

# International Affairs Forum

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*Capital Punishment  
Around the World*





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## summer 2015

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## ABOUT INTERNATIONAL AFFAIRS FORUM

International Affairs Forum is a publication of the Center for International Relations. Inside each issue you'll find interviews, editorials, and short essays from academics and practitioners, presenting a wide spectrum of views and from around the globe. In this way, we wish to provide readers with an all-partisan, international look at today's major issues, and tap into the research and views of major thinkers and actors in the field within the 'space' between social science journalism and academic scholarship. That is, we look for carefully considered contributions that can nevertheless be published relatively quickly and can therefore maintain the impetus of current thinking but do not require detailed peer review. The extent of our review is therefore largely a matter of informed editorship. We think that this is a valuable approach to extending informed opinion on policy in the international sphere.

Another feature of each issue is recognizing winners of our Student Writing Competition Program by publishing their efforts. As part of our mission, we provide a platform for students to take next steps toward successful professional careers and as such, believe exceptional work should be recognized, regardless of experience level. The program is open to all college students around the world.

## ABOUT THIS ISSUE

This issue's focus is on the topic of capital punishment around the world. With recent events ranging from the sentencing of Boston bomber Dzhokhar Tsarnaev to Nebraska's repeal of the death penalty to executions in Saudi Arabia and elsewhere, the topic has generated a great deal of renewed debate.

You'll note that the collection of pieces contained within presents an anti-capital punishment point of sentiment. International Affairs Forum strives to present you with an all-partisan collection of mainstream content and it was not our intent to present such a one sided view of this important topic. We did our best to engage capital punishment proponents to present their views but were unsuccessful in engaging them to participate. However, we certainly encourage you to share your comments on the issue, pro and con.

The issue also includes a wide selection of international affairs and economic essays.

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Of these, the last five are winners of our biannual Student Writing Competition. We wish them a hearty congratulations.

We hope you enjoy this issue and encourage feedback about it, as it relates to a specific piece or as a whole. Please send us your comments to [editor@ia-forum.org](mailto:editor@ia-forum.org).

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# THE DEATH PENALTY

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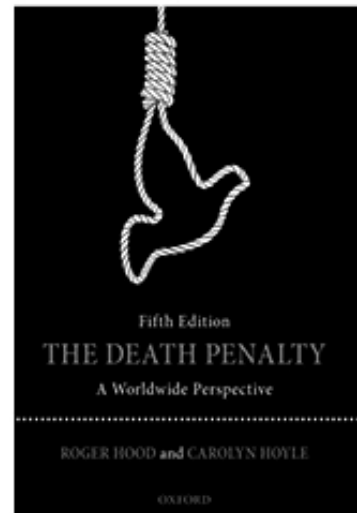
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# Progress Made for Worldwide Abolishment of Death Penalty

Prof. Roger Hood and Carolyn Hoyle  
Centre for Criminology, University of Oxford

**T**he recent publication of the Fifth Edition of *The Death Penalty: A Worldwide Perspective* by Roger Hood and Carolyn Hoyle (Oxford University Press 2015) shows the great progress made towards worldwide abolition of capital punishment over the past quarter of a century.

It is 25 years since Roger Hood published the First Edition of this book, based on his report in 1988 to the United Nations Social and Economic Council (ECOSOC). This aimed to assess the progress that had been made since the UN General Assembly resolution of 1971 which made it clear that *the main objective* of the International Covenant on Civil and Political Rights (ICCPR) which had been adopted in 1966 was to progressively restrict the number of offenses for which capital punishment might be imposed, “with a view to the desirability of abolishing this punishment in *all countries* (our emphasis).” When the ICCPR came into force in 1976, a similar resolution followed to emphasize its importance. In particular, Article 6(6) had made it clear that “*nothing* shall be invoked to delay or prevent the abolition of capital punishment by any State Party.”

