



## **FOREWORD**

The Goldsmiths Review of Law, Politics and Social Sciences aims to accessibly platform essays that highlight the spirit of Goldsmiths' long political tradition. Academia should always be pushing boundaries: relentlessly curious and thorough, but must never be lofty and unattainable. With this issue we want to celebrate students engaging with that core ideal, pushing forward knowledge and discussion in the unique, creative ways that Goldsmiths inspires.

The Goldsmiths Review team would like to thank our contributors. We have been so impressed by the perspective and standard you have brought to academic writing on such a wide range of topics and we look forward to the future of this review.

We would also like to thank the Law society for all the support and encouragement they have given us.

All the best from Nina, Nuha, Evie and Sophia

And Law Society President, Daniel



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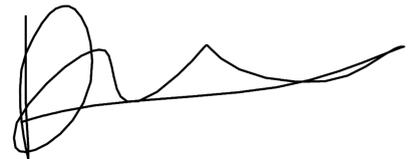
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### **IS IT ENOUGH IN A DEMOCRACY, SUCH AS THE UK, TO IMPROVE THE SUBSTANTIVE REPRESENTATION OF WOMEN AND ETHNIC MINORITIES?**

# Bridging the Gap: The CJEU's Response to the Absence of Horizontal Direct Effect

Eleni Alexia Timiliotis

## Abstract

This article explores how the Court of Justice of the European Union (CJEU) compensates for the absence of horizontal direct effect on directives through a comprehensive system of legal alternatives. Although individuals may invoke vertical direct effect against their Member State for not complying with directives, they are not able to do so against private parties. To address this limitation, the CJEU developed a comprehensive legal framework that ensures the objectives of the European Union (EU) may still be achieved. The article analyses four principal doctrines with which the EU achieves a substitute for horizontal direct effect. Despite each legal remedy facing limitations on its own, their combined operation constitutes a sufficient legal framework that upholds EU directives.

## 1. Introduction

To ensure that the European Union (EU) achieves its set objectives, directives are implemented by Member States. These are objectives set with a deadline for each member state to implement. The principle of direct effect was first established in *Van Gend en Loos*<sup>1</sup> for Treaty provisions. This principle was later extended by the Courts through cases, such as *Van Duyn*,<sup>2</sup> *Ratti*,<sup>3</sup> and *Becker*,<sup>4</sup> allowing individuals to rely on directives vertically where a Member State has failed to implement them correctly or past their deadline, provided they are unconditional, sufficiently clear and precise. This permits individuals to hold the state, or public bodies in their country, accountable in domestic courts.<sup>5</sup> However, the Court of Justice of the European Union (CJEU) does not recognise horizontal direct effect for directives, meaning they cannot be invoked against private parties.<sup>6</sup> Nevertheless, the CJEU provides several legal remedies that act as alternative legal pathways for horizontal direct effect on directives: achieving a similar result. This essay will further explore the sufficient and effective ways that EU Law offers a complete system of legal solutions to compensate for the absence of horizontal direct effect on directives. Particularly highlighting the Union's broad definition of the 'State', the implementation of indirect effects, the use of 'Incidental' and 'Triangular' horizontal effects, and finally, the extension of the *Francovich*<sup>7</sup> principle.

## 2. Emanations of the State as a Legal Remedy

To mitigate the prohibition on the horizontal direct effect of directives, the CJEU expanded its definition of the 'State' to include emanations of the State. Thus, developing legal alternatives that enable private individuals to use vertical direct effect to hold their employers accountable for not implementing EU

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<sup>1</sup> Case 26/62 *Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1.

<sup>2</sup> Case 41/74 *Van Duyn v Home Office* [1974] ECR 1337.

<sup>3</sup> Case 148/78 *Pubblico Ministero v Ratti* [1979] ECR 1629.

<sup>4</sup> Case 8/81 *Becker v Finanzamt Münster-Innenstadt* [1982] ECR 53.

<sup>5</sup> LexisNexis, 'Vertical Direct Effect Definition' <<https://www.lexisnexis.co.uk/legal/glossary/vertical-direct-effect>> accessed 9 November 2024.

<sup>6</sup> LexisNexis, 'Horizontal Direct Effect Definition' <<https://www.lexisnexis.co.uk/legal/glossary/horizontal-direct-effect>> accessed 9 November 2024.

<sup>7</sup> Joined Cases C-6/90 and C-9/90 *Francovich and Others v Italian Republic* [1991] ECR I-5357.

directives<sup>8</sup>. In *Foster v British Gas*<sup>9</sup>, the CJEU established guidance factors to define an emanation of the state<sup>10</sup>: if the body in question is not an individual but governed by public law, is controlling or has authority over a public body or is executing a task for the public interest and subsequently has gained special powers.<sup>11</sup> This exemplifies how the CJEU recognises emanations of the state as part of the State to expand the areas in which vertical direct effect may be applied to directives providing a legal remedy for horizontal direct effect.<sup>12</sup> Although effective in a few instances, it can be argued that it does not provide a sufficient and effective alternative on its own. As not all individuals work for entities that qualify as emanations of the state, they are prevented from applying vertical direct effect to directives. Furthermore, Foster's<sup>13</sup> three criteria do not appear to have a uniform application, which reduces the reliability of the effectiveness of the remedy. *Doughty v Rolls-Royce plc*<sup>14</sup> illustrates that, despite being largely state-owned and nationalised, the company did not provide a public service and lacked special powers. Therefore, the Court of Appeal did not grant the application of vertical direct effect to be applied.<sup>15</sup> Although *Doughty*<sup>16</sup> portrays that this legal remedy may not always be a sufficient and effective alternative alone, it is important to consider the later development of Foster's criteria in *Farrell II*<sup>17</sup>. In *Farrell*, the CJEU clarified that a private organisation that performs tasks in the public interest and has special powers, and is not under State control, can also be viewed as an emanation of the state. The case put an end to inconsistencies within EU case law by clarifying Foster's<sup>18</sup> criteria. Ultimately, this causes the law to have increased uniform application and reliability.<sup>19</sup> Despite legal improvements, it is considered an inadequate legal remedy for horizontal direct effect on directives due to its existing gaps. However, when combined with other legal alternatives, they amount to a sufficient and effective legal remedy.

### 3. The doctrine of Indirect Effect

Alongside the doctrine of vertical direct effect for emanations of the state, the CJEU has proposed the doctrine of indirect effects to compensate for the suppression of horizontal direct effect on directives. The *Von Colson*<sup>20</sup> case, which raised concerns about Article 6 of the Equal Treatment Directive 76/207<sup>21</sup>, was the first to establish indirect effects. Although the defendant was a public body, vertical direct effect could

<sup>8</sup> N Foster, *EU Law Directions* (8<sup>th</sup> edn, Oxford University Press 2023) 204.

<sup>9</sup> Case C-188/89 *Foster v British Gas plc* [1990] ECR I-3313.

<sup>10</sup> N Foster, *EU Law Directions* (8<sup>th</sup> edn, Oxford University Press 2023) 204.

<sup>11</sup> KR Bakhtina, 'Farrell II and the Concept of an "Emanation of the State"' (2018) 18 *International and Comparative Law Review* 244 <<https://doi.org/10.2478/iclr-2018-0035>> accessed 22 December 2024.

<sup>12</sup> KR Bakhtina, 'Farrell II and the Concept of an "Emanation of the State"' (2018) 18 *International and Comparative Law Review* 244- 246 < <https://doi.org/10.2478/iclr-2018-0035> > accessed 22 December 2024.

<sup>13</sup> Case C-188/89 *Foster v British Gas plc* (1990) ECR I-3313.

<sup>14</sup> *Doughty v Rolls Royce Plc* [1992] 1 CMLR 1045.

<sup>15</sup> N Foster, *EU Law Directions* (8<sup>th</sup> edn, Oxford University Press 2023) 204.

<sup>16</sup> *Doughty v Rolls Royce Plc* (1992) 1 CMLR 1045

<sup>17</sup> Case C-413/15 *Farrell v Whitty*, EU:C:2017:745.

<sup>18</sup> Case C-188/89 *Foster v British Gas plc* (1990) ECR I-3313.

<sup>19</sup> KR Bakhtina, 'Farrell II and the Concept of an "Emanation of the State"' (2018) 18 *International and Comparative Law Review* 248 <<https://doi.org/10.2478/iclr-2018-0035>> accessed 22 December 2024.

<sup>20</sup> Case 14/83 *Von Colson and Kamann v Land Nordrhein-Westfalen* (1984) ECR 1891.

<sup>21</sup> Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L39/40, art 6.

not be applied to the directive, as it was not sufficiently precise.<sup>22</sup> This case established the legal doctrine of indirect effect to require national courts to interpret and conform their national laws to the fullest extent with EU law provisions.<sup>23</sup> Despite the defendant in the case of *Von Colson*<sup>24</sup> being a public body, indirect effects are commonly used in cases concerning other private bodies. This is depicted in the case of *Harz v Tradax*<sup>25</sup>, in which the defendant was a private employer. In theory, this remedy is an effective legal substitute for horizontal direct effect on directives. However, it relies on the member states' courts' inclination and effectiveness in interpreting national law in line with EU directives, leaving private individuals vulnerable to the courts.<sup>26</sup> In the case of *Duke v GEC Reliance Systems*<sup>27</sup>, which concerned itself with the Equal Treatment Directive<sup>28</sup> that was ignored by a private employer, the House of Lords refused to interpret pre-existing law in accordance with the Equal Treatment Directive<sup>29</sup>. Furthermore, the Judgment appeared to have contradicted the initial ruling in *Marshall*<sup>30</sup>, which held that an employee could rely on EU directives against employees of state authorities, acting as employers or 'an emanation of the state,' even if it was not in accordance with national law. This further highlights how indirect effects are at the mercy of the courts and might not function as an effective legal remedy for horizontal direct effect on directives. In the case of *Pfeiffer v Rotes Kreuz*<sup>31</sup>, the CJEU clarified the doctrine of indirect effect and further strengthened it by establishing that the doctrine applies to pre-existing national laws as well as the laws that were enacted to implement the directive. In this decision, the CJEU further affirmed that national courts must consider the whole of domestic law, not only the specific implementing legislation.<sup>32</sup> Despite the clarification on indirect effects, 'Contra Legem' still threatens the doctrine, as it states that National Courts are not obliged to interpret national laws in a manner that would clearly be contrary to their wording.<sup>33</sup> Depicting how indirect effect serves as an alternative solution to vertical direct effect, while it is not regarded as a singular effective and sufficient remedy for horizontal direct effect on directives. However, alongside other remedies, they might function as one.

<sup>22</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 205-206.

<sup>23</sup> LexisNexis, 'Indirect Effect Definition' <<https://www.lexisnexis.co.uk/legal/glossary/indirect-effect>> accessed 23 December 2024.

<sup>24</sup> Case 14/83 *Von Colson and Kamann v Land Nordrhein-Westfalen* (1984) ECR 1891.

