diplomacy and a focus of foreign policy by western states. The following case study depicts the response of the Russian government to the soft power pressures from the western world to comply with human rights norms. This section focuses on the Russian government's response to the institutionalized human rights values in the Council of Europe, which Russia is obligated to comply with because it is a member. This paper concludes with the assertion that the nature of liberal institutions and the liberal world is precarious in nature and currently under threat from multiple sources. This paper argues that the U.S. needs to improve and enhance its soft power projection capability to protect these liberal institutions by enhancing their perceived attractiveness, both to retain members and enhance the institution's legitimacy.

Soft Power's Beginnings

Even though countries have been exporting their cultures to enhance their international prestige for centuries, the term soft power is credited as the brainchild of Joseph Nye in the late twentieth century. In the book, *Bound to Lead: The Changing Nature of American Power*,[1] Nye argued that global power was in a state of transformation, as was the efficacy of traditional power projection methods. Two types of power are distinguished: behavioral power (the ability to influence the behavior of another actor so that the actor fulfills the influencer's objective) and resource power (the traditional conception of power based on tangible goods and military might). In assessing the international context within which power is projected, Nye claimed that modernizing factors—such as advancement in technology and expediency of information transmission—would ultimately undermine traditional bureaucracy and reliance on hard power (coercive) resources, giving significant agency and influence to non-state actors in international politics. Therefore, a reliance on coercive methods to fulfil state objectives was rendered too costly.

It is for this reason, Nye proposes that governments should take seriously the "second face of power," an indirect way to influence others through soft power mechanisms. To Nye, this co-optive power, or soft power, is exerted when the influencing state uses the attractiveness of its culture, ideology, and institutions to shape the preferences of another state in such a way to fulfill its own policy objectives. In *Bound to Lead*, Nye identifies and provides a name for the phenomenon of influencing others indirectly and without coercion; in *Power in a Global*

[1] Nye, Joseph. S. *Bound to Lead: The Changing Nature of American Power*. New York, Basic Books: 1990.

Information Age: From Realism to Globalization,[2] Nye provides an explanation of soft power with greater breadth and depth. Here, Nye argues that the internet era has irreversibly altered the global power structure, with soft power at the helm. The advent of internet accessibility diffused power over information to a broader audience, imparting on individuals and non-governmental actors greater influence over the domestic and international political arena. In the information age, competency and mastery over the information sphere is an increasingly major source of power. The ability of groups and individuals to expeditiously communicate with others and disseminate their own information greatly enhances their capacity to attract and influence others or, in other words, exert soft power. In the article, "Public Diplomacy and Soft Power",[3] Nye explicitly states that the information age has elevated the efficacy of soft power over hard power, in addition to forcing governments to compete with governments and non-state actors on the credibility and soft power front.

One strategic benefit of soft power, as noted by Nye, is the ability to frame issues. However, the explosion of information and communication technology has caused a 'paradox of plenty,' meaning the masses are inundated with information overload and those that can capture or direct another's attention possess power. Therefore, political competition has become a competition over harnessing peoples' attention. Credibility is thus an important source of soft power. In the context of the global information age, Nye lists three factors that would make an entity's soft power efforts more likely to be successful: the entity's values are consistent with the prevailing global norms; the entity has the capability of accessing its target audience through multiple channels and

[2] Nye, Joseph. The information revolution and American soft power." *Power in the Global Information Age: from Realism to Globalization.* London: Routledge, 2004, pp. 81-96.
[3] Nye, Joseph. "Public Diplomacy and Soft Power." *American Academy of Political and Social Science*, vol. 616, Mar. 2008, pp. 94-109.

influences the framing of issues; the entity's credibility is enhanced by its attractive domestic and foreign policy and action.

It was in the article, "Public Diplomacy and Soft Power", that Nye investigates how soft power is mobilized. Generally, people accept that there are two methods to shaping the preferences of others, carrot or stick, meaning bribery or coercion. To Nye, both carrot and stick are means of exercising hard power; he offers a third method, that of attraction, that functions the same way as the other two, in that it influences and shapes the preferences of another, but it does so subtly and indirectly. Nye acknowledges the three resources of soft power—values expressed in influencer's culture, internal practices, and external behaviors—are all resources that produce soft power, but simply possessing these resources does not guarantee the influencer will be successful in shaping the preferences of others. If the resources projected by the influencer are not perceived as attractive to the target audience, then the resources are rendered ineffectual and the influencer will not be successful. In this article, Nye asserts that an entity's ability to convert its soft power resources into vehicles of attraction is absolutely paramount, as is measuring success by the number of minds changed, not dollars spent.

Over the course of two decades, Nye introduced the term 'soft power' into the international relations lexicon, explained its viability in connection to the information age and started to probe mechanisms of converting soft power resources into fulfilled policy objectives. His investigation, however, is incomplete and other scholars have sought to discredit the existence of soft power altogether; provide deeper investigation on the conversion of resources into operable power in order to establish an analytical framework of soft power; and, others introduced the concept of 'smart power', arguing that a combination of soft and hard power resources is necessary to produce

optimal results for the influencer. These diverse perspectives and augmentations to soft power theory will be addressed below.

There is Only One Power—Hard Power

In opposition to Nye's soft power theory stands Janice Bially Mattern. In "Why 'Soft Power' Isn't So Soft: Representational Force and the Sociolinguistic Construction of Attraction in World Politics",[4] Mattern takes issue with the core component of Nye's soft power theory: attraction. Mattern's main critique is that the concept of 'attraction' is never analyzed or dissected. Therefore, a primordialist, or essentialist, model of attraction is assumed—target audiences will naturally find attractive influencers that are similar to them and resist those that are different. Mattern questions why, if attraction is so natural, must states try to cultivate it through soft power means? This is the foundation of her argument against the existence of soft power. She asserts that if you investigate what attraction actually is, the process by which it is cultivated, it becomes apparent that the attraction is coercive and thus another form of hard power; since attraction, the foundation of soft power, is not distinguishable from coercion then soft power cannot be juxtaposed from hard power, but is instead the rhetorical extension of hard power influence.

When looking at how attraction occurs, given that it is varied and subjective, Mattern takes a constructivist approach, asserting that realities are socially constructed through continues dialogue and interaction between multiple parties. Since communication is conducted predominantly through language, the construction of reality is socio-linguistically based and,

[4] Mattern, Janice Bially. "Why Soft Power Isn't So Soft: Representational Force and the Sociolinguistic Construction of Attraction in World Politics." *Millennium-Journal of International Studies*, vol. 33, no. 3, pp. 583-612.

therefore, so is attraction. Hence, groups determine the 'truth' of what is to be considered attractive through a long process of competing (fighting) perceptions over time, and eventually, through competition (fights), one perception will dominate and that becomes the epitome of 'truth' or reality and attraction for the whole group. In Mattern's model of attraction, attraction is rooted in persuasion. Persuasion is a form of verbal fighting in which the influencer constructs a narrative using words and sentences that bully the target into agreeing with its perception of reality ('truth' and attraction). Persuasion is mobilized through argumentation which is based on logic. Extracting from Habermas, Mattern asserts that such arguments are only feasible within a context in which all participants share the same lifeworld (meaning, they share a common culture). Then, because participants share a common lifeworld, they recognize participants as legitimate and value their input or perception. Verbal fighting occurs within arguments that employ representational force, which Mattern defines as a form of power that is transmitted through the influencer's constructed narration of reality (attraction). Thus, because representational force is infused with coercive sentiments, soft power is coercive and, in actuality, the rhetorical extension of hard power.

In order to accept Mattern's interpretation, one must make a few assumptions. First, one must assume that all actors are rational truth seekers. This assumption ignores and discredits appeals to ethos and pathos, giving preeminence to logos. Second, by arguing that attraction is rooted in coercion, one must then assume that countries' projection of prestige, for example China's grand displays while hosting the Olympics, are coercive expressions meant to compete with others' interpretation of reality. One must then perceive China's actions during the 2008 Winter Olympics as displays of representational force threatening other nations that they are either 'with China or against China'. Even for a cynic, that is a bit too cynical to digest. Third, the cultivation of attraction is basically marketing—advertising goods to entice others to consume.

Asserting that the cultivation (marketing) of soft power is a form of coercion, then requires one to surmise that all marketing is a form of coercion and is thus hard power exercised by corporations threatening consumers if they do not buy their product. Marketing appeals to ethos and pathos; it is a tug on your heart strings, not a rhetorical knife at your throat.

Finally, according to Mattern's model of attraction, arguments can only occur when groups share the same lifeworld or culture. This assertion insinuates that there are ingroups and outgroups, and persuasion/arguments to determine attraction or reality only occur within groups and never between groups. If this was the case, then, ideas would not influence or permeate through the borders of other cultures. If this was accurate, then transnational human rights networks would not be possible because people living in different cultures, on different continents, would not be able to engage in the conversation (argument) since they do not share the same lifeworld because they would not be viewed as legitimate or credible and they will not view others as legitimate or credible. Mattern's argument is too convoluted and narrow-minded to persuade the reader to abandon inquiry into soft power as distinct from hard power. However, she does highlight a gap in Nye's assessment. That gap is: discerning what attraction is, how it works, and who it affects.

Addendums to Nye's Soft Power

Kondo Seiichi makes an incredibly valuable and insightful contribution to the understanding of soft power theory by adding two more stages into the framework of soft power transmission. In the chapter, "Wielding Soft Power: The Key Stages of Transmission and

Reception",[5] Seiichi dismisses those that question soft power's existence, and posits the question to what extent can or should soft power be used to fulfil specific policy objectives. Noting the difficulty of determining the causal relationship between soft power resources and fulfillment of objectives, Seiichi argues that there are actually four stages in the operationalization of soft power projection: existence of resources, transmission of resources, reception of resources, and outcome resulting from the transmission and reception stages. Therefore, the power to influence preferences is only actualized after these four stages proceed in the proper manner; any mishap or impediment at any stage would negatively impact the desired outcome. Even the seemingly exceptional and attractive of resources can fail to achieve the desired goal if they are transmitted improperly or not well received.

Seiichi distinguishes two ways to transmit soft power: projection (more aggressive and proactive) and presentation (reserved and subtle). According to Seiichi, the presentation method of soft power is more fitting of cultures that are patient and use artistic expression and creation of symbolic objects to attract others to their culture and value system. Other societies prefer a less reserved method by consciously engaging in activities with the intent to change and attract the minds of their target audience. While presentation is subtle and accomplished over a long-time span, projection aims for concise articulation of what should be perceived as attractive in order to reap soft power success in the short term. Seiichi notes that throughout the process of transmission and reception, there is a continuous flow of communicative signals between the influencer and recipient. On the influencer side, the soft power resources must be a genuine representation and

[5] Seiichi, Kondo. "Wielding Soft Power: The Key Stages of Transmission and Reception." *Soft Power Superpowers: Cultural and National Assets of Japan and the United States*, edited by Yasushi Watanabe and David L. McConnell, Taylor & Francis, 2008, pp. 191-206.

reflection of the value system and not a manipulative form of propaganda providing the illusion that the culture is more attractive than it actually is. On the recipient side, human psychology is especially important and the recipient must either possess similar values or be predisposed to the influencer's value system (for example, if the influencer is promoting universal values, such as freedom from government oppression).