At the time when the ICCPR was adopted, only 12 countries had abolished the death penalty for all crimes, for all offenses, and in all circumstances in peacetime and wartime. By 1988 the first edition of *The Death Penalty* noted that the number had gradually increased to 35, with another 17 countries having abolished capital punishment for ordinary crimes in peacetime only (as had the United Kingdom) and a further 26 countries that appeared to be abolitionist *de facto*, not having executed anyone in the previous 10 years. The abolitionist countries were predominantly in Europe and South or Central America. The pessimistic conclusion of this edition was that “In many regions of the world there is little sign that abolition will occur soon.”

From the Second Edition (1996) onwards the tone has changed towards gradually increasing optimism. It is abundantly evident that the goal set by the UN is ever closer to being achieved and at a rate that could not be envisaged in the 1980s, notwithstanding some very recent setbacks such as the resumption of executions in Pakistan after a moratorium of six years, provoked by the terrorist outrage in Peshawar; the decision of Jordan to resume executions after a period of eight years; and the many death sentences imposed during the recent turmoil in Egypt. This new edition, it is hoped, will make a convincing case for optimism and for rejection of pessimism.

At present, 107 countries have abolished the death penalty accounting for over half of the 198 independent countries in the world. Furthermore, 100 of them have rejected it completely in all circumstances – an enormous increase from the 12 countries that had done so by 1966. As many as 82 countries have ratified the ICCPR and/or one of the regional human rights treaties abolishing

the death penalty, and many have embodied abolition in their constitutions. At the United Nations, the resolutions for a moratorium on the death penalty and executions were supported in December 2014 by 117 countries, with 38 opposed, compared to 55 when the resolution was first introduced in 2007. Furthermore, the majority of countries that have embraced abolition in the last 25 years have moved swiftly from executions to complete abolition within a few years without going through a lengthy period of being abolitionist in practice while still imposing death sentences. This Fifth Edition notes that there are now only 39 countries that have executed anyone within the past 10

...evidence show[s] the failure of capital punishment to meet contemporary human rights standards in those countries that still retain it

years, whereas as recently as December 2007 there had been 51. Eight countries had abolished the death penalty completely and the number regarded as abolitionist *de facto* increased from 44 to 52. In the United States, seven states have abolished the death penalty since 2007. In 2013 only 22 of the 198 countries executed anyone, whereas the number in 1998 had been 37. Furthermore, in most retentionist countries the number of persons executed has fallen substantially since the 1990s; this trend is evident in countries such as China, Singapore, Vietnam, Malaysia and the USA. In fact, most retentionist countries, and states of America, can best be characterized as “low level and sporadic executioners.” In the five years between 1996 and 2000, 26 countries executed at least 20 people in each of these years, yet in the five years between 2009 and 2013, only seven nations were known to have executed 100 or more people – an average of 20 a year: China (by far the largest), Iran (by far the highest proportion per head of population), war-torn Iraq, Saudi Arabia, North Korea, Yemen and the USA (the lowest rate per head of population).

A new dynamic has been at work and a new pattern has been set since the end of the 1980s when the Berlin Wall came tumbling down: one which has sought to move the debate about capital punishment beyond the view that each nation has, if it wishes, the sovereign right to retain the death penalty as a repressive tool of its domestic criminal justice system on the grounds of its purported deterrent utility or the cultural preferences and expectations of its citizens. This new approach instead strives to persuade countries that retain the death penalty that it inevitably, and however administered, violates universally accepted human rights embodied in the ICCPR, as interpreted and developed by international human rights institutions, by domestic Supreme or Constitutional courts and embodied in constitutions. An ever more powerful group consisting of advocates for abolition - and defenders of the rights of those who may be subject to the death penalty - has been making a significant impact in the courts and seats of government: among them many European governments, including the United Kingdom FCO, The European Union, The World Coalition to End the Death Penalty, Hands off Cain, the International Commission, Reprieve, Penal Reform International, The Death Penalty Project and, of course, Amnesty International.

The evidence showing the failure of capital punishment to meet contemporary human rights standards in those countries that still retain it is extensively reviewed and critiqued in this Fifth Edition.