<sup>25</sup> Case 79/83 *Harz v Deutsche Tradax GmbH* [1984] ECR 1921.

<sup>26</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 206.

<sup>27</sup> *Duke v GEC Reliance Ltd* [1988] AC 618 (HL).

<sup>28</sup> Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L39/40.

<sup>29</sup> Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [1976] OJ L39/40, (ibid.).

<sup>30</sup> Case 152/84 *Marshall v Southampton and South-West Hampshire Area Health Authority (Teaching)* [1986] ECR 723.

<sup>31</sup> Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others v Deutsches Rotes Kreuz, Kreisverband Waldshut eV* [2004] ECR I-8835

<sup>32</sup> Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others v Deutsches Rotes Kreuz, Kreisverband Waldshut eV* [2004] ECR I-8835.

<sup>33</sup> O Hamulák and T Kerikmäe, 'Indirect Effect of EU Law under Constitutional Scrutiny – the Overview of Approach of Czech Constitutional Court' (2016) 16 *International and Comparative Law Review* 70 <<https://intapi.sciendo.com/pdf/10.1515/iclr-2016-0005>> accessed 23 December 2024.

#### 4. Incidental and Triangular Horizontal Effect: Shield not Sword

Another legal remedy is ‘incidental’ and ‘triangular’ horizontal effect, which, alongside others, effectively compensates for the exclusion of horizontal direct effect on directives. Incidental direct effect was first established in the case of *CIA Security International v Signalson SA and Securitel Sprl*<sup>34</sup>. The court ruled that the obligation could not be directly imposed on the private parties, but rather on Belgium as it failed to enforce the EU directive, making Belgian law at the time inapplicable to the private parties.<sup>35</sup> Delineating how incidental horizontal effect allows private parties to benefit from EU directives in private party disputes without using horizontal direct effect on directives, as the EU law obligation is not imposed on them although on the state.<sup>36</sup> It may be said that incidental effects and indirect effects are part of a broader view of direct effects, as shown in *Becker*<sup>37</sup>, as national law should only apply if it complies with EU law.<sup>38</sup> Similarly to ‘incidental’, the ‘triangular’ horizontal effect does not impose direct legal obligations on private parties. However, instead of solely involving two private parties, it usually involves an additional one as well: the State.<sup>39</sup> Triangular horizontal effect was established in the case of *Wells v Secretary of State for Transport*<sup>40</sup>, where Wells intended to invoke a directive against the state but would cause indirect consequences for another private party and thus, creating a triangular effect. In both instances of applying the incidental and triangular effect, it is important to note that these can be viewed in terms of estoppel, as the private parties may rely on the Directives as a shield from protecting their own personal interests by estopping another party to enforce national law. However, they are not used as a sword.<sup>41</sup> Although incidental and triangular horizontal effect offer another alternative to other legal remedies used to compensate for the lack of horizontal direct effect, it is apparent that, while effective in some cases, this legal remedy does not serve as a proper substitute for horizontal direct effect. This is due to the inability of individuals holding private parties liable in court for failing to implement EU directives, as liability remains with the State. Nevertheless, it remains a legal remedy that offers a sufficient and effective solution for horizontal direct effect because it enables private parties to have EU Directives exclude conflicting national provisions, even if it is not an exact substitute for horizontal direct effect on directives.

#### 5. Extending the Francovich Principle

A final legal alternative that functions alongside other legal remedies in creating a sufficient and effective legal substitute for horizontal direct effect on directives is the extension of the principle of Francovich<sup>42</sup>.

The principle of Francovich, or rather the principle of state liability, refers to the CJEU declaring that individuals are able to claim monetary compensation from the resulting loss they suffered from the state, for not having implemented EU directives. To establish this principle, three criteria would need to be met: the

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<sup>34</sup> Case C-194/94 *CIA Security International SA v Signalson SA and Securitel SPRL* (1996) ECR I-2201.

<sup>35</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 208.

<sup>36</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 208.

<sup>37</sup> Case 8/81 *Becker v Finanzamt Münster-Innenstadt* (1982) ECR 53.

<sup>38</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 208.

<sup>39</sup> E Frantziou, ‘The Horizontal Effect of the Charter of Fundamental Rights of the EU: Rediscovering the Reasons for Horizontality’ (2015) 21 *European Law Journal* 657

<<https://discovery.ucl.ac.uk/id/eprint/1531161/1/Frantziou-The%20Horizontal%20Effect%20of%20the%20EU%20Charter.pdf>> accessed 23 December 2024.

<sup>40</sup> Case C-201/02 *Wells v Secretary of State for Transport, Local Government and the Regions* [2004] ECR I-723.

<sup>41</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 209.

<sup>42</sup> Joined Cases C-6/90 and C-9/90 *Francovich and Others v Italian Republic* [1991] ECR I-5357.

directive must grant rights to an individual, these rights would need to be identifiable within the wording of the directive, and a causal link must be present between the state's failure to implement a directive and the loss suffered by an individual.<sup>43</sup> The expansion of the principle occurred in the case of *Courage Ltd v Crehan*<sup>44</sup>, where it was applied to a private party as Crehan sought compensation from Courage Ltd, due to the breach of competition law Article 81 EC (now 101 TFEU)<sup>45</sup>, causing them to suffer a loss. Through building on the foundation cases of *Van Gend en Loos*<sup>46</sup>, *Costa v Enel*<sup>47</sup>, and *Francovich*<sup>48</sup>, the CJEU argued that the extension of the principle was necessary for the effective protection of the rights of an individual if they suffered a loss resulting from a contract or conduct liability to restrict or distort competition.<sup>49</sup> While the extension of the principle<sup>50</sup> acts as a legal substitute for horizontal direct effect on directives, by enabling monetary punishment for private parties who caused another to suffer a loss, its scope of application is limited.<sup>51</sup> This is displayed in the reasoning of the CJEU, previously mentioned, for the extension of the *Francovich* principle because it only applies to distinct instances, the majority involving competition law.<sup>52</sup> The *Manfredi*<sup>53</sup> case further showcased the CJEU's support for the private enforcement of EU competition law and the ability to claim damages.<sup>54</sup> In spite of the application of the extension of the *Francovich* principle being limited to EU competition law and its directives, it nevertheless provides a legal alternative to compensate for the lack of horizontal direct effect on directives. Moreover, in combination with other legal remedies, EU law provides a system of remedies that together act as a sufficient and effective legal alternative.

## 6. A Complete System of Remedies

While acknowledging the existing gaps within each legal remedy provided for the absence of horizontal direct effect on directives, the CJEU has created a sufficient and effective legal framework as compensation. Its ability to tackle the prohibition of horizontal direct effect was previously discussed through the use of emanations of the state, amongst other legal alternatives. Expanding the definition of what is considered 'the State' allowed for private individuals to hold companies that fulfilled the criteria to be considered an emanation of the state<sup>55</sup>, accountable for not having imposed EU directives. Although it is not a direct substitute for horizontal direct effect on directives because the state was still held accountable and not a private party, private parties still obtained the ability to bring these to their national courts. Another legal alternative implemented was the indirect effect, which required courts to adapt national laws to EU

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<sup>43</sup> R Van Den Bergh, 'Francovich and Its Aftermath: Member State Liability for Breaches of European Law from an Economic Perspective' in J Basedow, T Kono and A Metzger (eds), *Economic Implications of Liability Rules in European Law* (Bloomsbury Publishing 2010).

<sup>44</sup> Case C-453/99 *Courage Ltd v Crehan* [2001] ECR I-6297.

<sup>45</sup> Article 101, TFEU.

<sup>46</sup> Case 26/62 *Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1.

<sup>47</sup> Case 6/64 *Costa v Enel* (1964) ECR 585.

<sup>48</sup> Joined Cases C-6/90 and C-9/90 *Francovich and Others v Italian Republic* [1991] ECR I-5357.

<sup>49</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 214 214–215.

<sup>50</sup> Joined Cases C-6/90 and C-9/90 *Francovich and Others v Italian Republic* [1991] ECR I-5357.

<sup>51</sup> Daniel J Meltzer, 'Member State Liability in Europe and the United States' (2006) 4 *International Journal of Constitutional Law* 43.

<sup>52</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 214 214–215.

<sup>53</sup> Case C-295/04 *Manfredi v Lloyd Adriatico Assicurazioni SpA* [2006] ECR I-6619.

<sup>54</sup> N Foster, *EU Law Directions* (Oxford University Press 2023) 214 214–215.

<sup>55</sup> Case C-188/89 *Foster v British Gas plc* [1990] ECR I-3313.

Directives to the best of their ability.<sup>56</sup> However, the challenge to the effectiveness of this legal remedy is *Contra Legem*, making it not invulnerable.<sup>57</sup> Moreover, incidental and triangular horizontal effects operate through the obligations of the State, causing indirect consequences for private parties without creating horizontal obligations under the directive. This can occur through making a complaint against another private party, in which the state assumes the responsibility, as seen in the case of *CIA Security International v Signalson SA and Securitel Sprl*<sup>58</sup>, or by the state indirectly affecting another private party, as the state subsequently needs to adapt its laws. In both instances, the obligation is imposed on the state, not private parties. Whilst this does not replicate horizontal direct effect on directives, it allows for the opportunity to make other private parties comply with EU regulations. Lastly, the extension of the *Francovich* principle<sup>59</sup> mimics horizontal direct effect by allowing private parties to claim damages from other private parties. The hindrance this remedy presents is that its scope of application is narrowed to EU competition law. When analysing these legal strategies to overcome the prohibition of horizontal direct effect, their limitations become apparent. Individually, they are ineffective and insufficient methods to compensate for the lack of horizontal effect. Nonetheless, collectively they have the ability to offer a functionally adequate system of remedies that is sufficient and effective, as each is applicable in specific instances.

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<sup>56</sup> Case 14/83 *Von Colson and Kamann v Land Nordrhein-Westfalen* (1984) ECR 1891.

<sup>57</sup> O Hamulák and T Kerikmäe, 'Indirect Effect of EU Law under Constitutional Scrutiny – the Overview of Approach of Czech Constitutional Court' (2016) 16 *International and Comparative Law Review* 70 <<https://doi.org/10.1515/iclr-2016-0005>> accessed 23 December 2024.

<sup>58</sup> Case C-194/94 *CIA Security International SA v Signalson SA and Securitel SPRL* (1996) ECR I-2201.

<sup>59</sup> Joined Cases C-6/90 and C-9/90 *Francovich and Others v Italian Republic* [1991] ECR I-5357.

# ESSENTIAL BUT EVOLVING: THE ROLE OF CONSIDERATION IN CONTEMPORARY ENGLISH CONTRACT LAW.

*Evie Hones*

## Abstract

This article examines the continuing significance of consideration within contemporary English contract law, arguing that despite growing flexibility in judicial reasoning, consideration remains an essential element of a valid and enforceable agreement. It begins by outlining the core principles of consideration, including sufficiency, the requirement for economic value, the rule that consideration must move from the promisee, and the exclusion of past consideration, drawing on leading cases such as *Chappell v Nestlé* and *Tweddle v Atkinson*. The article also explores key exceptions, most notably promissory estoppel, illustrating through *High Trees* how fairness can temporarily override the strict need for consideration. Finally, it assesses how judicial interpretation has evolved, particularly through *Williams v Roffey Bros*, to recognise practical benefits in modern commercial contexts. Overall, the article argues that while the doctrine has adapted to contemporary realities, consideration continues to play a foundational role in maintaining fairness, reciprocity, and enforceability in contract law.