Due to the dyadic nature of the transmission and recipient stages of soft power projection, the influencer must be sensitive and attentive to the recipients existing beliefs and response to projected values. Seiichi advises governments projecting soft power to not assume their projection efforts fail if they do not achieve the desired policy objectives—increasing volume of the message projected may cause more harm than good. Also, exercising soft power resources may also be off putting if it is overly obvious and done so in an aggressive manner. Furthermore, Seiichi asserts, most importantly, that the government should not create and mobilize the soft power resources. Instead, the government needs to facilitate and create the space for the formation of networks and exchange of ideas to occur (i.e. refrain from imposing restrictions on the flow of ideas), but allow the private sector and civil society to create the culture and ideas that will attract others. Government abstention from intervention will promote greater interaction between transmitting forces and target recipients.

Blanchard and Lu, in "Thinking Hard About Soft Power: A review and Critique of Literature on China and Soft Power",[6] investigate techniques for gauging the potential attraction to resources and factors hindering soft power projection. Based on the complexity and variation of attraction, the authors argue that influencers must take into account, when mobilizing soft power

[6] Blanchard. Jean-Marc F. and Fujia Lu. "Thinking Hard About Soft Power: A review and Critique of the Literature on China and Soft Power." *Asian Perspective*, vol. 36, no. 4, 2012, pp. 565-589.

resources, different levels of contextual analysis. They must conjecture what a state's predominant culture would find attractive or alluring, but also asses the states position within a global and regional context. To understand the potential outcome of soft power projection, it is first important to analyze the content of the message to determine who the target audience is; has the mobilization of soft power resources produced attraction in the past; and, does the change in impression produce real policy shifts. The authors specifically note that even though the opinion or impression the recipient has for the influencer may change, this does not necessarily translate into a change in policy.

While not explicitly stated, I believe that the Blanchard and Lu would add a fifth element to Seiichi's stages: resources, transmission, reception, change of impression, and *policy change*. In this sense, the objective of soft power is to not only change the preferences of another, but to change them in such a way that it changes policy and behavior that, in turn, fulfills the objectives of the influencer. To determine the efficacy of translation attraction to policy, one must assess the target groups interest and ability in organizing to instigate change; its motivation to mobilize and bring change to fruition; and the receptivity of decisionmakers to heed the desires of the target group.

The authors also note instances that may hinder the projection of soft power. The influencer may be sending mixed messages or even the wrong message since symbolic gestures could be misinterpreted. What occurs domestically can alter or inhibit the effectiveness of a state's soft power message. For example, if the state is promoting equality and harmonious and social values abroad, while at home classes or ethnicities are in conflict, that message may not have the desired affect because the transmitter does not seem credible or genuine.

A predominant mechanism for mobilizing soft power resources within this body of literature is that of public diplomacy. This mechanism directly contradicts Seiichi's assertion that government must create the framework within which non-government entities can create and transmit to recipients the soft power resources, but do no more than that. Public diplomacy, as defined by Nye, is the mechanism by which governments instrumentalize soft power resources and communicate these resources (or messages) directly to the masses of another state, rather than to their government or ruling elites.

Greg Simons, in "Perceptions of Russia's Soft Power and Influence in the Baltic States",[7] dissects the various manifestations of public diplomacy that the Russian government has employed with the objective of shaping the opinion and perception of Russia in the Baltic states. Simons admits that public diplomacy is a time-consuming process because it involves multidirectional communication between a target population and a foreign government, but essential to soft power influence. Simons argues that this is an opportunity for governments to not only rhetorically communicate their resources that make them attractive and worth emulating, but demonstrate to the target population their goodwill (essentially—show them, don't just tell them).

In the Baltics case study, Simons makes some critical observations about the nature and character of public diplomacy and soft power in general—it must be flexible and pragmatic. Because beauty is in the eye of the beholder, when states are attempting to influence another population through its attractive qualities, they must take into account the culture of the population they are trying to influence and the larger context in which that culture exists. The state must be ready and willing to tailor its transmission mechanisms (and sometimes content of message) to the

[7] Simons, Greg. "Perceptions of Russia's Soft Power and Influence in the Baltic States." *Public Relations Review*, vol 41, 2015, pp. 1-13.

specific target; there is no cookie-cutter public diplomacy method that is surefire. This harkens back to Seiichi's advice—albeit to the public and private sectors, not government—soft power influence through public diplomacy must be multifaceted and entities must be realistic about their assessments of the effectiveness of the transmission of their resources (even when the assessment is negative) and make necessary adjustments to transmit successful the desired message.

Smart Power

While Nye mentions the concept of smart power in his article, "Public Diplomacy and Soft Power", he does not probe this concept as Giulio Gallarotti does in "Smart Power: Definitions, Importance, and Effectiveness".[8] According to Gallarotti, smart power is the optimum combination and execution of both soft and hard power resources. Using the invasion of Iraq as an example, Gallarotti argues that overreliance on hard power resources is detrimental to the attractiveness of a state and diminishes its soft power potential. The cosmopolitan world we exist in favors soft power over hard power. However, this does not mean the renunciation and abandonment of hard power resources because they are outdated. What Gallarotti argues here is that a 'smart' combination of both enhances the soft power and influence capability of a state.

Hard power resources can be a source of soft power. For example, other nations may see a great military apparatus, be attracted to its grandeur and wish to emulate the state that possesses such a military; the state with impressive military might has decisively influenced the preferences of another state. In addition, a state may provide humanitarian aid to a struggling state, which

[8] Gallarotti, Giulio M. "Smart Power: Definitions, Importance, and Effectiveness." Journal of Strategic Studies, vol. 38, no. 3, pp. 245-281.

improves its image, but the funds provided are used to pay off debts to the donor state. In these examples, military might and humanitarian aid are simultaneous instruments of both soft and hard power. Therefore, the distinction between what constitutes a soft or hard power mechanism can be very vague.

Applying Soft Power to Human Rights and the Cold War

In the discussion below, I will apply the analytical framework loosely constructed here in this literature review. Human rights norms, as instrumentalized by the United States in the Cold War context, will be assessed a mechanism of soft power. This paper will highlight the radical shift in U.S. foreign policy from a Kissingerian principle of non-intervention in the internal affairs of another state to a foreign policy campaigning for compliance with human rights norms in bilateral relations with countries across the Iron Curtain. The efficacy of U.S. soft power initiatives will be assessed by tracing the evolution of Soviet defiance and compliance with human rights norms. This paper investigates what makes human rights values a soft power resource and why those under Soviet control would find these values attractive. It asks why the United States did not employ these values earlier in the ideological competition between the two powers and what contextual changes were necessary to permit the mobilization of these values. It will identify and assess the various mechanisms by which the U.S. transmitted these values to Soviet states. This paper will analyze the efficacy of U.S. soft power initiatives by tracing the evolution of Soviet defiance and compliance with human rights norms.

Finally, this paper will contemporize the findings regarding human rights values as a mechanism of soft power and the Soviet legacy to describe the necessity maintain a strong Council

of Europe and Russia's membership in it. Furthermore, this paper will illuminate the value and effectiveness of promoting positive human rights rhetoric and action as a mechanism of soft power because these values resonate with many target audiences. The intended contribution of this paper to the soft power literature is that it synthesizes existing analytical frameworks that investigate theoretical and contemporary analysis of soft power usage and applies this framework to an historical case study and engages in a contemporary debate regarding the Council of Europe.

Human Rights and the Final Act Literature

There is a plethora of books and articles depicting the emergence and impact of human rights values during the twentieth century, as well as the connection between international human rights norms, the seminal document, the Final Act, of the Conference for Security and Cooperation in Europe (CSCE),[9] and the collapse of Communism.

Through the paradigm of liberal and constructivist theories, Daniel C. Thomas argues that human rights values emanated from the European Community's integration process in which the Europeans were seeking to establish basic group norms that underscored what it meant to be 'European'. Human rights values were thus transformed from a regional, European-specific value system into a universal value system propagated by western democracies, namely the United States, after the signing of the Final Act. The Soviets accepted the human rights norms embedded in the Final Act because they were desperate for the legitimacy and access to critical resources the document offered, and because they did not believe they would be held accountable for compliance

[9] The CSCE conference and the Final Act go by numerous names that can, for the most part, be used interchangeably. The Conference and the follow-up meetings are also called the 'Helsinki Process', because the Final Act was signed in Helsinki, Finland in 1975. The Final Act is also called the Helsinki Accords or the Helsinki Declaration.

with these norms given the document's explicit prohibition of interference in the internal affairs of another state. This was a fatal miscalculation on the part of the Soviets because state security rested on social isolation and protection from foreign ideas and influences. The document's values were predominantly Western in scope, representing liberal democratic ideals. According to Thomas, the universalization and power of human rights norms in the international political arena affected the demise of the Soviet Union, the collapse of communism, and the victory of liberalism[10]

In contrast, Sarah B. Snyder insinuates that it was not the power of norms that promulgated human rights to the forefront of international attention, but rather individual activists and organizations were the most crucial factor because their activities publicized and furthered human rights norms. Activists monitored, documented, then disseminated evidence proving human rights violations by the Soviet Union and East European states to other Helsinki signatory states via the emerging transnational human rights network. Snyder's argument focuses primarily on the efforts of individuals from the West affecting change in the Soviet sphere in terms of human rights. While important Soviet individuals are discussed, like Yuri Orlov and Mikhail Gorbachev, Snyder insinuates that, without intervention by Western actors, like Ronald Reagan and Jimmy Carter, the impact of Soviet dissident efforts, alone, would not have been as significant. Attributing the creation of the Helsinki network to U.S. Congressional Representative Millicent Fenwick, as well as the U.S. Commission on Security and Cooperation in Europe (or the Helsinki Commission), Snyder argues that Fenwick's initiatives and the Commission played an indispensable role in providing channels for dissidents in Communist states to access the Helsinki network and expose

[10] Thomas, Daniel C. *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism.* Princeton: Princeton University Press, 2001.

Communist infringements on the emerging rights regimes.[11] In short, for Snyder, the driving force behind the promulgation of human rights norms was as at the individual level, rather than the international level, and attributed to western, predominantly American, efforts.

In a similar vein, albeit slightly different, Michael Cotey Morgan situates the evolution of human rights norms and the manifestation of the Helsinki Final Act within the broader Cold War context. The proposition of a European security conference was a Soviet suggestion because, after the Second World War, the Soviet Union wanted to preserve the status quo and Soviet legitimacy in Eastern Europe. Once it became inevitable that a security conference was going to occur, the Western states, especially the European Community, were more eager to get involved because they wanted influence and control over agenda setting, rather than allowing the conference to be a potential propaganda victory for the Soviets. The narrative presented by Morgan focuses on the salience of diplomacy during the Cold War, arguing that the Helsinki Process was a diplomatic solution to the crises, anxieties, and state ambitions of that era. According to Morgan, the security conference was transformed from "an exercise in damage control into a tool for waging cold war by other means."[12] In order for other aspects of the Final Act to be fulfilled, such as confidence-measures and trade and scientific cooperation, the Soviets were compelled to accept the Western interpretation of the Final Act, which had significant and transformative repercussions.

In addition to scholarly research and historical analysis, there is a host of memoirs, from both American and Soviet sources, of former ambassadors, presidential advisors, and state leaders discussing their part in the Helsinki process and its consequences. George P. Schultz, Secretary of

[11] Snyder, Sarah B. *Human Rights Activism and the End of the Cold War: A Transnational History of the Helsinki Network.* Cambridge: Cambridge University Press, 2011.
[12] Morgan, Michael Coty. The Final Act: The Helsinki Accords and the Transformation of the Cold War. Princeton: Princeton University Press, 2018, here, pp. 10.

State during the Reagan Administration, published a hefty book documenting his experience and his activities during a tumultuous and transformative decade, the 1980s, in which he played an active, nontrivial part. While the position of Secretary of State had Schultz addressing various global issues, bettering U.S.-Soviet relations and advancing Soviet compliance with unfulfilled human rights promises were Schultz two focuses. According to Schultz, he encouraged Reagan to engage in an ideological offensive rooted in human rights values against the Soviet Union. Advocating quiet diplomacy, exchanges programs, and opening up Soviet society to American influence, Schultz repeatedly stated that he, as Secretary of State, and President Reagan were determined to penetrate the Soviet sphere with American ideology and values, establishing compliance with human rights norms as the precursor to any arms control or regional negotiations.[13]

On the Soviet side, Eduard Shevardnadze's memoir illustrates his personal conversion from "worshipping the idols of pseudo-ideology"[14] and perpetual superpower confrontation to coexistence and preference for political resolutions, rather than military action. While Shevardnadze does not discuss in detail the CSCE or the Helsinki Process, during that time he was the First Secretary of the Georgian Communist Party, he examines the shift in Soviet foreign policy under Mikhail Gorbachev that was motivated by 'New Thinking'[15] and universal human values. Through Shevardnadze, we get a glimpse into the Soviet narrative of the post-Final Act era, from

[13] Schultz, George P. *Turmoil and Triumph: Diplomacy, Power and the Victory of the American Ideal.* New York: Macmillian Publishing Company, 1993, here, 266-276.

[14] Shevardnadze, Eduard. *The Future Belongs to Freedom*. New York: The Free Press, 1991, here, 59

[15] 'New Thinking'—referred to Gorbachev's broad vision of resuscitating and reconstructing the Soviet system. Above all, it focused on universal values, with added stress to the 'common fate of humanity'; the end of confrontational superpower competition and the beginning of coexistence; and a transition from state security dependent of military might to security ensured by political cooperation. See, Zwick, Peter. "New Thinking and New Foreign Policy Under Gorbachev." PS: Political Science and Politics, vol. 22, no.2, 1989, pp. 215-224.

which we can glean information and inferences regarding the actual impact the Helsinki process and human rights values had on the Soviet political structure and the leadership's perspectives.

Within the Cold War human rights and Helsinki process literature, there is a pervasive redundancy to the narrative presented. This narrative goes as follows: The Soviet Union wanted a security conference to confirm their legitimacy to interfere in the internal affairs of other states within the Soviet Bloc. The Europeans and the Americans begrudgingly acquiesced to hold a European security conference, expecting it would be of no gain to them, but staunchly insisted on the inclusion of the human dimension and values aspect of the document to prevent an outright Soviet propaganda victory. The document took on a life of its own—dissidents and grassroots Helsinki monitoring groups surfaced, dissenting against the tyranny of Communism, exposing the systemic hypocrisies and contradictions, and demanding American-style freedom and liberties. A concerted effort between dissidents behind the iron curtain and western democratic allies showed Communist governments the error of their ways, the preeminence of liberalism and the indispensability of human rights norms. Recognizing their shortcomings, the Soviets relinquished control over Eastern Europe and later dissolved the Soviet Union. Liberalism triumphed.

The cookie-cutter narrative repeatedly found in this body of literature is imbued with essentialist, Fukuyamian undertones—the demise of the Soviet empire and the failures of Communism were inevitable because the forces of history favored Liberalism; states were destined to become liberal democracies practicing capitalism because that was fate and human destiny.[16] The 'it was just meant to be' explanation for the mechanisms transforming human rights into an international norm and its impact on the Soviet Bloc is naïve. An essentialist approach not only

[16] Fukuyama, Francis. *The End of History and the Last Man*. New York: The Free Press, 1992.

ignores other potentially vital explanatory mechanisms, but taints the scholarly investigation by unquestioningly propagating an 'inevitable liberal victory' bias ending to the narrative.[17]

This paper makes a unique contribution to the Cold War human rights and Helsinki Process literature because it does not accept or employ an essentialist approach to the development of human rights norms or the spread of liberal democratic beliefs. Meaning, I do not view the outcome as predetermined. Rather, through the paradigm of soft power, I argue that the United States deliberately instrumentalized and operationalized human rights values as a mechanism of soft power in order to penetrate Soviet borders with American (liberal) ideology in order to weaken, delegitimize and defeat the Communists on the ideological front of the Cold War rivalry.

United States Human Rights Versus Soviet Social Rights

The term human rights, much like the term democracy, is often used, but seldom defined by contemporary Western authors of human rights. There is this assumption that these values are universal and inherently understood. Complicating this issue, there is an unfortunate tendency to attribute to the conceptualization of the term human rights, and the term democracy for that matter, "everything that is good," rather than proving a substantive definition. Because this paper assesses the efficacy of the United States use of these values as a mechanism of soft power projection, the understanding of human rights used here will reflect the values enshrined in the United Nations

[17] Barbara Keys argues, "The commonly held view that universal human rights are the contemporary articulation of deep ethical and religious impulses (for just rule, respect for the human person, avoidance of suffering) is a truism that obscures the post war system's unique features. It is too way to assume that the rise of universal human rights after the Second World War was logical and inevitable…" See, Keys, Barbara. *Reclaiming American Virtue: The Human Rights Revolution of the 1970s.* Cambridge: Harvard University Press, 2014.

Declaration of Human Rights of 1948 (UDHR).[18] Because this document was produced by a Western institution projecting a liberal worldview, [19] the UDHR cannot be perceived as a neutral document or void of ideology; it was a mechanism for spreading liberal values internationally at the onset of Cold War. That being said, the UDHR functioned more as an unenforceable moral suggestion rather than a legally binding obligation to fulfill the expressed human rights.

Even though the United States signed the UDHR, it could not use this document or these values as leverage in the Cold War ideology rivalry because its own domestic political values did not live up to the Declaration's standards. First, the United States had to rectify its domestic practices before these values could be operationalized as a soft power resource; that is to say, hypocrisy is not an alluring feature. After the signing of the UDHR up until the mid-1960s, there was fierce resistance domestically against further development or legalization of international human rights norms. This defiance was in part due to controversial race relations within the U.S., namely racial segregation and discrimination. Some states also feared that the federal government was infringing on the rights and sovereignty of individual states by allowing Congress to exercise power beyond what was constitutionally permitted. Finally, specific to the Cold War context, people within the U.S. were concerned that, if a binding international human rights document were to be ratified, this document and the interpretation of human rights values would be exploited by the Soviets, promoting a vision of human rights antithetical to a liberal democratic conceptualization, that would be waged against the U.S. for Soviet gains in the superpower ideological rivalry.[20]

[18]UN General Assembly. "Universal Declaration of Human Rights." United Nations, 217 (III) A, 1948.
[19] Thomas, Daniel C. The Helsinki Effect, pp. 82-83.
[20] Curtis, Bradley A. "The United States and Human Rights Treaties: Race relations, the Cold War, and Social Constitutionalism." *Chinese Journal of International Law*, vol. 9, no. 2, 2010, pp. 321-344.

While the United States was grappling with its domestic racial controversy, the Soviet Union was expanding domestic social rights pledged in the Soviet Constitution of 1936[21] and championing the anti-colonialism movement through its foreign policy. The welfare reforms of Khrushchev focused on fulfilling social rights of Soviet citizens—providing housing,[22] pension reform,[23] and services for veterans. The values of the emerging Soviet welfare state began to permeate Soviet foreign policy. In a speech to the United Nations General assembly in 1960, Khrushchev criticized both Western governments continuation of colonial exploitation and the United States' hypocritical support of the UDHR[24], by treating its non-white population as second-class citizens. Arguing that colonialism was a form of exploitation and enslavement, in addition to a direct violation of the UDHR, Khrushchev asserted, "The colonial system and colonial administration in all these forms must be completely abolished in order to afford the people of the territories concerned an opportunity to determine their own destiny and form of government.[25] In his speech Khrushchev praised the unity and harmony in Soviet society, as well as the cultural, social and technological developments.

In this sense, the Soviets were leading on the ideological competition because foreign policy initiatives mirrored social reforms that were aimed at bettering its citizens' standard of living. Within the framework of soft power influence and potential influence, of the resources

[21] Smith, Mark B. "Social Rights in the Soviet Dictatorship: The Constitutional Right to Welfare from Stalin to Brezhnev." *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, vol. 3, no. 3, pp. 385-406, here, 386.
[22] Attwood, Lynne. "The Khrushchev Era: 'To every family its own apartment,'" Gender and Housing in Soviet Russia: Private Life in a Public Space, Manchester: Manchester University Press, 2010, pp. 154-174, here, 154-156.
[23] Smith, Mark B. "The Withering Away of the Danger: Society: The Pension Reforms of 1956 and 1964 in the Soviet Union." *Social Science History*, vol. 39, no. 1, Spring 2015, pp. 129-148.
[24] It is important to note that, while the Soviets criticized the United States failure to comply, the Soviets abstained from signing the UDHR.
[25] UN General Assembly. "Speech by Mr. Khrushchev, Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, at the 869th Plenary Meeting of the 15th Session of the UN General Assembly," September 23, 1960, History and Public Policy Program Digital Archive, United Nations Document A/PV.869, pp. 65-84.

possessed by the United States—culture, domestic political values, foreign policy—racist domestic policy and aggressive foreign policy (the Vietnam war)[26] undercut the possibility for the U.S. to cultivate attraction for its ways of life internationally, giving the Soviet Union an edge over projection of soft power and cultivation of attraction for Communist ideology.

Détente and Non-interference

During the early Cold War period, the governing international principle regarding state relations was a principle of non-interference in the internal affairs of other states. The pinnacle of this principle was during the Presidency of the Richard Nixon, along with National Security Advisor Henry Kissinger, when détente was the primary U.S. foreign policy objective in U.S.-Soviet relations. Recognizing the changed international environment precipitated by nuclear weapon developments, the Sino-Soviet split and the Soviet desire to enhance trade and cooperation with Western states, Nixon seized the opportunity to normalize relations with the Soviet Union; this normalization would be founded on mutual respect, desire for a peaceful world, and abandonment of confrontation in favor of negotiation.[27] Kissinger argued that this approach served long-term U.S. foreign policy best and would foster an international political environment that would support peaceful coexistence between Liberalism and Communism: "Over time, trade and investment may leaven the autarkic tendencies of the Soviet system, invite gradual association of

[26] The great irony is that U.S. military force remained in Vietnam to prevent humiliation and uphold its reputation as guarantor of the liberal order so that other states would not loose faith in U.S. commitment and capacity. The fear was that, a Soviet victory in Vietnam would create a domino effect, by which Communist would spread through Asia like a wildfire, making the international environment hostile to the existence of a liberal world order. See, Graebner, Norman. Cold War Diplomacy: American Foreign Policy, 1945-1975, 2nd ed. New York: Litton Educational Publishing, 1977, here 135-137.