## **Introduction**

Contracts are legally enforceable agreements that happen between two or more parties - Consideration is one part of a few elements that make contracts legally binding. Consideration forms a promise into a binding contract and makes sure each party gives something in return for the other's promise. Without this exchange, the law does not need to enforce an agreement. Not every promise is said with the intention of it carrying legal weight. Consideration functions to differentiate casual commitments made by parties, from promises that should be legally recognised and enforced. Consideration is essential in contract law, because it warrants that both parties are involved in a proper exchange - taking on the benefits, obligations and sacrifices involved in the exchange. Most importantly, consideration creates fairness and balance by binding the parties to the terms of their agreement.

This article will examine key principles, explore its exceptions, and discuss how courts have interpreted and developed it over time. Before finally establishing that consideration is an essential element of a valid contract

## **Key Principles of Consideration**

There are two types of consideration: Executory - the promise to perform acts in the future and, Executed - one party performs an act to fulfil the promise from the other party. In both types, consideration has golden rules that help contracts function the way they are intended too.

A key rule of consideration is that it must be sufficient, not technically adequate. The law doesn't evaluate if the deal is fair - only if something of value is changed. If there is legal value in the exchange, the court won't bother questioning the exchange's weight. Consideration just needs to be something that holds value for both parties, as we see in the *Chappell v Nestlé* [1960] AC 87. The court, in *Chappel*, decided that chocolate wrappers gathered for discounted records were valid consideration, even though they weren't worth money - they were worth something within the promotional context. Although critics have noted that while this preserves party autonomy, it exposes the minimal threshold required to satisfy the doctrine, raising doubts as to whether consideration continues to function as a meaningful safeguard.

Another important rule of consideration is that consideration must be of economic value in the eyes of the law. A case that clarifies this rule is *Bret V J.S* [1600] Cro Eliz 706. *Bret v Elis*, furthered the principle of ensuring contracts are based on genuine exchanges. Thus, whilst critics have sought to argue against the ruling in *Chappel*, *Bret v Elis* expands on *Chappel* by expanding and noting that consideration must be of economic

value in the eyes of the law. In turn, wrappers whilst not seen as typically meaningful were seen to have more 'value' than love and affection. Consequently, acting as an inherently meaningful safeguard to the legitimacy of a contract by ensuring each party gives something of value. As such, The case declined that love, and affection was valid consideration. Thus, highlighting that the law demands economic value for a contract to be accepted as valid.

Moreover, In *Tweddle v Atkinson* [1861] 1 B&S 393 - The court confirmed another consideration rule, that consideration must move from the promisee. This means that the person receiving the promise must also provide something in return. This reinforces the essential role consideration has when a contract is formed and ensures both parties have a stake in the agreement. Without consideration from the promisee, the contract would lack the necessary mutual exchange and cannot be legally enforced. This case and rule support that consideration is essential for a valid contract.

Finally, in the case of *Roscorla v Thomas* [1842] 3 QB 234 - The court reinforced the rule of consideration that past consideration is not good consideration. In this case, the court ruled that the warranty provided after the completion of a sale of a horse lacked valid consideration because it was a promise made after the contract was already completed. This means that past consideration would not support it, as for a contract to be valid, the consideration must be given at the same time as the promise, not a result of a previous action. This case reinforces the idea that consideration is a fundamental element for a valid contract, ensuring a fair exchange of value - as consideration must be new and given at the time the promise is made, not in the past. This supports that consideration plays an essential role in the formation of a valid contract.

In conclusion, consideration is essential for a valid contract. Consideration's rules ensure fairness and clarity. Without consideration, contracts would lack the foundation to be enforceable or legal. Consequently, Consideration guarantees that both parties are committed, making it a critical element for upholding the effectiveness of agreements.

### **Exceptions to Consideration**

Although consideration is normally required for a contract to be enforceable, the law recognises several exceptions where a promise can still be binding without fresh consideration. Exceptions to consideration allow certain promises to be enforceable even without new value being exchanged, usually to prevent unfairness or because the law recognises special categories like deeds, promissory estoppel, and requested past acts.

One key exception to consideration, that could be used to argue that consideration is not always essential in creating a contract, is promissory estoppel. Promissory estoppel applies when one party makes a promise knowing the other will rely on it, and it would be unfair to let them break that promise. In *Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130, the landlord agreed to reduce the rent during wartime, and the tenant relied on this promise.

Even though no consideration was given, the court held that the landlord could not later demand the full rent. This shows that while consideration is usually seen as essential, the courts sometimes set it aside to protect the interests of the party who suffered a loss, as this was the main priority to safeguard and uphold fairness of the law.

If the case had been judged purely on consideration, the promise would have been unenforceable. Subsequently overlooking the fact that one party had reasonably relied on it and suffered loss, leading to an outcome that would have been unfair and failed to contemplate the realities of the situation. This highlights a key point in answering whether consideration is always essential for a valid contract. While consideration

most of the time is an essential requirement, exceptions like promissory estoppel show that fairness can sometimes override consideration.

Therefore, it is a fact that consideration is an essential element for a valid contract - but it is not always the main factor in determining the validity of a contract. Consideration has exceptions, but they do not replace the overall doctrine of consideration - they refine it in justified situations to ensure fairness in specific situations.

### **Judicial Interpretations and the Evolution of consideration**

The Courts have interpreted Consideration and have adapted it over time to ensure fairness and consider varied realities. Over time, judicial interpretations have evolved in their approach but have kept it at the centre of determining the legality and enforceability of contracts. This evolution shows a growing recognition that legal principles and judicial interpretations must adapt to modern situations.

An important case that recognises varied judicial interpretations of the doctrine of consideration, is *Williams v Roffey Bros & Nicholls Contractors Ltd* [1991] 1 Q.B. 1. In this case, the courts recognised that practical benefit could serve as valid consideration even when there was no new promise beyond the old contractual obligations. They interpreted this in their own way to ensure fairness in contracts by seeing that avoiding delays and penalties could be enough to make a promise enforceable, even if principle forms of consideration were not present. Furthermore, in the recent case of *Little v Olympian Homes* [2024] EWHC 1766 (Ch) where modern courts may enforce changes or relaxations of contract obligations even where traditional “consideration” is absent, by way of estoppel/waiver, which is a different rationale from the “practical benefit” approach in *Williams*. In turn, signifying a step even further in flexibility

This case shows us how judicial interpretations have shifted over time to fit the specific circumstances of some contracts. Whilst consideration is an essential part of contract law, judicial interpretation allows the doctrine to be more flexible and fit a certain circumstance that needs to be judged.

In conclusion these shifts in interpretations show that, while consideration remains essential to contract law, judicial interpretations have evolved with fairness through practicality, making sure contracts are enforceable in a range of real-life situations.

### **Conclusion**

To conclude, I argue that consideration is pivotal in contract formation because it provides the foundations for valid and enforceable agreements. However, I also acknowledge that the sole consideration set out in the 1800 lacks flexibility, but that does not mean that it lacks utility, consideration is an evolving doctrine that is both necessary for formation of contract and for the establishment of just exceptions, as exemplified in *Roffey Bros*.

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### Abstract

This article examines the transformation of two key Japanese third places, the izakaya and the sentō, under conditions of corporatisation, commodification, and neoliberal economic reform. Drawing on ethnographic fieldwork in Tokyo and urban sociological literature, the article compares independently operated venues with large chain counterparts. The analysis shows how standardisation, digitalisation, and exclusionary policies reshape social interaction, habitus, and belonging. While corporatised venues may improve affordability and accessibility, they often weaken spontaneous social exchange. Traditional venues foster deeper community ties but may also reproduce informal exclusion. Social efficacy ultimately depends on how economic logic, spatial design, and cultural practice are negotiated in contemporary urban life.

### **Introduction**

Britain's coffee houses of the 16th and 17th centuries gained the nickname of 'penny universities'<sup>60</sup>, as for the price of a single penny, you could sit with any assortment of others and engage in the latest topics of discussion. These happenstance meetings and public debates, fuelled in vigour by coffee coming to replace the gin palaces, which were more predisposed to numb the mind rather than empower it, birthed a great many invaluable creations. Daily newspaper<sup>61</sup>, the Royal Society<sup>62</sup>, the London Stock Exchange<sup>63</sup>; the ability to come to a space full of others, some of whom you might have known and others strangers, and meet, argue, and lecture, fuelled the discussions that built much of the world we live in.

Understanding what we can do when we come and mix ourselves and our ideas together in communal space is an essential piece in understanding the imperative nature of having these spaces. Too often are conversations about social spaces' proclivity and efficacy so focused on the positive well-being outcomes that the immense amplifying potential collaboration has on each of our contributions to culture and society finds itself ignored.

It is with this in mind that we're seeking to understand Tokyo's two most renowned social spaces, the *izakaya*- a Japanese pub and the *sentō*- a traditional Japanese bathhouse. Specifically, our aims in the following report are to understand how trends of corporatisation, commodification, financialisation, and deregulation have impacted our chosen spaces. It is our belief that what will be revealed is an erosion of the capacity of these social spaces to sponsor meaningful interactions between individuals for a number of reasons.

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<sup>60</sup> Macasaet, Megan. "A Penny For Your Cuppa: How Coffeehouses Revolutionized Coffee Consumption in England's Seventeenth and Eighteenth Centuries." *Constellations* 12, no. 2 (2021). 7

<sup>61</sup> Halliday, Paul D. "Coffee Houses, the Press and Misinformation." In *News, Newspapers and Society in Early Modern Britain*, edited by Joad Raymond, 34–61. Princeton, NJ: Princeton University Press, 1999.

<sup>62</sup> The Royal Society. "Our History: The Founding of the Royal Society." Accessed July 18, 2025.

<https://royalsociety.org/about-us/history/>

<sup>63</sup> Halliday, Paul D. "Coffee Houses, the Press and Misinformation." In *News, Newspapers and Society in Early Modern Britain*, edited by Joad Raymond, 34–61. Princeton, NJ: Princeton University Press, 1999.

We will attempt to investigate and ultimately justify this claim first through a necessary contextualisation of global economic trends and their local expressions in Japan. We will attempt to answer the question of what form our baseline early *izakaya* and *sentō* took and how they came to be established, the economic forces that came to swell against shores, and their necessary responses. The stage set, we will embark on a small personal exploration of two separate sets of *izakaya* and *sentō*, one pair that has resisted to the best of its ability these forces motivating their change and instead remained as they have functioned for many decades; these will serve as our best available stand-ins for what the experience may have been at the turn of the century. Our second pair will be members of chains with many other locations, centrally managed and fully embracing the imported corporate model. In both our experiences of these spaces and in conversations with operators and patrons, we hope to gain some personal insight into the reality of their functioning.