[27] Daigle, Craid. The Limites of Détente: The United States, the Soviet Union, and the Arab-Israeli Conflict, 1969-1973. New Haven: Yale University Press, 2012, pp. 22-23.

the Soviet economy and the world economy, and foster a degree of interdependence that adds an element of stability to the political equation."[28] Besides mutual respect and the desire for coexistence, the underlying principle of détente promoting global stability was that of non-interference in the internal affairs of fellow states. Therefore, in the spirit of détente, the United States, under the administration, would not diplomatically promote or enforce human rights behind iron curtain, because it infringed on the principle of non-interference. Kissinger explicitly stated that he held "the strong view that human rights are not appropriate in a foreign policy context."[29]

Détente served not only the interests of the United States, but also the Soviet Union. For the Soviets, détente decreased international tensions and the attainment of nuclear parity with the U.S. in the late 1960s afforded the Soviets the semblance of diplomatic security and self-confidence. Since the end of the Second World War, the Soviet Union repeatedly requested and suggested a European security conference to formally recognize the post-war boundaries and legitimize Soviet claim to Eastern Europe. Leaders of the United States and Western Europe were unenthusiastic about holding a Soviet-proposed security conference, wary of their dubious intentions. However, the relatively amicable international environment created by détente warmed up the Europeans to the idea of holding a security conference. A conference was perceived as increasingly inevitable, therefore the European states wanted to set the agenda and became more actively involved in pre-security conference negotiations. The Americans, on the other hand, did not want to disrupt détente by engaging in a conference that could heighten Cold War tensions, yet again.[30]

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[28] Gaddis, John Lewis. *Russia, the Soviet Union, and the United States, an Interpretive History, 2nd ed.* New York: McGraw-Hill Publishing Company, 1990, pp. 276.
[29] Keys, Barbara. "Congress, Kissinger, and the Origins of Human Rights Diplomacy." *Diplomatic History*, vol. 34, no. 5, 2010, pp. 823-851, here, 823.
[30] Thomas, Daniel C. The Helsinki Effect, pp. 34-38.

The Conference for Security and Cooperation in Europe

> The Soviets desperately wanted the CSCE, they got it and it laid the foundations for the end of their empire. We resisted it for years, went grudgingly, Ford paid a terrible price for going—perhaps reelection itself—only to discover years later that CSCE had yielded benefits beyond our wildest imagination. Go figure.
>
> -Robert Gates

During the 1970s, in the CSCE negotiations, the West was not a unified actor. In fact, there was a major divergence in desired outcomes from the conference between the burgeoning European Community (EC) and the North Atlantic Treaty Organization (NATO). The EC was undergoing a process of European integration aimed at greater political and economic cohesion. Once integrated, the CSCE provided the opportunity for the EC to have some influence and leverage over the future of détente, the security conference's agenda and the shape of the prospective international order. To the EC, the CSCE was a chance for them to have a viable and valuable role in the Cold War competition and an opportunity introduce itself to the international stage as a unified actor with a unique identity founded on democratic values and human rights. [31]

The EC's objective was to externalize democratic and human rights values[32] through the CSCE and effect change on the European security structure that was congruent with these values. Essentially, by demanding the inclusion of human rights values in CSCE's agenda, the EC, during the Helsinki Process, was the force that effectively shifted the international norm governing

[31] Mockli, Daniel. "The EC Nine, the CSCE, and the Changing Pattern of European Security." Origins of the European Security System: The Helsinki Process Revisited, 1965-75. eds. Andreas Wenger, et. al. London: Routledge, 2008, here, 146-148.

[32] This aspiration was explicitly stated in the Davignon Report, or the Luxembourg Report, adopted by the Foreign Ministers of the original European Community of six states on October 27, 1970.

interstate relations from a principle of non-interference to a reality where human rights violations were cause for other states to be concerned with and intervene when necessary.

While the EC liberal democratic views during the Helsinki Process, NATO was not in a position to echo these sentiments because two NATO members, Greece and Portugal were governed by repressive military dictatorships. Also, the United States, either alone or within NATO, did not push the human rights issue because Nixon was committed to the principle of non-interference and had signed a U.S.-Soviet Basic Principles Agreement with Leonid Brezhnev affirming this principle.[33] Therefore, neither NATO or the United States were advocates of internationalizing human rights norms, only the EC.

The Soviets protested the human dimension of the Final Act, arguing that human rights and national self-determination were not a matter of diplomacy or relevant to interstate relations. While the EC had to satisfy domestic opinion and display the Community's solidarity, it became apparent to the Soviets that the EC, and the West in general, were steadfast in their commitment to including human rights and human contacts on the CSCE agenda. The Soviets were eager, or desperate, to convene the conference with a document guaranteeing the status quo in Eastern Europe. They were confident that they could counteract any potential negative repercussions for signing commitments to human rights. They believed this, first, because the principle of non-intervention in the internal affairs of other states was place before the principle on human rights within the document. Second, they believed that the normative agenda of the CSCE would not be enforced, much like the signing of the UDHR did not result in sincere compliance.[34]

[33] Thomas, Daniel C. The Helsinki Effect, 48.
[34] Ibid., 59-61.

The Soviets protested the human dimension of the Final Act, but subsequently acquiesced because Brezhnev was adamant to bring the CSCE to a swift conclusion in order to claim the conference and the Final Act as a Soviet victory for his domestic approval. After the conference concluded, the Soviets flaunted the Final Act as a Soviet victory, at first, because the Soviets were actively framing the discourse immediately following the conference, the West, too, believed this narrative, arguing that they gained nothing and the Soviets got exactly what they wanted. In hindsight, this was an understandable assessment: the Soviets finally got the security conference they long desired and a document legitimizing the status quo in Eastern Europe, while the West believed the East would never upholds its commitments to human rights.

However, the Soviets and the West severely underestimated the potential impact the Final Act would have on domestic populations behind the iron curtain and on international norms in general. By Robert Gate's assessment,

> "In promoting the CSCE, and agreeing to the human rights provisions, no matter how qualified, the Soviets made a historic miscalculation…By signing the Helsinki Declaration, the Soviets and their East European minions gave legitimacy to efforts by their own citizens and the West to try to implement the document's principles concerning human rights and freedom of movement."[35]

The signing of the CSCE Final Act in 1975 ignited a human rights movement behind the iron curtain based on a network of dissidents, activists, non-governmental organizations, and Helsinki watch groups, in addition to opening a window of opportunity for the United States to flex its soft power resources and instrumentalize human rights norms as a mechanism to influence Soviet and Eastern European societies in order to undermine Communist control. In this soft power narrative,

[35] Gates, Robert M. *From the Shadows: The Ultimate Insider's Story of Five Presidents and How They Won the Cold War.* New York: Simon & Schuster, 1996, here, 88.

there are numerous important actors operationalizing soft power resources to influence domestic affairs within the Soviet Sphere: Henry M. Jackson, Jimmy Carter, the US Helsinki Commission, the NED, and Ronald Reagan.

From Kissingerian Principle of Non-Intervention to Interference for Human Rights

Even though Senator Henry M. Jackson was an outspoken opponent to President Gerald Ford's participation in the CSCE conference, along with Ronald Reagan, he engaged in human rights advocacy before the Final Act was even signed. Senator Jackson, the grandfather of neoconservatism, and his like-minded colleagues turned to human rights advocacy against Soviet repression to suppress the shame and American culpability for transgressions in Vietnam.[36] Senator Jackson opted to become an advocate for the Soviet Jewry both for political and personal reasons. By advocating for better treatment of the Soviet Jews, Jackson would win the support of American Jews to assist in fulfilling his presidential ambitions. Also, Jackson had a personal sense of regret, believing that the United States could have prevented the Holocaust and failed to do so.[37]

The culmination of Jackson's initiative was the 1974 legislation known as the Jackson-Vanik Amendment which corelated the title of Most Favored Nation to the elimination of barrier that inhibited emigration.[38] Jackson argued that 'freedom to emigrate' was the most essential freedom of all espoused in the UDHR, because wherever a government attempted to encroach upon an individual's inherent civil liberties, the right to liberty would be returned by emigrating

[36] Keys, Barbara. Reclaiming American Virtue, 103-104.
[37] Ibid., 117.
[38] Korey, William. *The Promises We Keep: Human Rights, the Helsinki Process, and American Foreign Policy.* New York: St. Martin's Press, 1993, here, 53.

to the "free countries of the West."[39] The passing of this legislation was an example of the U.S. exercising soft power to influence the behavior of Soviet government and society, which was effective. Shortly after it became apparent that the Soviets would not qualify to receive Most-Favored Nation status because they were inhibiting emigration, the Soviets repealed the ridiculously expensive 'diploma tax' that was intended to inhibit Jewish emigration.[40]

The U.S. congress, at the initiative of Representative Millicent Fenwick (R-NJ) and Senator Clifford Case (R-NJ), introduced and passed a bill in 1975 to create the U.S. Helsinki Commission in order to monitor compliance with Helsinki human rights obligations, give Congress greater influence over foreign policy, reverse the Ford-Kissinger propagated indifference to the human dimension of the Final Act, function as a mouth piece for Communist dissidents exposing violations, and influence other states to change their behavior as a result of negative international publicity. Proponents of the U.S. Helsinki Commission believed that if the United States did not take an active role monitoring observance of the values in the Final Act, then the Helsinki Process would have truly been a Soviet propaganda victory and of no use to American Cold War efforts. According to R. Spencer Oliver, Chief of Staff of the U.S. Helsinki Commission, argued that the U.S. Helsinki Commission, concentrated on human rights, would be decisive in securing an American victory on the Cold War ideological front and he urged the Commission to "hold the Soviet's feet to the fire."[41] With the inception of the U.S. Helsinki Commission, Congress effectively embedded human rights values within a government institution dedicated to upholding and promoting these values internationally.

[39] Keys, Barbara. Reclaiming American Virtue, 121.
[40] Korey, William. The Promises We Keep, 56-57.
[41] Snyder, Sarah B. *Human Rights Activism and the End of the Cold War*, 2011, pp. 48.

Later, in 1983, the U.S. Congress funded the creation of a 'quango,' or quasi-autonomous non-governmental organization, the National Endowment for Democracy (NED). The purpose of the NED was to promote democratization and transparently combat Communist propaganda internationally. Essentially, NED, a non-profit, would receive financial support from Congress, which would then be distributed via grants to private U.S. groups that would sponsor foreign organizations who where mobilizing to affect democratization within their country.[42] The NED was a mechanism for the U.S. to project soft power abroad through public diplomacy and it facilitated a fairly direct avenue for communication and contact between dissidents behind the iron curtain and the United States.[43]

The shift from a Kissingerian principle of non-intervention in the internal affairs of another state to a foreign policy concentrated on promotion and compliance with human rights norms occurred under the Carter administration. Inspired by the political and social development ending discrimination and segregation in the South, Jimmy Carter was acutely aware of the transformative power liberal values could have on a society and, in his conviction, he believed that these values were the most appropriate foundation upon which to exercise American soft power abroad.[44]

President Carter exercised his influence through direct contact with important Soviet dissidents and through a greater reliance on U.S. diplomacy to fulfil its global human rights policy objective. By engaging directly with Soviet dissidents, President Carter was symbolically siding with and legitimizing dissidents' cause, giving internal opposition negotiation leverage and influence. In a personal letter to Andrei Sakharov, Soviet physicist and dissident, Carter affirmed

[42] Richmond, Yale. "Doing Democracy at NED." *Practicing Public Diplomacy: A Cold War Odyssey*. New York: Berghahn Books, 2008, pp. 161-164.
[43] Yale Richmond, after serving thirty years in the Foreign Services
[44] Carter, Jimmy. *Keeping Faith: Memoirs of a President*. Fayetteville: University of Arkansas Press, 1995, 145-147.

his administration's staunch commitment to human rights promotion internationally, as well as stating that the U.S. intended to "seek the release of prisoners of conscience" within the Soviet Union.[45] Carter also received a former Soviet prisoner and vocal dissident, Vladimir N. Bukovsky, at the White House. While precedent setting, the meeting with Bukovsky symbolically demonstrated the sentiments expressed by President Carter about a "permanent" commitment to human rights universally, not just within the Soviet sphere. After thanking Carter for his invitation, Bukovsky added, "and I understand that in doing so, your administration shows its respect for the movement I represent and the ideas which we stand for."[46] This quotation signifies Bukovsky's recognition that having the United States' 'respect' is important and valuable for both the movement and its ideological objective. The symbolic significance of this meeting is that it signaled to the Soviet Union, and other non-democratic states, that the U.S. would, in fact, engage directly with other states' citizens in order to metamorphize their societies into spaces of individual freedoms and respect for human rights, circumventing tradition diplomatic norms. In other words, the era of non-intervention of internal affairs of other sovereign states was over.

The Carter objectives were made explicitly clear in the 1978 Presidential Directive-30. Thus forward, the primary focus of U.S. foreign policy was to operationalize the policy as a mechanism of influencing compliance with human rights values internationally. It states, "In promoting human rights, the United States shall use the full range of its diplomatic tools, including direct diplomatic contacts, public statements, symbolic acts, governmental organizations, and with international organizations."[47] All these stated initiatives are mechanisms of soft power projection.

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[45] Wren, Christopher S. "Sakharov Receives Carter Letter Affirming Commitment on Rights." *The New York Times*, 18 Feb. 1977. Accessed 8 May 2019.
[46] Gwertzman, Bernard. "Carter and Mondale See Bukovsky, a Soviet Dissident." *The New York Times*, 2 Mar. 1977. Accessed 8 May 2019.
[47] United States, Executive Office of the President Jimmy Carter. *Presidential Directive/NSC-30.* 17 Feb. 1978.

Reagan and the Weaponization of Human Rights

With the invasion of Afghanistan in 1979, it became blatantly obvious to the American leaders that the Soviets were not abiding by their Helsinki commitments and that détente had failed to curtail further Soviet expansionism. In response, taking a new hardline approach to the Soviets, President Reagan decisively and openly reignited Cold War tension, which had been previously mitigated by détente, with the declaration that the United States was embattled in moral conflict with a belligerent "evil empire".[48] Moreover, Reagan argues, that is was America's value system—its resounding commitment to peace and freedom—that entrusted the United States with the position of world leader. With the self-appointed status as steward of international democratization, Americans found the justification and incentive to "vigorously" pursue the spread of democratic systems.[49]

In President Reagan's assessment, Soviet adventurism and oppression was antithetical to the peaceful and democratic world he viewed himself as the protector and promoter of, at the United States President. According to Schultz, Reagan was "perfectly comfortable in taking a highly controversial and even unpopular stand when he felt he was right," adding that, "he was also willing to use a controversial position to bargain for other desired objectives."[50] Because compliance with human rights and democratic norms became a bargaining chip in bilateral U.S.-Soviet relations, the United States effectively weaponized an instrument of soft power projection into a coercive hard power tool to force Soviet acquiescence in accepting Western norms and values. This highlights the potential ambiguity between hard and soft power resources—intentions

[48] Schultz, George P. Turmoil and Triumph, 277.
[49] Reagan, Ronald. "Address Before a Joint Session of the Congress on the State of the Union." U.S. national Archives and Records Administration, 25 Jan. 1983. Accessed 9 May 2019.
[50] Schultz, George P. *Turmoil and Triumph*, 145.

matter. It is soft power if the influencer is trying cultivate attraction which results in the target's *voluntary* change in behavior; it is hard power if the recipient is *obligated* to change its behavior for *fear* of impending negative consequences.

This is where the complexity of human rights policy during the Reagan era truly manifests itself. While the previous administration assumed a relatively passive, although rhetorically strong, position on compliance with human rights norms, the Reagan administration aggressively propagated and enforced conformity to American democratic values and norms with such fervor that these values morphed into a tactical and political tool of coercing the Soviets into democratizing, thus blurring the distinction between a hard and soft power resources. NSDD-75 explicitly states, "the U.S. must convey clearly to Moscow that unacceptable behavior will incur costs that would outweigh any gains… the U.S. must make clear to the Soviets that genuine restraint in their behavior would create the possibility of an East-West relationship that might bring important benefits for the Soviet Union."[51]

This document implies that, in order for the United States to be willing to engage in fulfilling other aspects of the Final Act, like trade and scientific cooperation, the Soviet Union must first alter its behavior in accordance to American values and interests [read: democratize and abide by western human rights norms]. That is, rather than equitably implementing the entirety of the Final Act, the United States government fastidiously backed the very aspect of the Final Act that the Soviets so adamantly opposed, because the Americans recognized the bargaining leverage that imposed human rights values afforded them, both within the Helsinki Process context and the greater Cold War context.

[51] United States, Executive Office of the President Ronald Reagan. *National Security Decision Directive Number 75: U.S. Relations with the USSR*. 17 Jan. 1983.

Concerning direct engagements between U.S. and Soviet leadership, it was particularly difficult for President Reagan to develop any rapport because, as he said, "they keep dying on me!" In under three years, the Soviet Union welcomed and buried three elderly General Secretaries (Leonid Brezhnev, Yuri Andropov, and Konstantin Chernenko).[52] The frequent replacement of Soviet leaders inhibited the development of long-term cooperation, security, and trust between the Superpowers. According to Jack F. Matlock, Jr., the trajectory and fate of the Cold War and its peaceful resolution depended on the introduction of a new generation of Soviet leaders onto the political stage.[53]

Gorbachev Enters

> "The realities of today and the prospects for the foreseeable future are obvious: the Soviet Union and the United States are a natural part of the European International and political structure. Their involvement in its evolution is not only justified, but historically conditioned. No other approach is acceptable. In fact, it will even be counterproductive." –Gorbachev, Council of Europe, 1989[54]

The necessary generational shift occurred with the nomination and election of Mikhail Gorbachev to the position of General Secretary in 1985. Determined to revitalize, repair and ameliorate the Soviet socialist economy, political apparatus and society, Gorbachev was eager and willing to initiate considerable foreign and domestic policy reform. The 'New Thinking', which Gorbachev embodied, was not simply a reorganization of existing Soviet policy and tactics to resurrect the declining empire, but rather it was a comprehensive overhaul of the foundational

[52] Bennett, William J. *America: The Last Best Hope, Volume 2: From a World at War to the Triumph of Freedom, 1914-1989.* Nashville: Thomas Nelson, 2007, here, 505-507.
[53] Matlock, Jack F., Jr. *Reagan and Gorbachev: How the Cold War Ended.* New York: Random House, 2004, here, 104.
[54] Council of Europe. "Speech by Mikhail Gorbachev." *Parliamentary Assembly*, Strasbourg, 6 Jul 1989.

values and beliefs.[55] Unfortunately, these were the very beliefs and values that granted the Communist Party the monopoly on power and the Soviet Union the legitimacy to exist.[56] In order to preserve the Soviet Union, and its Superpower status, Gorbachev recognized that the economy's health depended greatly on curbing military spending and engaging more with Western institutions.[57] This meant that Gorbachev needed to assuage the arms race and open up Soviet society, which entailed the elimination of the vital shields protecting the Soviets from foreign and domestic threats.

Adamantly opposing and obstructing liberalizing initiatives, Gorbachev was perpetually confronted with internal resistance by Politburo conservatives and hardliners. The arrival of Gorbachev and the internal political discord presented the Reagan administration with a unique opportunity to weaken Soviet isolationism and reduce military tension by energetically encouraging Gorbachev to embrace liberalization; it was in the national interest of the United States to instigate Soviet democratic transition.[58] In the bargaining arena, particularly over fulfilment of Final Act obligations, the United States possessed the upper hand because, according to Zbigniew Brzezinski in 1986, the U.S. had already decisively defeated the Soviets on the ideological and economic fronts, in addition to holding a position of technological superiority. The Soviet social model was not attractive because it failed to provide living standards comparable to that of the U.S. and the Soviet military-industrial complex parasitically consumed the state's

[55] English, Robert. "The Sociology of New Thinking: Elites, Identity Change, and the End of the Cold War." Journal of Cold War Studies, vol. 7, num. 2, 2005, pp. 43-80, here, 43.
[56] Kotkin, Stephen. "The Drama of Reform." *Armageddon Averted: The Soviet Collapse 1970-2000.* Oxford: Oxford University Press, 2008, pp. 58-85.
[57] Westad, Odd Arne. *The Cold War: A World History.* New York: Basic Books, 2017, here, 536.
[58] McFaul, Michael. *From Cold War to Hot Peace: An American Ambassador in Putin's Russia.* Boston: Houghton Mifflin Harcourt, 2018, here, 94.

economic resources. The situation in which Gorbachev found himself, in trying to fix the dilapidated Soviet system, was in a position of weakness and desperation.

After a year as General Secretary, Gorbachev was disappointed, to say the least, that the commercial and social reforms were not producing economic growth or strengthening the communist state. In order to achieve major domestic internal reforms, he recognized the imminent need to steady and make strides to improve the U.S.-Soviet relations in order to garner the legitimacy needed to enact radical domestic reform. The meeting between Gorbachev and Reagan at Reykjavik was the first time a Soviet leader displayed genuine interest in making serious concessions to normalize relations with the United States.[59] While Reykjavik failed to produce an agreement on arms reduction, which both sides desired, for Gorbachev, the meeting's takeaway placed him in a precarious position—it became undeniable that in order to achieve an arms control agreement, he would first have to make significant internal reforms, however, the catch-22, the development of internal reforms was contingent on securing a bilateral security agreement.[60]

In the aftermath of Reykjavik, feeling "squeezed"[61] by U.S. policy, the Soviets began engaging in a second wave of initiatives that actually changed Soviet system considerably. The outcome of the first wave of reform—glasnost and perestroika—was minor, although they were, at the time, revolutionary reforms because they opened up a previously locked public space. In this second wave, which Gorbachev would refer to as Soviet "democratization," Gorbachev sought to create a socialist law-based state. One major constitutional change was the creation of the Congress

[59] Matlock, Jack F. Jr. *Reagan and Gorbachev*, pp. 236-250. According to Matlock, in hindsight, the Reykjavik's outcome was for the better, and it is now viewed as a major turning point, a psychological turning point, in bilateral relations. After a cool down period, and Gorbachev's initiative for internal reform, both sides were able to engage in discussions on a wide range of topics. pp. 50.
[60] Chernyaev, Anatoly. *My Six Years with Gorbachev*. University Park: Penn State University Press, 2000, here, pp. 87.
[61] Matlock, Jack F. Jr. *Reagan and Gorbachev*, pp. 260.

of People's Deputies, in 1988, in which a majority of the participants gained membership through a competitive election. Then, it was the Congress' job to select, from its own members, the individuals that would be part of the Supreme Soviet.[62] While the Congress was the chief legislative body, both the Congress and Supreme Soviet possessed and exercised the authority to create and pass laws. In addition, further reforms were made that enhanced the independence of the judiciary, established a committee that was tasked to assure constitutional compliance, and initiated competitive elections at the regional level. While the constitutional changes created new institutions with law-making powers, the assumption still held that the Communist Party was at the top of the hierarchy and was the ideological glue holding the Union together. [63]

Despite genuine constitutional reform, Gorbachev and other like-minded Soviet leaders believed that they only way they could get the West, especially the United States, to take the Soviet Union seriously and earn their trust was to sincerely engage in structural reform that institutionalized human rights. At last, Gorbachev engaged in wide sweeping, truly revolutionary reforms, that was, ultimately, the opening of Pandora's box for the fate of the Soviet Union.