Personal conclusions drawn, we'll move to an analysis of research and literature to hold up against our conceptions of these institutions in the pursuit of some conclusivity. We'll engage with the works of Ray Oldenberg, Judit Bodnar, Michiko Molasky, Rachael A. Woldoff, Dawn Marie Lozzi, Lisa M. Dilks, Susanne Wessendorf, and James Farrer to understand the evolving dynamics of third places, social interaction, urban space, and the impact of commercialisation and migration in Tokyo. This multidisciplinary approach will allow us to reflect on how our initial assumptions contrasted with our ethnographic observations, and how our perspectives and feelings subsequently developed, all guided by existing theoretical and empirical scholarship.

### **How we got here**

Before beginning our analysis of the current situation, it's worth establishing to some extent the factors and events that have brought us here. Since Commodore Mathew Perry's landing in Tokyo Bay, a Western influence has been present in the operation of Japanese business. Professor Wai Keung Cheng of Chinese University, Hong Kong, characterises the Japanese adoption of western business practices as a skilful weaving of functional advances and traditional practice<sup>64</sup>, but we can infer that even where introduction is done thoughtfully, western failings may see themselves carried over.

Even though free market ideas were diffusing across international borders in the 19th and early 20th century, it wasn't until the end of the Meiji era that an outward-looking United States would ensure these ideas were becoming commonplace. Among a plethora of other causes, Japan's neighbours finding themselves embroiled in civil wars and touting socialist sentiment was enough motivation to ensure they stayed onside through a full embrace of everything the communists were not.<sup>65</sup> The Allied occupation or S.C.A.P. broke up zaibatsu corporations to promote freer, democratised markets<sup>66</sup> and invested to promote industrialisation and westernisation of the economy.

In 1973 and again in 1976, a pair of oil shocks caused by OPEC embargoes sparked a crisis for the West's post-war economic model. Its strong interventionist Keynesian state would be challenged by

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<sup>64</sup> Chung, Wai Keung. "Westernization of business organizations in Japan and China. Continuity and change." (2006): 239. Accessed: [https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=1085&context=soss\\_research](https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=1085&context=soss_research).

<sup>65</sup> Schaller, Michael. *Altered States: The United States and Japan since the Occupation*. New York: Oxford University Press, 1997.

<sup>66</sup> Takeda, Haruhito. "Contemporary Economic History of Japan." Lecture notes, University of Tokyo, 2004. [https://ocw.u-tokyo.ac.jp/lecture\\_files/eco\\_05/5/notes/en/CEHJ-18.pdf](https://ocw.u-tokyo.ac.jp/lecture_files/eco_05/5/notes/en/CEHJ-18.pdf).

Chicago school ideas of liberalisation, decentralisation, and deregulation. This inevitably spread to Japan, and the 1980s saw a significant policy shift in the East to match.<sup>867</sup>

Financialisation of an economy often comes with the unfortunate side effect of a significant inflation of asset prices,<sup>68</sup> as was the case in Japan in the 1990s during the ‘lost decade’. This period of economic disarray warranted a relaxation of rules surrounding corporate mergers and takeovers, spawning a significant uptick in this behaviour that is still trending today.<sup>69</sup> Now, many of the Zaibatsu that found themselves broken up at the end of the war were being pieced back together, but this time under private ownership.

These free-market ideals proved a challenge to the existence of primarily independently run third places, both in the United States, Japan and across the globe. Oldenburg, the American urban sociologist who coined the term ‘Third Places’, claimed in 1997 that “Most residential areas built since World War II have been designed to protect people from community rather than connect them to it. Virtually all means of meeting and getting to know one’s neighbours has been eliminated.”<sup>70</sup> This phenomenon, resulting from the adoption of free market ideals, has commodified spaces that used to be hubs of community engagement. Finlay et al. further document this shift, describing the decline of third places and their impact on health outcomes, arguing that “almost all categories (of third places) – especially commercial establishments and privately-run organisations – declined since 2011 and 2012”.<sup>71</sup>

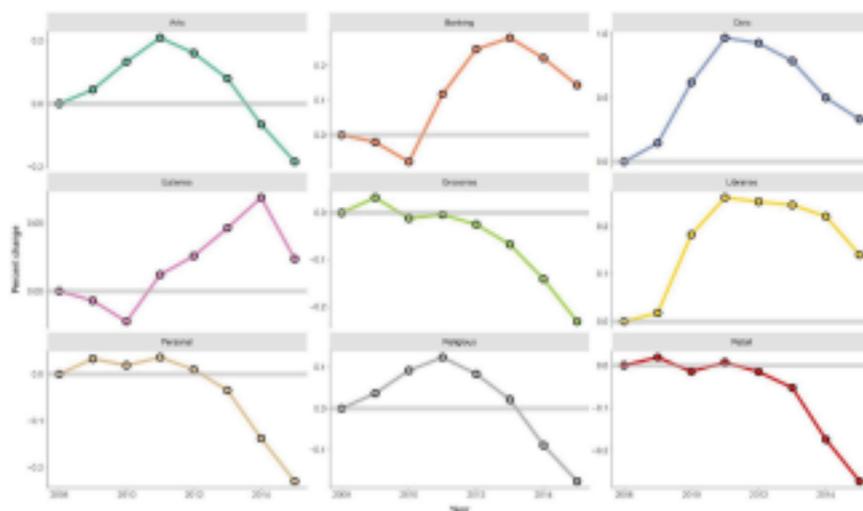


Fig 1. Visualisations of various third spaces decline from 2000 onwards. Finlay, et al.

Oldenburg further describes this commodification and destruction of the third place in *The Great Good Place*, arguing that “The third place is seldom found in America’s newer urban environments”<sup>72</sup>, and that “Where once there were places, we now find nonplaces”<sup>73</sup>. He goes on to clarify the

<sup>67</sup> Hirashima, Katsuji. "Regime Shift in Japan? Two Decades of Neoliberal Reforms." *Swiss Journal of Economics and Statistics* 140, no. 1 (2004): 99–125.

<sup>68</sup> Toporowski, Jan. *The End of Finance: Capital Market Inflation, Financial Derivatives and Pension Fund Capitalism*. London: Routledge, 1999.

<sup>69</sup> Blomström, Magnus, and Sumner La Croix. "A lost decade for Japanese corporate governance reform? What has changed, what hasn't, and why CURTIS J. MILHAUPT." In *Institutional Change in Japan*, pp. 109-131. Routledge, 2006.

<sup>70</sup> Oldenburg, Ray. "Our vanishing third places." *Planning commissioners journal* 25, no. 4 (1997): 6-10.

<sup>71</sup> Finlay, Jessica, Michael Esposito, Min Hee Kim, Iris Gomez-Lopez, and Philippa Clarke. "Closure of ‘third places’? Exploring potential consequences for collective health and wellbeing." *Health & place* 60 (2019): 102225.

<sup>72</sup> Oldenburg, Ray. *The great good place: Cafes, coffee shops, bookstores, bars, hair salons, and other hangouts at the heart of a community*. Da Capo Press, 1999.

<sup>73</sup> Oldenburg, Ray. *The great good place*

manner in which these nonplaces expand, utilising economies of scale while also attempting to emulate the traditional third place. “Corporations take immediate hold of new areas, from the development of the residential sites to the malls that serve them and the fast-food outlets that command all the choice locations... The locally-owned lunch counter soon finds itself competing with a newly-built, fast-food nonplace”.<sup>74</sup> A shift to market-oriented policies and distancing from public funding, as well as a focus on growth, has shifted the third place from a place of community to one co-opted by commercial influences, less tailored to simple interaction, and designed more for consumption.

While smaller, locally run spaces such as bars and cafes have been able to carve out and maintain a small niche, there has been a vast increase in commercial spaces. Small, independent cafes are increasingly being replaced with chains and franchise models, expanding globally. Even within these commercial spaces, recent history has seen a spate of different commercialised third places. Particularly in North America, the rise and fall of the shopping mall can be seen as an example of the shifting nature of the third place<sup>75</sup>. Malls functioned as a symbol of prosperity, increasing in the United States along with a rising middle class, affluent, and caught up in the idea of shopping as an activity. This mass consumerism, with a one-stop shop for any item that an individual could want, is homogenised across the entire nation, with similar stores and experiences available across the country, reinforcing the norms of a mass market.

Japan, influenced by the West, mirrors this phenomenon in many of its traditional third places, with spaces like *izakaya* and *kissaten* dying out and being replaced in many cases with large chains, similar to the United States and the world<sup>76</sup>. The second stage of capital liberalisation in July 1969 allowed for foreign direct investment in Japanese markets, increasing competition and further introducing Western market ideals into Japan.<sup>77</sup> Department stores and shopping centres expanded, franchisee and chain models, and foreign chain brands thrived. These chains, like Starbucks, Doutor, Torikizoku, and more, have standardised menus, less sense of regularity, and perhaps function, as Oldenburg would claim, as less hardy third places. As Molasky argues, currently, “Japanese coffee shops, conversely, are places where people basically go to be left alone”<sup>78</sup>.



Fig 2. A graph displaying the growth of Torikizoku store locations and revenue, from their opening in 1985 to 2015. The Y axis is measured in million yen, and the X axis has

<sup>74</sup> Oldenburg, Ray. *The great good place*

<sup>75</sup> Matuke, Samantha, Stephan Schmidt, and Wenzheng Li. "The rise and fall of the American pedestrian mall." *Journal of Urbanism: International Research on Placemaking and Urban Sustainability* 14, no. 2 (2021): 129-144.

<sup>76</sup> Molasky, Michael, and Shintaro Uchinuma. "In Conversation: Uchinuma Shintaro and Michael Molasky 'Viva the Third: Place Urban Pockets of Treasure.'" *In Conversation*, International House of Japan, Sept. 2014, [www.i-house.or.jp/eng/programs/ihj-world04/](http://www.i-house.or.jp/eng/programs/ihj-world04/).

<sup>77</sup> <https://www.mlit.go.jp/hakusyo/transport/shouwa44/ind010401/002.html>

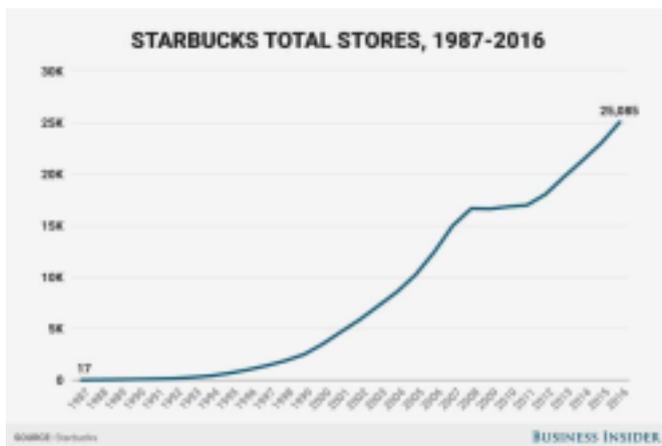
<sup>78</sup> Molasky, Michael, Shintaro Uchinuma, *In Conversation*

specific dates. Throughout the graph, milestone store numbers are noted, the 100th store opening, 200th, and more. From Torikizoku Company Presentation, April 2015.