Believing the USSR was a European state, Gorbachev envisioned the idea of a "common European home", which mean that that Soviet leadership needed to "make Europe and European politics our first priority." Furthermore, he believed that state security and world peace were only possible if "the USSR would embrace international society and integrate itself politically, economically, and culturally."[64] The first major gesture to demonstrate commitment to international norms and peaceful relations, thus demonstrating the Soviet's place in Europe, was

[62] Quigley, John. "The Soviet Union as a State under the Rule of Law: An Overview." *Cornell International Law Journal*, vol. 23, no. 2, 1990, pp. 205-225.
[63] Pomeranz, William E. *Law and the Russian State: Russia's Legal Evolution from Peter the Great to Vladimir Putin*. London: Bloomsbury Academic, 2019, here, 108-111.
[64] Morgan, Michael Cotey, *The Final Act*, pp. 238.

the signing of the Intermediate-Range Nuclear Forces Treaty (1987) between Gorbachev and Reagan. This treaty was a major concession on the part of the Soviets because they were required to eliminate more weapons than the U.S., voluntarily subjected themselves to major on-site inspections for verification. Even though intermediate missiles made up very small number in both Soviet and American nuclear arsenals, as Shevardnadze stated, "the agreement to dismantle them spoke to the world about the possibility of actually getting rid of the most lethal weapons of war. It translated the idea of nuclear disarmament from the realm of dreams to concrete realization."[65]

While the Soviets had recognized for a couple years the foreign military engagements were draining their weak economy, it was not until 1988 that Gorbachev began withdrawing troops from Afghanistan. This war was not only financially devastating, but it also tarnished the Soviet's international prestige and garnered distrust and disdain from its own citizens; the policy of glasnost amplified and gave prominence to anti-war dissidents. According to Major General Oleg Sarin and Colonel Lev Dvoretsky of the Soviet Army, "The Afghan War is but one more crack in the foundation of the old Soviet society,"[66] and withdrawing forces was the only way for Gorbachev to move the Soviet Union closer to Europe and European values.

International reform initiatives occurred coterminal with peaceful perestroika on the home front, beyond the constitutional changes mentioned above. With internal and external pressure for greater openness, in 1987, the Soviets established the Commission on Humanitarian Affairs and International cooperation that was tasked to domestically monitor Soviet progress in complying with Helsinki norms. By the end of the following year, with the avid support of the Commission's chairman, Fyodor Burlatsky, the vast majority of Soviet political prisoners had been released, with

[65] Shevardnadze, Eduard, *The Future Belongs to Freedom*, pp.91-92.
[66] Sarin, Oleg and Lev Dvoretsky. *The Afghan Syndrome: The Soviet Union's Vietnam.* Novato: Presidio Press, 1993, here, 149.

only a negligible number remaining incarcerated.[67] Additionally, for the first time, the Soviet government responded positively to petitions made by the U.S. Helsinki Commission. This resulted in the resolution of 137 emigration cases which permitted over 300 people to emigrate.[68] In 1988, the Soviet government created within the Ministry for Foreign Affairs an Administration for International Humanitarian Cooperation and Human Rights.[69] The purpose of this institution was to assure Soviet legislation was aligned with international norms and fulfilled Soviet Final Act obligations and assist in finding resolutions for family reunification and emigration issues.[70] Then, in 1990, with Gorbachev's full support, the most inconceivable and radical reform occurred—the Congress abolished Article Six of the Soviet constitution which guaranteed the Communist Party the monopoly of power,[71] thus opening up the political sphere for multi-party, not just multi-candidate, competition.

The second wave of reforms, or democratization, initiated by Gorbachev was further motivated by two related factors: the Vienna conference was being held—the final Helsinki Final Act follow-up meeting; and, the Soviets actively sought to make happen their proposal to hold a conference on human rights in Moscow. The proposal, made at the opening of the Vienna conference, stunned attendees because all previous Soviet participants brazenly deflected any question on human rights. Some criticized that any such conference, held in Moscow, would only serve Soviet propaganda without making any honest improvement to their poor human rights record; others viewed is as an opportunity "to give the Soviet people a forum for discussing their government's past, present, and future human rights practices. It would allow an infusion of

[67] Thomas, Daniel C., *The Helsinki Effect*, pp. 242.
[68] Snyder, Sarah B., *Human Rights Activism*, pp. 191.
[69] Shevardnadze, Eduard, *The Future Belongs to Freedom*, pp.44.
[70] Ginsburgs, George. *From Soviet to Russian International Law: Studies in Continuity and Change*. Hague: Martinus Nijhoff Publishers, 1998, pp. 33-34.
[71] Pomeranz, William, *Law and the Russian State*, pp.112.

Western ideas and values."[72] The question of whether or not to hold a conference in Moscow became central issue negotiated at the Vienna meeting. The West's agreement to and participation in a Moscow conference was contingent on an extensive list of conditions regarding Soviet human rights improvements. Soviet leadership worked arduously to placate the West—psychiatry abuse was stopped; laws inhibiting freedom of speech and religion were abolished; and radio jamming ceased.[73]

While Gorbachev and his associates went above and beyond the minimum conditions for the West to agree to holding a conference, the Vienna meeting closed in 1989 without any acceptance of the Soviet proposal. Gorbachev's commitment to human rights norms was, yet again, demonstrated by Soviet restraint during the 1989 revolutions in Eastern Europe, effectively putting to rest the Brezhnev Doctrine. Only after the failed coup in 1991, did Gorbachev get to host a Conference on the Human Dimension in Moscow. The vast majority of the issues on the agenda for discussion had already been mended, so the conference focused on Helsinki compliance given the rise in nationalism and ethnic tension.[74] Again, the Soviets finally got what they wanted—a conference in Moscow. But the cost was rapid liberalization and steadfast compliance with Western values and norms, which contributed to the complex processes that led to the dissolution of the Soviet Union because all mechanisms of holding the Union together had been dismantled.

Council of Europe—How Helsinki Lives on in Russia

[72] Snyder, Sarah B., *Human Rights Activism*, pp. 201-202.
[73] Ibid., 210-215.
[74] Ibid., 240-243.

> The scandalized politicization of human rights, humanitarian and other issues affected primarily the Parliamentary Assembly… The protection of human rights is not longer perceived as a supreme value and basis of this organization, but only as a populist tool to combat geopolitical rivals. This is what some decisions of the European Court of Human Rights exemplify. –Ivan Soltanovsky[75]

The prospects for complete liberalization and democratization of the Russian Federation were stifled from the emergent state's inception. The method by which Boris Yeltsin—the final president of the Russian Republic of the USSR and the first president of the Russian Federation—contributed to the dissolution of the Soviet Union was neither legally legitimate or backed by popular support. According to Stephen F. Cohen, the democratization process initiated by Gorbachev, and obstructed by Yeltsin, was "Russia's missed democratic opportunity."[76] A major influential factor in the de-democratization process in Russia, after 1991, was the rapid privatization campaign whereby elites consolidated former Soviet assets in order to enrich themselves. Marshall I. Goldman calls the method by which the state transitioned from collective property to private property as "piratization", instead of privatization.[77] This campaign resulted in devastating economic and political repercussions which only further shattered Russia's prospects for genuine democratization. With the economy in shambles, Russia's parliament decided it was time to oust Yeltsin. However, before they were able to act, Yeltsin used his power of presidential decree to dissolve the state legislature with the intention of creating a new, two-chamber parliament. When Congress ignored the presidential decree, Yeltsin responded by attacking the building which housed the parliament with tank. In Yeltsin's bid to retain power, one hundred and

[75] Soltanovsky, Ivan. "Interview with Russia's Permanent Representative to the Council of Europe Ivan Soltanovsky with Rossiyskaya Gazeta." *Council of Europe.* 19 Jan. 2018.
[76] Cohen, Stephen F. *Soviet Fates and Lost Alternatives: From Stalinism to the New Cold War*. New York: Columbia University Press, 2011, here, 149.
[77] Goldman, Marshall I. The Piratization of Russia: Russian Reform Goes Awry. London: Routledge, 2003.

fifty-eight people died.[78] The constitution instituted the same year, 1993, weakened legislative powers and elevated Presidential powers. With the help of oligarchs, the 1996 election was rigged in favor of Yeltsin.[79]

Given the chaotic and corrupted political and economic environments during the 1990s, it is not surprising that human rights majorly suffered.[80] Although, despite the cascading episodes of undemocratic behavior, the Russian Federation was accepted to be a member of the Council of Europe (CoE) in 1996, despite its failure to fulfill entirely the human rights requirements. Then, in 1998, the European Convention on Human Rights (here, Convention) was ratified, thus binding the Russian Federation to the jurisdiction of the European Court of Human Rights (here, the Court). Russia's membership in the CoE was important, at the time, for numerous reasons; and it is even, arguably, more crucial today. Membership in the CoE meant that Russia has been integrated into a pan-European institution that promoted European values and culture. Furthermore, by adopting the Convention, the government accepted its obligations to respect human rights norms, thus effectively creating a post-Soviet continuation of the norms established by the Helsinki Final Act. Finally, as a CoE member, Russia is bound by the jurisdiction of the European Court of Human Rights.[81]

While the Russian state benefits from CoE membership by gaining the prestige and influence (before the 2014 repeal of voting rights, to be discussed below), Russian citizens have also reaped considerable benefits. After the ratification of the Convention, reports of human rights

[78] Mcfaul, Michael, *From Cold War to Hot Peace*, pp. 31-33.
[79] Cohen, Stephen F., *Soviet Fates and Lost Alternatives*, pp. 153.
[80] Weiler, Jonathan D. "Human Rights in Post-Soviet Russia." *Demokratizatsiya*, vol. 10, no. 2, 2002, pp. 257-276.
[81] Burkov, Anton. "How to improve the results of a reluctant player. The Case of Russia and the European Convention on Human Rights." *The European Court of Human Rights and its Discontents Turing Criticism into Strength*. Cheltenham: Edward Elgar Publishing, 2013, pp. 147-157.

abuse allegations from the Russian Federation overwhelmed the Court. For the Russians, the Court presented an opportunity for them to circumvent the domestic legal system in pursuit of justice for state transgressions against Convention's principles.[82] According to a Levada Center survey in 2019, more than 58% of Russian citizens regard Russia's participation in the CoE and the Court positively.[83]

The Court, Navalny and Nemtsov

To activists, having access to petition the Court is their "ultimate hope for justice." According to Alexei Navalny, a prominent Russian lawyer and activist, to those that fight for human rights in Russia, there is immense value in simply knowing that, while justice may not be served in a domestic courtroom, there is an international institution out there, located in France, that the Russian Federation is a part of and its membership in the CoE obligates the state to comply with European human rights norms, in addition to subjecting the state the jurisdiction of the Court.[84]

Alexei Navalny, while being likened to Sakharov[85], is a controversial opposition leader. Distraught that a law degree and a specialist diploma in finance did not make him extremely rich, as explained by Ben Judah, Navalny realized that the path to wealth in Russia was linked to government participation and networks. With this realization and disinterest in menial office work, Navalny jumped into politics by joining the party Yabloko—a democratic party that opposed

[82] Pomeranz, *William, Law and the Russian State*, pp. 147.
[83] Волков, Денис и Степан Гончаров. "Участие России в работе совета европы и европейского суда по правам человека." *Левада-Центр,* 8 Апр 2019. Accessed. 10 May 2019.
[84] "Russia may leave Council of Europe and European Court of Human Rights." *The Japan Times*, 15 Mar. 2019. Accessed. 10 May 2019.
[85] Davidoff, Victor. "Navalny, the New Sakharov." The Moscow Times, 21 Jul 2013. Accessed 26 May 2019.

Yeltsin's version of democracy and resists, to this day, Putin's authoritarianism. The political environment of the mid-2000s shaped Navalny's activities. Terrorism and the fear of attacks ignited Russian nationalist sentiments. Harnessing fear and nationalism, Navalny and his friend, Zakhar Prilepin, started a democratic-nationalists movement called Narod. Featured in a video produced by Narod, Navalny likens Caucasians to cockroaches, demonstrating that a flyswatter works best on the bugs, but a pistol is the appropriate tool to kill an insurgent.[86] [87] This endorsement of ethnically motivated violence is not what you would expect from someone who is likened to Andrei Sakharov, a well-respected opposition leader and human rights activist. However, since then Navalny has done a lot of work exposing corruption—which is what he is most well-known for.

After expulsion from Yablokov in 2007, Navalny gave up on trying to start an opposition movement based on Russian patriotism and democratization, then reinvented his public image and persona as the self-appointed, anti-corruption tsar blogger. Since patriotism and democratic values failed to elevate Navalny's status as an opposition leader, he believed the only way to mobilize Russian society was to expose government theft and corruption; so, he took his activism to the internet and the blogging-sphere[88] While Navalny's website was developing and gaining popularity, Boris Nemtsov was the preeminent opposition leader. Nemtsov was the protégé and potential presidential successor of Yeltsin.[89] He, along with opposition partner Vladimir Milov, former deputy oil minister, published multiple reports criticizing: government corruption; the

[86] Judah, Ben. *Fragile Empire: How Russia Fell In and Out of Love with Vladimir Putin*. New Haven: Yale University Press, 2013, pp. 205.
[87] This video can be viewed through Alexey Navalny's official Youtube channel. For more, "НАРОД за легализацию оружия." *YouTube*, uploaded by Alexey Navalny, 19 Sept. 2007. Accessed 31 May 2019.
[88] Ibid., 217.
[89] Gel'man, Vladimir. *Authoritarian Russia: Analyzing Post-Soviet Regime Changes.* Pittsburg: University of Pittsburgh Press, 2015, pp. 62.

demographic crisis; economic dependence on oil; dilapidated infrastructure; terrorism and failure to restrain the North Caucuses; inequality; pension reforms; the pipeline project; and hosting the Winter Olympics in Sochi.[90] Nemtsov was one of the main leaders in the major protests during Putin's campaign for a third term in office. He was even arrested and sentenced to serve jail time for participating in a state-sanctioned protest against restrictions on the freedom of assembly.[91] After the annexation of Crimea, Nemtsov urged western governments to impose sanctions on Russia for violating Ukrainian sovereignty; this was viewed by the Russian government as equivalent to treason.[92]

By exposing corruption on his website, in addition to filing lawsuits against fraudulent companies in which he was a minority shareholder, Navalny superseded Nemtsov as the main oppositional figure. While his website and lawsuit strategy made him famous in Russia, Navalny gained political influence through friendship with oligarchs and members of the government and became an adept minority shareholder activist through the mentorship of Bill Browder.[93] Since gaining fame, Navalny has declared himself a presidential candidate, has participated in various demonstrations and has been arrested numerous times. It is because of these arrests that Navalny is relevant to this discussion on human rights and the Court.

Navalny has twice appealed to the European Court of Human Rights to assess the domestic court case he was a part of and whether the state's treatment of him was in violation of the Convention. In the first case, Navalny and his brother were charged with embezzlement from a

[90] Nemtsov, Boris and Vladimir Milov. "An Independent Expert Report: Putin: What 10 Years of Putin have Brought." Trans. Dave Essel. *Putin-itogi*. Accessed 25 May 2019.
[91] Schwirtz, Michael. "Arrests in Russia Signal Divisions Over Dissent." The New York Times, 3 Jan. 2011. Accessed 28 May 2019.
[92] Knight, Amy. "Russia: Another Dead Democrat." *The New York Review of Books.* 2 Mar. 2015. Accessed 28 May 2019.
[93] Judah, Ben. *Fragile Empire*, pp. 219.

Russian firm. The Court ruled that the brothers' rights were violated by the Russian judicial system because they were denied a fair trial and their business activities did not constitute fraud. In the second case, the Court determined that the restrictions placed on Navalny during the couple months he was on house arrest were also deemed in violation of his rights. So, the Court ruled twice in Navalny's favor and the Court ordered Russia to pay Navalny compensation for damages and case-related expenses. Navalny and supporters argued that the government's behavior was politically motivated, and the Court echoed similar sentiments by asserting that Navalny was treated poorly in order to hinder political activity.[94]

In 2014, the year before his assassination, Nemtsov claimed that the Russian government had violated his rights, as stated in the Convention, to freedom of expression and peaceful assembly by arresting and detaining him. The Russian government acknowledged that Nemtsov's rights had been violated, but justified state actions arguing that the state simply sought to maintain public order and its response was proportionate to Nemtsov's misdeed. The Court ruled in favor of Nemtsov, declaring that the state's reasons for detention were insufficient, the state had violated the Convention it its treatment of Navalny, and ordered the Russian government to pay retribution to Nemtsov for the violation of his rights.[95]

The murder of Nemtsov is still a matter the Parliamentary Assembly of the Council of Europe is still contending with. On May 28, 2019, a draft resolution was published by the Assembly questioning the integrity, thoroughness, and accuracy of the investigation of Nemtsov's murder and the prosecution of those found responsible for it. The document notes that, while the

[94] "European Court: Russia Violated Navalny's Rights with House Arrest." *RFE/RL*. 9 Apr. 2019. Accessed 8 May 2019.
[95] European Court of Human Rights." Case of Nemtsov v. Russia: Judgement." *Council of Europe*, Strasbourg, 13 Jul 2014.

role of the Assembly is not to investigate the murder and find the culprit, it does strongly urge Russia to reopen and continue investigating the case. It also encourages all Council of Europe member states to seize every opportunity to remind Russia's government that justice must be served for Nemtsov's murder. It is also noted that Russian authorities refused to participate or contribute to the creation of this draft resolution.[96] Other prominent scholars also question the quality of Russia's investigation to the murder of Nemtsov. The investigation conducted by John B. Dunlop, a distinguished historian at the Hoover Institute, indicates that this murder may actually be part of a Kremlin power struggle.[97]

State Sovereignty and Human Rights Compliance

The Navalny case, however, highlights one major issue regarding the power relation between the Court and the Russian state. Most of the Court rulings order the government to pay a fine for violating the Convention, which the government generally complies with, but when the court requires legal changes the state seldom responds or enacts these changes.[98] This begs the question: what authority does the Council of Europe and the European Court of Human Rights actually have over member states and what benefit is derived from being a member?

This question is extremely pertinent and relevant, considering the fact that the Russian Federation stopped paying its dues to the Council of Europe in 2017, three years after its voting rights were revoked, and has recently discussed the possibility of withdrawing from the CoE. After the annexation of Crimea by Russia in 2014, the CoE responded in protest to the state's actions by

[96] Parliamentary Assembly. "Committee on Legal Affairs and Human Rights: Shedding light on the murder of Boris Nemtsov." *Council of Europe*. Strasbourg, 28 May 2019.
[97] Knight, Amy. "The Crime of the Century." *The New York Review of Books*, 21 Mar. 2019. Accessed 28 May 2019.
[98] Pomeranz, William, *Law and the Russian State*, pp. 147.

revoking Russia's right to vote in the Parliamentary Assembly. Taking away voting rights was meant to send a "clear warning to Putin and his regime."[99] However, the Assembly's response and threat did not force Russia to relinquish Crimea or incentivize a change in behavior. This, actually, marks the beginning of increasing tension between the CoE and Russia.

In 2017, Russia ceased paying its dues to the CoE in reaction to the stripping of its voting rights. Sergei Lavrov, Russia's Foreign Minister explicitly stated that payments would resume once voting rights had been returned.[100] Over the next two years, there had been significant debate within Russia and the CoE regarding Russia's status in the Council. While Russian representatives were permitted to observe Assembly meetings, they were barred from participation. This has prompted the Russian Federation to consider pulling out voluntarily from the CoE, rather than being expelled for failure to pay dues —the 'Ruxit', as dubbed by Secretary General Thorbjorn Jagland of the Assembly.[101] Even if Russia were to remain in the CoE, Lavrov called into question the legitimacy of the Court in presiding over cases involving the Russian state because, since the stripping of rights, over half of the total judges were elected without Russia's participation. Therefore, to the executive and judicial system, the Court's "legitimacy for Russia is rather dubious."[102] This perception could very well impact the influence the Assembly and Court have over urging Russia to reopen and continue investigating the Nemtsov case.

The Russia question has caused immense disruption within the Assembly, especially over the last few months. Russia has repeatedly stated that its continued membership in the CoE is

[99] RFE/RL "PACE Deprives Russia of Voting Rights." *RFE/RL*, 10 Apr 2014. Accessed. 8 May 2019.
[100] Solovyov, Dmitry. "Russia suspends payment to Council of Europe over Crimea row." *Reuters*, 30 Jun. 2017. Accessed. 20 May 2019.
[101] "Secretary General Jagland: Council of Europe ordinary budget should come from member states, not the EU." *Council of Europe*, Strasbourg, 9 Apr. 2018. Accessed 11 May 2019.
[102] Lavrov, Sergei. "Foreign Minister Sergey Lavrov's interview with Euronews." *Council of Europe*, 16 Oct. 2018.

contingent on the reinstatement of voting rights. However, while completing this paper, a major change occurred. On May 17, 2019—members of the Assembly voted in favor of reinstating Russia's voting rights.

The future of Russia within the organization is, still, uncertain. Giving back voting rights may not have eased contention in the CoE because many believe that, by returning voting rights, the Assembly is implicitly legitimizing Russia's annexation of Crimea and may set a concerning precedent by encouraging Moscow to make more ambitious demands. For example, Ukraine boycotted this meeting and threatened that it would no longer cooperate as willingly with the CoE due to a loss of confidence in this institution.[103] Also, the reinstatement of voting rights does not guarantee Russia will comply with Court rulings or refrain from using threats as leverage over the Assembly. This concern was confirmed when Lavrov stated, "I am not saying we should always use methods of blackmail. But if we hadn't done this, then perhaps, our partners would not have realized that the current situation around PACE's illegitimate decision is unacceptable."[104] There is the potential for Russia to leverage further blackmail, or reject decisions by the Court, in the future to defy what it views as Russophobia in the Assembly and Court which it, also, believes has politicized human rights in order to push a biased, anti-Russia agenda.[105]

Nevertheless, the best decision the other members could have made was reinstating voting rights to keep Russia in the CoE. First, access to the Court provides a vital life-line for Russian citizens to receive restitution for the state infringing on their rights. Even if the Court decisions do

[103] "Russia to stay in PACE, European ministers say despite anger from Ukraine." *RT,* 17 May 2019. Accessed 17 May 2019.
[104] "Council of Europe realized current status of Russia unacceptable, says Lavrov." *TASS*, 17 May 2019. Accessed 17 May 2019.
[105] Soltanovsky, Ivan. "Interview with Russia's Permanent Representative to the Council of Europe Ivan Soltanovsky with Rossiyskaya Gazeta." *Council of Europe.* 19 Jan. 2018.

not result in change to Russia's legal system, at least Russia has a good record of providing financial compensation to its victims and, by taking the case to an international court, this is an opportunity for the international community to record and monitor violations of human rights. Second, membership in the CoE keeps Russia involved in and committed to one of only two pan-European institutions, the other being the European Union. This prevents Russian isolationism. The CoE is the only institution keeping Russia tied to Europe that legally binds the state to respect human rights and has the jurisdiction to demand accountability for transgressions. If Russia were to leave or be expelled from the CoE, there is a greater possibility of the resurrection of east versus west blocs, exacerbating the already polarizing trend occurring in Europe. Finally, the two pan-European institutions are in crisis: the EU with Brexit and the CoE the future possibility, albeit less so now, of a Ruxit. This is indicative of a crisis larger than just Europe, the stability and continuation of the liberal world order is being threatened.