<https://daiwair.webcdn.stream.ne.jp/www11/daiwair/qlviewer/pdf/1504113193.pdf>

Large chains are often seen as economically more competitive, with advantages over smaller stores. Vias argues that for “large national and international retail chains, the advantages over smaller independently owned stores derive from several sources, especially cost savings derived from economies of scale.”<sup>79</sup> While this kind of advantage is perhaps most often seen in big box stores like Walmart or Target, the same can be said of multinational firms that seek to supplant the third place, like Starbucks. According to White, Starbucks is emblematic of a commercial entity that seeks to position itself as a ‘third place’<sup>80</sup>. As far back as 1995, then CEO Howard Schultz, drawing on Oldenburg, described Starbucks as a place different from the workplace and home. “At home, you’re part of a family. At work, you’re part of a company. And somewhere in between, there’s a place where you can sit back and be yourself. That’s what a Starbucks store is to many of its customers — a kind of ‘third place’.”<sup>81</sup> Starbucks continues to pursue this existence today, with various store models that seek to keep individuals in stores longer, or more comfortably during their stay.

Fig 3. Starbucks stores over time, from 1987 to 2016, Business Insider



As commodification of experience has continued, a variety of trends have been observed in the patterns of commodification that emerge, from McDonaldisation, Disneyfication, and more. Experiential venues, such as escape rooms or themed cafes, which once emerged as a natural part of social interaction, are now being isolated and sold as pay-per-hour entertainment. The desire for true

Third spaces remain among society, but the corporate response has been to create artificially styled locations that evoke the memory of those true third places, but without actually functioning as such.

<sup>82</sup> Now, spaces are created with the ideals of efficiency and reproducibility, with unique human

<sup>79</sup> Vias, Alexander C. "Bigger stores, more stores, or no stores: paths of retail restructuring in rural America." *Journal of Rural Studies* 20, no. 3 (2004): 303-318.

<sup>80</sup> White, Colin. "Starbucks: the third place". Strategic Management. Palgrave, London. 2004, [https://doi.org/10.1007/978-0-230-55477-1\\_29](https://doi.org/10.1007/978-0-230-55477-1_29)

<sup>81</sup> White, Colin "Starbucks: the third place". 2004

<sup>82</sup> Matusitz, Jonathan, and Lauren Palermo. "The Disneyfication of the world: a globalisation perspective." *Journal of Organisational Transformation & Social Change* 11, no. 2 (2014): 91-107.

interaction fading in favor of both dehumanized interactions and non-human technology.<sup>83</sup> These technological advances also contributed to the decline of public spaces in Japan, from the increase in availability of private bathing that decimated *sentō* numbers, as well as the addition of outlets, charging points, and public wifi as must-have items in many coffee shops. This perhaps cements the nature of a chain café as not an area to interact or communicate, but a space to work, to be online and productive. In some *izakaya* this is similar to the “soulless” nature of convenience stores, where even a loose relationship, brief recognition as a regular from staff members is rendered impossible<sup>84</sup>.

As demand shifts, even the most traditional spaces are being changed in an attempt to win over a new demographic. *Sentō* like ‘Denki-yu’ are integrating bookstores and community spaces within their confines, other *sentō* are utilizing technology to put on visual displays visitors can enjoy while bathing, or offering craft beer, merging contemporary art into traditional spaces, and even adding DJ spaces to their traditional environments. *Izakayas* are increasingly adopting new customs, with a wave of trendy, Instagram-friendly ‘neo-*izakaya*’ emerging in the past few years. Providing food and drink that would not look out of place on a social media feed, the neo-*izakaya* targets younger audiences and women, instead of focusing mainly on after-work salarymen. In this way, something between a traditional third place and commodified chain space is being created, and how such places will impact the nature of social interaction within is yet to be seen.

### **Ethnographic Takeaways**

The most notable difference between these corporatized businesses and their independent counterparts is not necessarily the presence, lack, or amount of social interaction. These businesses provide spaces for social interaction just as much, or in the case of the super-*sentō*, potentially more than their counterparts. However, the corporatized versions focus sharply on social activities that can be monetized, primarily aiming to offend the sensibilities of their majority customer base. In the case of the *sentō* this includes explicitly forbidding certain customers. This brings up the question of “habitus”, or who is implicitly made to feel welcome in these spaces. If master narratives are the words that infrastructure speaks, habitus is the accent and tone with which it speaks. Large-scale businesses are pushed to cater to social trends amongst their broad customer base and therefore create infrastructure that caters to their sensibilities explicitly and implicitly. As David Amadasun noted in his article “Black people don’t go to galleries”, even architecture and infrastructure can be subtly racialized or marked for certain classes of people, as evidenced by his 14-year-old daughter’s extreme hesitance to enter an art gallery simply upon seeing the building.<sup>85</sup>

The dialectical relationship between businesses catering to social dynamics decided by their customers, and customers getting accustomed to the spaces they find themselves in, can create a feedback loop in which “undesirable” customers are explicitly or implicitly refused entry, and those that frequent these locations grow accustomed to their absence. In countries with more stark wealth inequality, this can result in most corporatized spaces being built to serve a select few very wealthy, while invisibilizing the working class and signs of poverty. In Japan's case, this can mean chains catering to the relatively large middle class while excluding certain minority groups, resulting in

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<sup>83</sup> Ritzer, George, and Todd Stillman. "Assessing McDonaldization." *Global America?: The Cultural Consequences of Globalization* 8 (2003): 30.

<sup>84</sup> Molasky, Michael, Shintaro Uchinuma, In Conversation

<sup>85</sup> Amadasun, David Osa. “‘Black People Don’t Go to Galleries’ – the Reproduction of Taste and Cultural Value.” *Media Diversified*, Media Diversified, 5 Mar. 2022, [mediadiversified.org/2013/10/21/black-people-dont-go-to-galleries-the-reproduction-of-taste-and-cultural-value/](https://mediadiversified.org/2013/10/21/black-people-dont-go-to-galleries-the-reproduction-of-taste-and-cultural-value/)

specific *sentō* where one can find nightlife workers, people with tattoos, and those who would not fit the habitus of a middle-class super-*sentō*. Similarly *izakaya* where Waseda students or graduates would or would not find themselves could be demarcated with mostly implicit or subconscious markers. Given the complex and dialectical nature of societal and corporate change, how exactly the increase of chains will impact these dynamics isn't clear. However, it is important to remember that a fulfilling social life is about a lot more than simply interacting cordially with other individuals. Having a place to belong, an *ibasho*, is also vital, and given current trends, those whose *ibasho* is not sufficiently profitable may increasingly find themselves without one.

### **Bridging Fieldwork and Theory: Placing Ethnographic Findings Alongside the Literature**

The configuration and availability of public spaces have a profound influence on the residents' psychological sense of affinity and attachment towards their community. It is the clearest indication of a city's tension between the physical proximity and moral remoteness of the dwellers, as expressed by Judit Bodnar.<sup>86</sup> This division examines the broader significance of public spaces, particularly the concept of the 'third space' in the context of Tokyo, drawing on the existing literature and our ethnographic studies conducted.

Oldenburg defines third place as informal gathering spots outside of home or work that foster casual conversation, inclusivity, and a sense of community. He emphasises that these places should be "neutral ground", unstructured, walkable, and low-cost, with conversation as the chief activity. Most importantly, they are deeply embedded in the community. "With very few exceptions," Oldenburg argues, "third places have been and remain local, independently owned...Chain establishments... can, at best, yield fewer hardy forms of third places, subject to the (cash) flow of distant owners."<sup>87</sup> Judit Bodnar expands this critique of urban space, noting that city life is marked by the paradox of being physically near others while remaining socially distant. She further observes that "social segregation works against mixing, often aided by urban design which operates on conscious policies of reducing encounters with difference"<sup>88</sup> Our ethnographic observation in Tokyo offers concrete examples of this erosion. Comparing local *sentō* and *izakaya* to their commercialised counterparts reveals a clear weakening of the kinds of casual, cross-class, and cross-cultural interactions that characterise effective third places.

In Shinjuku, the neighbourhood *sentō*, Bentenyu, exemplifies the values Oldenburg promotes. The owner explicitly stated, "As long as you are well-mannered, I do not care who you are," signalling a commitment to openness over exclusion. The *sentō* attracts a wide range of users, even those with tattoos are accepted without question, and trust is embedded in the space. Trust between the owner and individuals trumps the social stigma of tattoos being associated with the Yakuza. During our interview, customers entered the bath silently after placing the correct fee on the counter. As the owner stated, "I place importance on regulars but also on newcomers. Regulars can be conceited...and I think that is dangerous." These values create a fluid, welcoming third space.

By contrast, the commercial super-*sentō yukemuri-no-sato* illustrates many of Bodnar's concerns. Tattoos are banned, a policy that effectively excludes an entire subculture. The facility, while pristine and well-equipped, with access to a restaurant, eating space, and a salon, restricts access to resting

<sup>86</sup> Judit Bodnár, "Reclaiming Public Space," *Urban Studies*, editorial, published online May 7, 2015,.

<sup>87</sup> Oldenburg, Ray. "Our vanishing third places." *Planning commissioners journal* 25, no. 4 (1997): 6-10.