Dugin, Eurasianism, and Anti-Liberalism in Russia

> Liberalism is an absolute evil; not only in its factual embodiment, but also in its fundamental theoretical presuppositions… 'Freedom from' is the most disgusting formula of slavery, inasmuch as it tempts man to an insurrection against God, against traditional values, against the moral and spiritual foundations of his people and culture… Only a global crusade against the US, the West, globalization and their political-ideological expression, liberalism, is capable of becoming an adequate response. –Alexander Dugin[106]

A brief discussion now on the Eurasianist movement and anti-liberal sentiments in Russia is imperative to understanding the gravity of maintaining Russia's integration in the CoE, a liberal European institution with a convention obligating compliance with liberal values and human

[106] Dugin, Alexander. *The Fourth Political Theory.* London: Arktos, 2012, pp.155.

rights. In Russia and in European right-wing political thought, Alexander Dugin is an influential thinker and prolific writer propagating an anti-Liberal and anti-America position. He is also a member of the Izborsk Club, the "intellectual hub of the new Russian nationalism", along with Alexander Prokhanov. The club functions as a think-tank, publishing articles that promote Eurasianism while condemning liberalism and western values.[107]

Co-founder of the National Bolshevik party after the dissolution of the Soviet Union, Dugin was a supporter of fascist ideals, contending that democracy was immoral, America was evil, and Russia needed a strong leader.[108] After leaving the party in 1998, Dugin courted Russian leadership by promoting himself as a "one-man think tank" in his ambition to become "counsel to the prince." Marlene Laruelle describes him as a political opportunist tailoring his strategy to gain influence over public opinion to the most accessible and salient issue of the day. Therefore, Dugin has found himself a niche by providing Russia a unique ideological alternative to Western liberalism.[109]

As a critical ideologue in modern-day Russia, it is important to understand the ideology Dugin espouses because he has advised President Putin and others in Russia's leadership on matters of geopolitics and his anti-Western and traditionalist values have yielded him an international following. Dugin asserts that the 20th century was a long war between competing ideologies which, ultimately, resulted in the annihilation of ideology all together: Fascism died in its youth with the conclusion of the Second World War; Communism "died of decrepit old age";

[107] Snyder, Timothy. *The Road to Unfreedom: Russia, Europe, America.* New York: Duggan Books, 2018, pp. 88-92.
[108] Ibid., 89.
[109] Laruelle, Marlene. Russian Eurasianism: An Ideology of Empire. Washington, D.C.: Woodrow Wilson Center Press, 2012, pp. 109-114.

and liberalism, like a phoenix, was reborn into something new and different in the absence of any competing ideologies.[110]

In his book, Dugin argues that modernity, and the propagation of the above ideologies, eradicated traditional ideals and values. However, absent a dominant ideology in Russia, there is space and opportunity to establish a new ideology, the 'fourth political theory', one that will reinstate Russia's great power status and pose a direct challenge to liberalism. This is based on Eurasianism drawing from premodern traditionalism. Dugin maintains that, while resurrecting traditional values during the 20th century seemed "foolish and doomed for failure," traditionalism will be able to thrive in the modern society because all of its heroes are " 'freaks' and 'monsters', 'transvestites', and 'degenerates'"[111]—the ludicrous is the norm.

In Dugin's assessment, Russia's salvation and future depend on following its own path—based on traditional values and thoughts—by developing the Fourth Political Theory. His theory advocates the return of empires and multi-polarity, rights of nations and the absolute rejection of American hegemony, liberal-democratic universalism, individualism, "human rights", and globalization.[112] Dugin's book and his theory are both a call to action for the Russian people and fellow anti-Atlanticists. He writes, "Unlike other political theories, the Fourth Political Theory does not want to lie, soothe, or seduce. It summons us to live dangerously, to think riskily, to liberate and to release all those things that cannot be driven back inside."[113] The target of Dugin's animosity is not just simply the West in general, but the United States in particular. Dugin avows that "the American Empire should be destroyed"[114] because America is liberalism's henchman

[110] Dugin, Alexander. *Fourth Political Theory,* 19.
[111] Ibid., 26.
[112] Dugin, Alexander. *The Rise of the Fourth Political Theory*. London: Arktos, 2017, pp. 85.
[113] Dugin, Alexander. *The Fourth Political Theory*, pp. 54.
[114] Ibid., 103.

imposing its culture and values on other sovereign nations with the threat of violence if the other does not submit.

With this concerning ideology penetrating Russian society, it is imperative that Russia remains in the CoE. Membership means that Russia is an integral part of a liberal institution that promotes liberal values, especially human rights. It also means that, through the Court, the state violations of human rights are subject to international scrutiny and demands for accountability—similar to the Helsinki process and that was relatively successful in promoting liberal values. Finally, membership in the CoE incentivizes Russia to moderate its behavior and cooperate so that it can maintain some input and influence over European affairs, which is important to the state.

Soft Power, the U.S. and the Liberal World Order

While some may argue that the liberal world order was inevitable, in the Fukuyamian sense, it actually is an human-constructed artificial system that was specifically established to prevent the international community from 'returning to the jungle' and to restrict state behaviors that caused two world wars in the twentieth century.[115] The liberal system is anomalous in the course of human history, even though we usually take it for granted as normal and inevitable. By creating the liberal community and security structure, states became compassionate toward their citizens—signing documents like the Universal Declaration of Human Rights, the Helsinki Final Act, and the European Convention on Human Rights—obligating themselves, the states, to respect, what they deemed, fundamental rights.

[115] Kagan, Robert. *The Jungle Grows Back: America and Our Imperiled World.* New York: Alfred A. Knopf, 2018.

However, liberal institutions and the liberal western world currently face numerous threats as multiple states that comprise this sphere have taken an illiberal turn. In Hungary, the Prime Minister Victor Orban has asserted that he wishes to create an illiberal democracy, claiming that liberal democracies are no longer globally competitive; the most prestigious university, Central European University was expelled from the country; and, the European Parliament has condemned Orban's government as a "systemic threat to the rule of law".[116] In the United Kingdom, Brexit demonstrates at there exists a lack of confidence in and distrust for the European Union, a liberal institution, by the British population, which may threaten this institution's legitimacy.[117] In Poland, the Law and Justice Party, populist and Eurosceptic, has been gradually seizing control over the country's judicial system. Some reforms, like the Supreme Court Law, which has since been repealed, have ignited contention between Poland and the European Union.[118] In Germany, Alternative for Germany (AfD), a far-right party, is discussing the possibility of a "Dexit" if the EU does not make certain changes, one demand is for the abolition of the European Parliament. AfD has also proposed dissolving the EU and creating in its place a new European economic issue.[119] In France, the rule of law is threatened as the Yellow Vest Movement holds demonstrations demanding government reform to enhance social welfare.[120] In the United States,

[116] Beaucamp, Zack. "It happened there: how democracy died in Hungary." *Vox*, 13 Sept, 2018. Accessed 28 May 2019.
[117] Serhan, Yasmeen. "Britain's Distrust of Europe Helped Cause Brexit. Now It Could Stop It." *The Atlantic*, 19 Mar 2019. Accessed 28 May 2019.
[118] Davies, Christian. "Hostile Takeover: How Law and Justice Captured Poland's Courts." *Freedom House*, May 2018, Accessed 28 May 2019.
[119] Anderson, Emma. "Germany's far-right AfD to campaign on possible EU exit."
[120] Goodmna, Peter S. "Inequality Fuels Rage of 'Yellow Vests' in Equality-Obsessed France." The New York Times, 15 Apr. 2019. Accessed 28 May 2019.

under the Trump administration, liberal institutions and the liberal western world faces threats as President Trump discusses pulling out of NATO,[121] defunding diplomacy, and foreign aid.[122]

The collapse of liberal institutions and the liberal world order would have devastating and, potentially, disastrous repercussions. Therefore, as defender and steward of the liberal world order, despite the threats emanating from the current administration, it is vital that the United States recognizes the potential threat the weakening of the Council of Europe poses, even though it is not a member, and acts accordingly to preserve the institution and the liberal system. As Joseph Nye argued, "power has never flowed solely from the barrel of a gun,"[123] therefore it is absolutely imperative that the U.S. and other western democracies enhance and mechanize their soft power resources to maintain the integrity of the liberal world order and its institutions. Keeping Russia in the CoE is vital. If Russia leaves, it threatens the legitimacy, value, and prospects for a fundamental liberal institution promoting cooperation and human rights. The United States must exert what soft power influence it has over the Russian people to educate them about the benefits of CoE membership, highlighting access to the Court, and boost the attractiveness of being involved in a pan-European institution that obligates the Russian government to observe and comply with the human rights norms of the Convention. Next, the United States must make sure that its European partners also recognize the precarious state of the liberal world order and the important role the CoE plays in maintaining this order. The United states must encourage the strengthening, rather than weakening, of this institution, arguing that cooperation is the only

[121] Barnes, Julian E. and Helen Cooper. "Trump Discussed Pulling U.S. From NATO, Aides Say Amid New Concerns Over Russia." *The New York Times*, 14 Jan. 2019. Accessed 28 May 2019.
[122] Wroughton, Lesly and Patricia Zengerle. "U.S. Lawmakers Blast Trump's Plan for Diplomatic, Foreign Aid Cuts." *Reuters*, 27 Mar. 2019. Accessed 28 May 2019.
[123] Nye, Joseph S. "The Benefits of Soft Power." Working Knowledge—Harvard Business School. 2 Aug 2004. Accessed 25 April 2019.

guarantor of security. Exerting soft power is another way that the United States can influence the behavior of the European states and their attitude toward the CoE.

Through public diplomacy, the United States can encourage the populations of Europe and Russia to see the attractiveness and value of the CoE and the values it embodies. Through increased student exchanges, the U.S. can let Russian students experience the benefits and culture of life in a liberal democracy. The U.S. must keep open diplomatic channels of communication and fund diplomacy because it prevents Russian isolationism and allows American diplomats to still disseminate Western values and ideas even when Russia is taking measures to shield its society from foreign influences. Finally, American leaders must vocally support Russia's participation in the CoE, if only to keep the spot light on Russia's human rights infringements, with the same amount of energy and dedication displayed during the Helsinki process.

Conclusion

The promotion of human rights values through the Helsinki process, backed by a document with a moral impetus to comply—the Final Act— protected, developed, and expanded the ambition to establish a liberal world order during the Cold War. With the Cold War over and the memory of Helsinki fading, the CoE is a vital institution continuing Helsinki's legacy, protecting human rights, promoting European unity and cooperation, and securing the liberal world order. It is in the national interest of the United States to operationalize its soft power resources in order to influence other states to recognize the critical security threat a weakened CoE poses, the threat to cooperation and stability a Ruxit would cause, and the dire consequences a failed liberal order would instigate. Without U.S. initiative and skillful employment of soft power resources to

maintain the integrity of the liberal world order, this could be America's greatest blunder of the twenty-first century causing a radical shift in the international order—one in which the United States would lose significant influence over. As Kagan so aptly states, "The liberal order is as precarious as it is precious. It is a garden that needs constant tending lest the jungle grow back and engulf us all." [124]

[124] Kagan, Robert. *The Jungle Grows Back*, pp.163.

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