<sup>88</sup> Judit Bodnár, "Reclaiming Public Space,"

areas based on the purchase of food, turning what could be shared space into commodified zones. Architecturally, it is isolated— a large, standalone complex surrounded by a parking lot, physically and socially disconnected from the surrounding neighbourhood. These design and policy choices reflect Bodnar’s point that modern cities increasingly operate on logics of segregation and revenue generation.<sup>89</sup>

This tension also emerges in our comparison of *izakaya*. In Torikizoku, patrons arrived in pre-formed groups, and no interactions were observed between tables. The space supported private group bonding but discouraged serendipitous encounters. A few doors down, the local *izakaya* Isogen operated under an entirely different rhythm. Bar seats and tables were closely packed. Staff and patrons greeted each other by name. These relationships, forged not through consumption but routine co-presence, exemplify the kind of informal community that Oldenburg sees as foundational. Our ethnography suggests that commercialisation not only alters the architecture of the third spaces but also diminishes their capacity to sustain unplanned, socially meaningful interactions. As Bodnar writes, “Going out into public space means literally going out to socialise and do something enjoyable, which has consequences for the public one seeks and encounters.”<sup>90</sup> But increasingly, what constitutes the “public” is shaped by exclusion and economic logic. In places like Bentenyu and Isogen, we see lingering examples of inclusive third places that foster everyday solidarity. However, it is important to note that the inclusiveness and openness observed at the traditional ‘third places’ may not invariably be experienced by all patrons. While some respondents noted that they find it easier to initiate conversations with others at the traditional sites, others expressed a sense of reluctance and exclusion they feel from the traditional settings. A number of our respondents at Isogen, a group of young university students, noted that they occasionally feel a sense of intimidation from the predominantly elderly regulars. “For me, it’s actually the opposite — I feel like I’m less likely to be approached in places like this (Isogen), since they tend to have an older crowd of regulars, and the atmosphere makes it hard to join in.”, one of our respondents expressed. The sense of exclusivity produced by the customer demographics of those traditional establishments extends beyond the younger generation, also impacting multicultural migrant communities. “Because of their size, small *izakaya* eateries in Tokyo have the feel of a private drinking space catering to regulars, which may be intimidating for migrants from other countries, particularly if they are not confident in their Japanese.”<sup>91</sup> This, and our participants’ accounts, together reveal that the close-knit atmosphere that facilitates and fosters interaction for some can unintentionally reinforce the exclusionary nature and atmosphere at those sites. This can indicate that while traditional third places, namely *sentō* and *izakaya*, may serve as effective social outlets for certain demographic groups, their potential to foster open interactions and inclusivity may be limited by existing cultural norms and expectations surrounding social interaction in Japan. Interestingly, this complicates the assumption that corporatised spaces are inherently less effective as third places. A comparative study of Boston-area cafés found that some Starbucks locations actually facilitated more spontaneous social interaction than independent venues. One site in particular—a Starbucks in Central Square—stood out as the most effective third place due to its spatial intimacy, regular clientele, and staff who fostered a welcoming atmosphere. Despite its corporate identity, this

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<sup>89</sup> Judit Bodnár, “Reclaiming Public Space,”

<sup>90</sup> Judit Bodnár, “Reclaiming Public Space,”

<sup>91</sup> Susanne Wessendorf and James Farrer, “Commonplace and Out-of-Place Diversities in London and Tokyo: Migrant-Run Eateries as Intercultural Third Places,” *Comparative Migration Studies* 9, no. 28 (2021). 12

Starbucks cultivated a sense of familiarity and comfort that aligned with Oldenburg's vision of third places more than the less socially conducive independent cafés nearby.<sup>92</sup>

In our ethnographic observations, a beer at Torikizoku costs around 390 yen, whereas at Isogen the price is approximately 500 yen. This pricing difference illustrates how commercialisation can impact affordability and accessibility, which are crucial in determining who feels welcome in these social spaces. Kurniawan's study of Bandung cafés supports this point by emphasising affordable pricing as a key feature of third places that remain open and inclusive to diverse populations such as students and young professionals. By maintaining reasonable prices, such venues foster broader social participation and sustain the inclusive atmosphere central to the concept of third places.<sup>93</sup>

Our ethnographic observations support scholars like Oldenburg and Bodnar, showing that informal, inclusive spots like local *sentō* and *izakaya* foster community across age, class, and identity. However, these traditional spaces are increasingly overshadowed by commercialised chains that emphasise efficiency and profit, sometimes deepening social distance. While chain *izakaya* offer affordable options that attract younger or lower-income patrons, their design—such as tablet ordering and booth dividers—encourages transactional, individual behaviours. This creates a feedback loop where social norms and corporate models reshape each other. Despite this, these affordable options may function as a more welcoming form of third place to a different generation of users. The issue isn't just losing traditional third places but the subtle transformation of urban social life under commercial logic. Tokyo's third places must evolve to balance meaningful interaction with modern demands.

## Conclusion

In conclusion, the evolution of third places in Japan, shaped by both historical Western influences and the global rise of neoliberal market ideologies, displays a complex tension between community and commodification. While commercialised chains like Torikizoku and large super-*sentō*s offer accessibility and standardised experiences, they often lack the unplanned social connectivity that characterises traditional third places such as Isogen and Bentenyu. Our ethnographic findings highlight how the interplay of architecture, pricing, and social norms influences who feels welcome and able to engage meaningfully in these spaces. The nuanced reality is that neither traditional nor commercialised venues are inherently more inclusive; instead, inclusivity depends on how these spaces negotiate cultural expectations, economic logic, and social habits. We began by justifying why this is not purely an issue of well-being but one concerning the very places that serve as host to the discussions and battles that form us and our world. We hope the ambiguity of our conclusions does not dissuade, and instead serves to demonstrate the significance and necessity of the challenge that lies ahead.

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<sup>92</sup> Rachael A. Woldoff, Dawn Marie Lozzi, and Lisa M. Dilks, "The Social Transformation of Coffee Houses: The Emergence of Chain Establishments and the Private Nature of Usage," *International Journal of Social Science Studies* (2013). 216

<sup>93</sup> Fajar Kurniawan and Acep Purwanto, "Café as Contemporary Third Place: A Study of Café Culture in Bandung, Indonesia," *International Journal of Architectural Research* 14, no. 2 (2020): 132.

**‘THE EXISTENCE OF AN ALL-POWERFUL HEGEMON ENSURES THAT THE INTERNATIONAL POLITICAL ECONOMY IS MORE STABLE AND EFFICIENT THAN ANY OTHER SYSTEM.’ DISCUSS.**

*Dawood Pervez*

**Abstract**

This essay evaluates whether the presence of an all-powerful hegemon ensures stability and efficiency in the international political economy. Using Hegemonic Stability Theory, it examines the roles of the British Empire and the United States in promoting global economic order through leadership, institutions, and enforcement. The analysis considers both the benefits and limitations of hegemonic power, particularly the United States’ post-1945 leadership and its occasional departure from liberal economic principles. Alternative theories, including regime theory, are assessed to determine whether stability can exist without a hegemon. The essay concludes that while a hegemon does not guarantee a liberal or efficient system, historical evidence suggests it has been a necessary condition for international economic stability.

**Introduction**

A realist definition of a hegemon can be described as a nation or state that provides leadership, guidance and ultimately, economic order to the world. A hegemon can also utilise its financial power and brute army strength to enforce its message on smaller states, either through military force or economic sanctions. Using these techniques of coercion and influence, the hegemon can establish a stable world economic order which can be maintained for the mutual benefit of all states. This theory is described as the ‘Theory of Hegemonic Stability’. The discussion in the first section of this essay will elaborate further on the details of the ‘Hegemonic Stability Theory’, particularly the benefits of this system and the attributes that the hegemon requires to establish this. The discussion will refer to both past and present hegemons such as the British Empire and the United States. With further elaboration and emphasis, in the second segment, on how American hegemony since 1945 has gone from relying “not on bombs but economically on the enormous wealth of the country and the central role its giant economy played in the world” (Hobsbawm, 2009,p.54-55) to its contemporary protectionist stance, through the use of tariffs, intended by the incoming President Donald Trump (Fechner & Knightley, 2024). The essay will methodically move to the final section, comparing the theory of hegemonic stability to rivalling theories in its ability to efficiently care for the international economy before evaluating and reaching a justified conclusion. The essay will proceed to navigate through a range of works such as those by Kindleberger and Gilpin in support of HST while also acknowledging opposing views such as those by Strange and Keohane. Ultimately, I will conclude how “a hegemon is a necessary but not a sufficient condition for establishment of a liberal international economy” (Gilpin, 2001,p.94) and therefore the existence of an all-powerful hegemon does not explicitly mean they will support a system in compliance with free market principles. I will seek to prove that a stable economic order must have an all-powerful hegemon but that there is no guarantee that they shall continue to act in a fashion that supports it when it is not in their interests.

**Hegemonic Stability Theory**

As previously mentioned, the theory of hegemonic stability relies on the nation in question obtaining the necessary attributes to be defined as a hegemonic power. This hegemonic power must also willingly enforce a system to support the international political economy as well as provide global states with mutual benefits and not rely on other political economic systems, such as historical hegemonic pretenders, the Soviet Union and Nazi Germany. The conditions for the rise of such a hegemon can occur when “one state has such

economic supremacy that no state or combination of states is able to challenge it effectively” (Gamble, 2002,p.130) and can exercise this economic supremacy through production, commerce and finance. A large economy is therefore a fundamental proponent of the hegemon as well as an advancement in an area of technology. Furthermore, a seismic political presence within world relations would be integral for the efficient enforcement of the system. It is therefore the hegemon’s responsibility, to use it to enforce such conditions as free market capitalism and global trade stability, whilst also establishing both political and economic institutions to uphold and maintain these values (Gilpin, 2001). In addition, a hegemon with a strong military, aids the international system as they can often pursue the role of a mediator on the world stage for whatever political or economic issues may arise. The hegemon can influence, pursue or even bully nations that do not comply with the system to retain harmony in the international economy. Ultimately, the economic, political and military might of a hegemon allows for stability as those who wish to challenge one another, or in fact challenge the hegemonic power, would be deterred to do so. This would then lead to a far more efficient system of trade, exchange of global goods and the upholding of free markets with everyone working in unison under the system of the one hegemon.

However, the hegemon would not promote this system without any benefit for itself, first and foremost, as well as assisting other nations for the stability of the international economy. It can be argued that a stable economic order would suit a hegemonic power as it stereotypically would have the largest economy in the world and would thus reap the most reward. For example, “in the nineteenth century under the Pax Britannica, overseas property rights were frequently upheld by British ‘gunboat diplomacy’” as well as the “international gold standard... managed by the Bank of England” (Gilpin, 2001,p.83) providing evidence of enforcement of economic policy, an institution responsible for international monetary stability as well as a stable monetary system in the gold standard. Whilst institutions serve as incredible assets in assisting monetary and economic stability for the world economy, they are usually set up and in large part influenced by the hegemon.

The British Empire is an example of an extremely powerful hegemon that stabilised the world’s economic order in the nineteenth and part of the twentieth centuries, for the ‘hegemonic stability theory’. Britain’s vast naval supremacy allowed for colonial expansion as well as “the commitment to free trade” becoming a staple of British policy. In addition, it was clearly in Britain’s interest to continue to enforce this system of capital, labour and free movement of goods as “British manufacturing industries enjoyed a technological lead” (Gamble, 2002,p.132) over others. Further evidence of British economic power can be exemplified through the fact that by 1914, British foreign investments had hit 4 billion pounds in exchange for a rentier income of £200 million per annum as well as London’s market being double the size of all economic competitors combined by 1870 (Gamble, 2002).

One of the most influential arguments in favour of hegemonic stability theory is that of Charles Kindleberger where he states, “that the 1929 depression was so wide, so deep and so long because the international economic system was rendered unstable by British instability and United States unwillingness for stabilising it” (Kindleberger, 1973,p.291-292). This infers that the collapse of the international political economy was down to the vacant hegemonic position, with Britain in decline and unable to enforce the system beyond itself and America sticking to their isolationist approach. This, he felt caused economic destruction everywhere with no stable system to mitigate economic struggles in the 1920s and 1930s and no one to enforce free market principles of free trade and goods. His further arguments pertain to the role of the hegemon maintaining the flow of goods to less economically developed countries, offering order in foreign exchange rates and arranging macroeconomic policy coordination as well as being a lender of last resort (Gilpin, 2001). It was clear to see the detrimental affect the 1929 depression had on economies with New York stock prices falling 32% and the British 16% by December 1929 (Kindleberger, 1984,p.370) on top of the crashing of the pound sterling from an exchange rate of \$4.86 to a low of \$3.25 in December 1931 (Kindleberger, 1984,p.380). Whilst Kindleberger’s points about the lack of a hegemonic figure being the

sole cause for the economic turmoil that followed are correct, he presents a liberal definition of the hegemonic stability theory in which the hegemon presents and maintains the system for its own benefit as well as others within the system. However, this perspective is slightly simplistic whereas the realist perspective gives thought to other political and economic goals of the hegemon. Their generosity in stabilising the world political economy may be more than a simple act of kindness, but rather an entry into achieving its imperial, political and economic goals through being selfish and ruthless when and where it is required for its own safety and prosperity. Whilst the intention of the hegemon may differ in the liberal and realist versions of HST, it is clear that a hegemon is almost practically a requirement for an efficient and stable international economic order.

### **USA as hegemon since 1945**

There has been no greater beneficiary of the Second World War than the United States. The collapse of the financial system coupled with the war presented a uniquely prominent position for the United States from 1945 onwards where they were finally able to fill the vacant spot of world hegemon. The declining British hegemon was heavily weakened by both events and understood that British and American interests were “complementary rather than antagonistic” (Gamble, 2002,p.134) with the former’s support for the creation of a new liberal international economic order, which at that point could only be feasible under the leadership of the United States. For this to occur, the Atlantic Charter was signed in 1941, dismantling what was remaining of the British Empire and freedom for colonies (Gamble, 2002). The American hegemon reinforced the principles set by its predecessor advocating wholly for free markets, free trade and provision for public goods. It could do this due to its ever-growing economy, its newly assigned political rank, and its military force. The United States recognised the intimate link between its economic principles of free market capitalism and its politics, especially in relation to the Soviet Union. The Bretton Woods system was launched to organise monetary activity, whilst making the U.S. dollar the new global reserve currency backed by gold from the British pound sterling. The International Monetary Fund was also founded to provide monetary advice, keep track of exchange rates and act as a lender (Gilpin, 2001). An example of this would be during the 1997 Asian financial crisis when they recommended some countries legally institutionalise their central banks autonomy and independence (Bagchi, 2024). Furthermore the establishment of the World Bank has provided much needed relief and care for less economically developed countries(Gilpin, 2001). All these institutions, spearheaded by the United States, have assisted in stabilising the world international economy by inspiring economic growth and prosperity as well as allowing nations of all sizes to build and expand their economies. Trade also required its own institutions to officiate the regulation of international trade. For this, the World Trade Organisation was set up to further enhance the stability of global trade with clear rules for nations to abide by. Additionally, the United Nations was set up to manage political activities, spread democracy and maintain human rights (Gilpin, 2001). The creation of these institutions protects the international economy from major upsets, allow for global cooperation and ultimately lead to stability. Kindleberger and Gilpin both regard institutions endorsed by the hegemon to manage global trade, commerce and monetary efficiency as an integral part to a successful hegemon within ‘hegemonic stability theory’.

The establishment of NATO, a military alliance between western powers soon after the conclusion of the Second World War, has also protected the international political economy. Firstly, America’s military prowess, especially through its arsenal of nuclear weapons and air superiority, prevents any physical confrontation from other states. As well as this, with the extensive size of the United States economy, sanctions can be put on any nation thought to be defying the system or who may be acting in a protectionist manner. This helps to keep markets open for goods and trade, with a healthy international political economy a boost for all capitalist states, not just the hegemon (Gilpin, 2001). The United States domestic and foreign policy has always been to uphold the values of free market capitalism with this mantra being particularly

highlighted adjacent to the communist hegemonic pretender of the time, the Soviet Union. Soon after the conclusion of World War Two, Marshall aid was launched to help rehabilitate a devastated Europe, along with their economies (Gamble, 2002). Whilst this may be seen as an unprecedented and selfless act, the United States political philosophy was also at play here. An economically healthy Europe would be one the U.S.' largest markets for sales and trade and would contribute significantly to the overall health and stability of the world economy. Furthermore, a far more integral reason was the emergence of the Cold War where not only was the capitalist ideology central to the 'hegemonic stability theory' under threat from Soviet communism, but America's own political influence as world hegemon was also under siege. To prevent countries falling into the Soviet sphere of influence and thus falling to communism, the United States deemed it a fundamental requirement to assist those through its economic might, to ensure capitalism survives in those countries and arguably creating their own sphere of influence with the goal of maintaining a stable world economic order. This was also the reason for the Korean war as well as the Vietnam war which the United States fought, one to protect its own hegemony and two, to prevent the decline of the international political economy due to the rise of communism (Hobsbawm, 2009). America understood that its influence and hegemonic strength relied not on a formal empire, but rather an informal one through the maintenance of free market capitalism around the world.

The American hegemon has guided the world using its military might, economic strength and oil resources, as well as the use of political and economic institutions, through many times of tension such as the Cuban Missile Crisis and other events during the Cold War (Baker, 2011). The United States has proven, from 1945 until present, as an effective hegemon not just in an economic sense but also a political one. This period under Pax Americana has provided many nations with economic platforms they had never had before including nations with emerging economies such as Brazil and India (Harold, 2011). However, this is not to say that the hegemon cannot and will not act irrationally from time to time. The gold standard, which allowed other currencies to be linked to the dollar, was suspended in 1971 by President Richard Nixon. Although the dollar was still strong and acted as the reserve currency of the world, it proved the United States had weaknesses even though capital and trade were still heavily supported and continued to thrive after 1971 (Gilpin, 2001). Furthermore, the United States invasion of Iraq in 2003 contradicted the very institutions and stability of the world order it had set up (Hobsbawm, 2009). Ultimately, on paper, the United States is the perfect hegemonic power to fulfil the 'hegemonic stability theory' with its fulfilment of all major disciplines set out by Gilpin and Kindleberger. However, with the United States political unpredictability and advocacy for extreme laissez-faire market policies, its economy and inadvertently the world economy may suffer from time to time.

### **Discussion on alternative theories**

Robert Keohane argues in favour of regime theory as an alternative to 'hegemonic stability theory' stating that regimes upholding international political and monetary institutions, such as the IMF, would be strong enough to sponsor cohesion and coordination between states, should there be no hegemon in charge. These regimes were designed to reduce uncertainty, minimise transaction costs and the prevention of market failures and have created an identity for themselves on the world stage, effectively stating that nations would adapt to these regimes. Whilst he does not deny the imperative role American hegemony has played in their creation, they have outgrown the hegemon and can once more allow for global cooperation to stabilise the international economy without a hegemon (Keohane, 1984). However, he neglects the lack of global and perpetual cooperation required between states when there is not a hegemon present, for example between the two World Wars when protectionist blocs had formed as well as the brittle nature of these institutions without a hegemon to enforce or influence the rules upon others. In addition, this theory relies heavily on the neutrality of these institutions in a post-hegemonic world. To many, this is unrealistic and simply untrue with Strange pointing in the direction that these regimes were incredibly biased towards

America's economic and political interests, ruled in America's favour and are simply extensions of American influence on the world. Iterating how the regime theory is implausible (Strange, 1987). Strange also insists that American hegemony is far from waning, suggesting at the time, "seven American major oil companies dominate the top ten" as well as "of the leading 300 enterprises in the world, 142 are U.S. based" (Strange, 1987,p.568). She provides alternative reasoning to world economic problems, other than the decline of American power. Whilst her point may have valid evidence in 1987, the 2007-2008 financial crisis coinciding with American involvement in the Middle East, has raised serious questions over America's position on the world stage. James Harold argues that the financial crisis was a pivotal moment in shifting power away from the United States, with the emergence of the BRICS alliance and with the rise of China, who in a 2003 report by Goldman Sachs were projected to overtake the US economy by 2041, which was further revised to 2027 after the crisis (Harold, 2011). Furthermore, he reiterates that currency wars have made summits like the G20 and monetary institutions like the IMF redundant, on top of a commercial order that relies on surplus, will "destroy and disturb international order" (Harold, 2011).

The decrease in hegemony by the United States would indeed support the HST and explain the economic issues that have plagued the American economy, and by extension the world. This proves just how strong and influential the American economy, institutions and political influence have been for stability since 1945. The model of American hegemony has proven erratic at times too, with their incursions in Iraq and responses to the financial crisis exploitative of the system and order they have helped create. This in turn could de-stabilise the economies of the world. The rise of foreign powers like China and India, the formation of economic alliances excluding the U.S., such as BRICS, put American influence in a difficult position resulting in Donald Trump's current stance on Chinese tariffs (Regilme & Parisot, 2017). The world may be becoming more multipolar but up until this moment, the United States' impact on retaining peace and economic prosperity since it took over hegemonic leadership, has been fairly successful. As Gilpin articulates, the United States has operated the world system for its own self-benefit but has also maintained a stable economic order for the world to prosper too. The political and economic institutions may have bias decisions toward the hegemon, but only when the hegemon's interests are at stake and without these institutions or rather an enforcer like a hegemon they would not function adequately.

## **Conclusion**

Overall, the existence of a hegemon in theory does not necessarily ensure that the international political economy is more stable and efficient than any other system however, in practice it has. The British Empire and the United States of America have both provided excellent examples of hegemon's who have promoted concepts required for a stable international economy. This stability can be measured in many forms, from the fact that despite Britain's loss of hegemony, they "will produce three to four times as much wealth in 2000 as it did in 1900" (Gamble, 2002,p.138) providing clarity over how many beneficiaries there have been of a stable world economic order under American leadership. Whilst the point that a stable and efficient order cannot exist without a hegemon cannot be completely refuted, there has never been a clear example of this occurring, at least since capitalistic systems have been utilised. So, although a hegemon may act recklessly and perhaps manipulate the system and institutions it has created for its own benefit on occasion, the world economic order has worked sufficiently with one at the helm to enforce it. Therefore, it can be assumed that for a stable global economy to come to fruition, a hegemon, more or less, must be present in some form.

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# **IS IT ENOUGH IN A DEMOCRACY, SUCH AS THE UK, TO IMPROVE THE SUBSTANTIVE REPRESENTATION OF WOMEN AND ETHNIC MINORITIES?**

Saraswati

## Abstract

This essay critiques the effectiveness of substantive representation in UK politics, arguing that numerical inclusion of women and ethnic minorities does not guarantee structural change. Using intersectional and Marxist perspectives, it highlights how tokenism and entrenched elitism sustain systemic inequalities. Historical and contemporary examples demonstrate the limits of descriptive representation and the persistence of colonial and class-based hierarchies. The essay concludes that meaningful political empowerment requires decolonial reforms, grassroots activism, and redistributive policies that address the root causes of exclusion rather than simply increasing visibility.

## **Introduction**

Is the pursuit of improved representation within the UK's democracy merely rendering systematic inequalities more palatable, instead of addressing the root causes that necessitate such representation in the first place? To ask whether improving substantive representation is "enough" assumes the issue lies in the scope or degree of representation, ignoring critical considerations of who defines these terms and whose interest this framing ultimately serves. Diverting attention from more profound systemic injustices, the question in itself warrants interrogation as it implies an acceptance of the framework of representation and democracy as they are currently understood within the liberal political discourse.

In substantive representation, the emphasis is usually on the actions of elected officials who advocate for the interests of marginalised groups and is celebrated as an indication of progress. According to Hannah Pitkins (1972), an overemphasis of the composition of the political bodies shifts the focus away from the activities of representation. Such a focus may entrench existing inequalities because it does not address the exploitative socio-economic structures underpinning oppression. In light of this, Krook (2020) reminds us that representation without structural change creates a superficial solution, masking the exploitative systems that perpetuate injustice. Substantive representation for Marxists highlights how the dominance of the ruling class is maintained through capitalist democracies. The many representations legitimise existing power structures by indicating that inclusivity exists where none exists. As noted by Childs and Hughes (2018), tokenism within such structures co-opts the language of diversity while ensuring that systemic exploitation is maintained. Performative politics, in which marginalised identities are visibly included without substantive empowerment, reinforce this veneer of progress in these elitist institutions.

This essay argues that inequality cannot be represented by mere representation; substantive representation exists, but these ideas should, broadly, be put into a Marxist and intersectional context, stating how such a move under large capitalism fails to reach any tangible benefits. The true struggle would lie in demolishing the root structures that dismantle class exploitations and institutionalised elitism into true equality and tokenistic inclusion.

### **Historical Struggles and Progress**

The struggle for the political inclusion of women and ethnic minorities in the UK has its roots in historical movements, including the Suffragette campaign and the fight against colonial discrimination. The Suffragette movement marked a turning point in the political struggle of women, spearheaded by groups such as the Women's Social and Political Union, and it attained partial suffrage in 1918 and full suffrage in 1928 (Childs & Webb, 2011). While these indeed were triumphs celebrated as milestones, Kenny observes that they primarily benefited white, upper-class women, leaving working-class and minority women on the periphery. This exclusion points to the role of intersectionality in understanding the diverse experiences of oppression, as highlighted by Mügge and Erzeel (2016).

While progress has been incremental, recent figures show that the representation gap remains. According to McKee (2017), women now make up around 35% of MPs, up from less than 5% in the mid-20th century. Similarly, ethnic minorities make up around 10% of Parliament, which is still underreflective of their 14% share of the population. According to the Commons Library, the diversity is growing step by step. However, Runderkamp et al. (2022) point out that most of such changes reflect tokenistic adjustments rather than any substantial development in empowerment. Historical and current trends stand as testaments to the fact that, even though quantitative improvements in representation are present, qualitative improvement concerning influence is not as high.

Another strong, contemporary form of shaping exclusions within politics in the United Kingdom can be linked to the legacy left by colonialism. Lovenduski (2012) maintains that the historic British political establishments, solely constructed to answer to the interest of the imperialist ruling elites, still demonstrate structural predisposition against groups outside the circle. The basis behind policies from the ideological frameworks of colonialism thoroughly reinforces the foregoing inequalities; for instance, laws concerning immigration are intensely restrictive in content. Such a tell-tale history reflects many of the more profound challenges faced by ethnic minorities, particularly those of former colonies' origins, seeking substantial access to political office. The historical struggles for inclusion have shown gains and limitations that come with a focus on numerical representation. Substantive equality remains an illusion without engagement with the deeper structures shaped by classism and colonialism.

## **Critiquing Substantive Representation**

Substantive representation has to do with the elected members acting for their constituents' interests and is a central concept in political theory. According to Pitkin's work (1972), as cited in Celis & Childs (2020), there are two different conceptual frameworks: descriptive representation, which addresses the physical characteristics of representatives, and substantive representation, which deals with their acts and decisions over policies. While the latter is often a marker of progress, some critics argue that it does little to remedy structural inequalities. For descriptive representation, while there is greater visibility, it runs the risk of tokenism when not accompanied by substantive results. The distinction becomes important in critiquing effectiveness in the context of British politics. Pitkin's work pushes us to view political representation in a substantive way, defining it as 'acting in the interest of those represented, in a manner responsive to them'.

Intersectionality describes the fact that political marginalisation may be multilateral. Mügge and Erzeel (2016) examine cases of "double jeopardy," or instances in which discrimination often cuts across numerous variables, for instance, race as well as gender. For a specific example, migrant women in Parliament must often surmount so many difficulties their white female colleagues rarely endure. Thus, their line of thought goes towards substantial representation – descriptive representation for such groups has and, in many instances, will continue to increase barring structural constraints within society. The intersecting nature of these oppressions, failing to be duly addressed, causes inequality at the individual level, especially within political frameworks of an elitist nature.

Another important criticism of substantive representation is a phenomenon described as tokenism: the likes of Priti Patel and Rishi Sunak are examples of how those from marginalised communities might be promoted into positions of authority but do very little to advance the interests of their group. The promotion of anti-immigration policies by Patel, like the Rwanda deportation scheme, even goes so far as to utilise this representation actively to implement policies that harm the group it is supposedly 'serving' (Childs & Hughes, 2018; Krook, 2017). Equally, Rishi Sunak's economic policies have been criticised for having disproportionate impacts on working-class and minority communities. Piscopo and Kenny (2020) describe such performative politics as an appearance of progress that conceals systemic inequalities and assures the maintenance of existing power dynamics.

The role of class and elitism further complicates the effectiveness of substantive representation. According to Lovenduski, (2015), the elitist tradition of the British political system confines the representative from a marginalised group to merely perform an act that could not challenge the status quo. In this regard, Parliament continues to be a monopoly of those who come from privileged socio-economic backgrounds and who seldom possess the necessary lived experience to comprehend and represent the

interests of systemic injustices. This framework of elitism, thus, sidelines the voice of the working class and sustains a politics of exclusion.

Quantitative data shows the limit of representation. According to McKee (2017), representation has risen to 35% of women in Parliament and ethnic minorities to 10%; these figures mask profound inequalities. As Lassébie (2020) underlined, even if quotas and modifications in recruitment could have quantitatively improved representative presence, such mechanisms often do not ensure substantive representative presence. Time trends show gradual improvement but limited transformation, with women and ethnic minorities remaining significantly underrepresented in leadership positions and decision-making structures. Charts from the Commons Library further illustrate the glacial rate of change, with British politics still dominated by white male elites.

Substantive representation alone cannot challenge the structural impediments that marginalised groups face. Increasing diversity in Parliament is necessary but not sufficient unless complemented by a far-reaching commitment toward dismantling class, race, and gender-based systemic inequalities. The critique of substantive representation, thus, shows that without structural reform, representation remains a superficial solution that only reinforces the status quo.

### **The Colonial and Institutional Context**

The exclusion in the UK setting is deeply engraved in historical and institutional frameworks. According to Kenny's (2013) statement, institutional barriers occur in the case of discriminatory hiring policies and with a preponderance toward established political networks. Diversity-enhancing reforms notwithstanding, these represent the institutional practices that ensure there remains a political scenery within which a low level of meaningful representation quickly haunts underrepresented marginal groups. This is further compounded by legacies of colonialism that continue to be deeply ingrained in British politics. According to Gains and Lowndes (2018), many current policies and institutions are influenced by the discriminatory practices of the British Empire, reflecting a racialised hierarchy which excludes ethnic minorities from full participation in the political process.

It is in this context of violence and harassment faced by women in politics that the intersection of gender and race becomes particularly stark. Krook and Sanín (2020) point to the fact that women, especially those from ethnic minority backgrounds, are subjected to increased violence and online harassment, which seriously affects their political participation and career advancement. Krook (2017) furthers this by exploring how such gendered and racial violence is disproportionate in its effects on women of colour, thus creating an inhospitable climate that deters people from political participation. These types of violence are a threat not only to the safety of the individual but also to greater participation from below-the-radar groups, hence continuing their exclusion in political processes.

A decolonial perspective shows how colonial ways of thinking continue to impact contemporary political representation. Celis and Childs (2020) argue that exclusionary practices in British politics are based on colonial ideologies in which some communities are 'othered' and are denied complete political competence. These colonial legacies also continue to shape policies and attitudes toward immigrants, especially those from former colonies, reinforcing the obstacles to their effective political representation.

### **Pathways to Revolutionary Change**

Tokenistic inclusion is celebrated as progress, yet it is not enough to make a difference. Grassroots organising and institutional reform are needed to dismantle the systemic inequalities embedded in the British political system. Childs and Webb (2011) posit that one can achieve empowerment only through collective movements challenging entrenched hierarchies. In a related argument, Lovenduski (2015) insists on revising the elitist political institution in ways that could allow mechanisms to articulate the voice of people with low incomes and pathways for effective influence.

Global examples are an insight into other models of representation. The Scandinavian countries, renowned for their gender equality, have quota systems and welfare policies that make it easier for women and ethnic minorities to participate more. Murray (2024) says such frameworks allow for substantive representation, rather than descriptive, because they tackle the structural obstacles to inclusion. In turn, Cuba's revolutionary approach demonstrates the role of redistributive policies and grassroots involvement in effectively empowering traditionally excluded groups. Cuba has managed to install equality at the roots of its political and economic systems and, therefore, build avenues for authentic representation and participation.

Systemic redistribution has been an important part of any revolutionary change. According to Piscopo (2019), class and wealth inequalities question poor community empowerment. Resource redistribution, including investments in education, healthcare, and housing, ameliorates material conditions that prevent people from engaging in politics. This increases participation but also makes representation meaningful for disadvantaged groups. For instance, tokenistic representation needs to be transformed into structural change. However, combining grassroots activism with institutional reform and systemic redistribution will offer democracies such as the UK a different kind of political life in which equality and justice for all can be the bottom line.

### **Solutions and Future Directions**

Decolonisation of institutions and education becomes especially paramount in addressing the structural inequalities within British politics. Kenny (2013) asserts that structural changes must be introduced to dismantle elitist frameworks that maintain exclusion. This includes recruitment reform, diversification of political institutions, and addressing implicit biases within policymaking. Lassébie (2020)

shows how education can reshape public narratives, calling for a curriculum that challenges colonial legacies and fosters inclusivity, empowering future generations to engage in politics.

Grassroots advocacy and policy reforms are core to ensuring that the root cause of inequality is addressed. According to Gains and Lowndes (2018), grassroots movements are concerned with mobilising the marginalised and changes in systemic reform. Through collective action, movements have challenged entrenched power structures and insisted on equity policies, including universal access to education, health care, and suitable employment practices.

Substantive representation is important to achieve equality, but, in of itself does not suffice. The representation would be tokenistic and performative without structural reforms and revolutionary change. Real inclusion can only be talked about when an attempt at transformation is made at the foundational inequalities of the political system. This would involve decolonising institutions, constant advocacy, and redistributive policies to attain equitable and inclusive democracy in the UK.

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