It highlights the inappropriate scope of the crimes and persons punishable by death, in particular for drug trafficking; the failure to protect the disadvantaged and mentally ill, the paucity of resources and inadequate procedures to ensure a fair trial, the failure to provide just clemency proceedings, the dreadful state of death rows in many countries and other human rights abuses contrary to the international standards set by the ICCPR and the UN Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty. It reviews the evidence of the inevitable arbitrariness, discrimination and error that has been found in all death penalty systems and procedures – whether mandatory or discretionary – as well as the failure to provide proof of a unique deterrent effect on murder rates associated with the use of capital punishment. Attention has been paid also to the argument and evidence for the claim that abolition is impossible to achieve in the face of hostile public opinion. Not only is it concluded that the evidence is weak but also that popular sentiments should not over-ride the duty of the state to protect all its citizens from arbitrary violation of their right to life and freedom from cruel, inhuman and degrading punishment. Finally, this volume (like its predecessor) tackles the question of what punishment should replace the death penalty and argues that any form of imprisonment should leave hope for the prisoner to be eventually paroled under supervision if shown by a competent authority to no longer present a danger if released. Life imprisonment without any hope of parole from the very beginning of the sentence is regarded as unnecessary, likely to lead to excessive punishment of persons who are not too dangerous to be released, and yet another form of cruel, inhuman and degrading punishment.

The spread of abolition throughout the world to include countries of varying cultures, religious creeds, and social and political structures, has severely undermined the argument of those who have taken a cultural relativist's position on this issue and added greatly to the normative and moral force propelling the abolitionist movement. Although largely European-led, it has been embraced in South and Central America, in many parts of Africa, among many secular Muslim states such as Turkey and Senegal, and is beginning to make headway in Asia. We note, for example, the abolition of the mandatory death penalty in an increasing number of jurisdictions, the willingness of the Attorney General of Malaysia to review the death penalty, the reforms in China to reduce and make less arbitrary the infliction of the death penalty with a view to eventual abolition, the further reductions in the scope of capital punishment in Vietnam, and the serious consideration of abolishing capital punishment now taking place in Thailand, Ghana, and Niger.

The situation on the global plane has undoubtedly moved towards universal abolition. Instead of abolitionists being on the weaker flank, constantly being called upon to justify their position, it is now the retentionists who are on the back foot. Most of these countries are recognising the need for reform to protect their national reputations in the human rights field, as is evident, for example, in China. As one prominent and influential Chinese senior scholar, Professor Zhao Bingzhi of Beijing Normal University, put it recently at an international meeting: "Abolition is *an inevitable international tide* and trend as well as a signal showing the broad-mindedness of civilized countries ... [*abolition*] is now *an international obligation*."

**Roger Hood** is Professor Emeritus of Criminology and Research Associate at the Centre for Criminology, University of Oxford.

He is author of numerous papers and books including (with Carolyn Hoyle), *The Death Penalty: A Worldwide Perspective* (5th edition, Oxford: Oxford University Press, 2015). He has also served as Consultant to the European Parliament on Enhancing EU Action on the Death Penalty in Asia, Consultant, The Death Penalty Project, Consultant, Great Britain-China Centre, Member, Foreign Secretary's Expert Group on the Death Penalty Panel, Fellow of the British Academy, Expert Consultant on Death Penalty United Nations, Member, Parole System Review, President, British Society of Criminology, Member, Judicial Studies Board, and Member, Parole Board for England and Wales.



Professor Hood presented his report to the European Parliament on *Enhancing EU Action Against the Death Penalty in Asia* in October 2012. In June 2013 he opened a plenary session of the World Congress Against the Death Penalty in Madrid and in early July launched his report *The Death Penalty in Malaysia. Public Opinion on the Mandatory Death Penalty for Drug Trafficking, Murder and Firearms Offences* at the Malaysia Bar Council in Kuala Lumpur.

**Professor Carolyn Hoyle** is Director of the Centre for Criminology. She has been at the University of Oxford Centre for Criminology since 1991 and has published empirical and theoretical research on a number of criminological topics including domestic violence, policing, restorative justice, the death penalty, and, latterly wrongful convictions. She teaches courses on the MSc in Criminology & Criminal Justice on: 'Restorative Justice'; 'The Death Penalty'; and 'Victims', lectures on Victims and Restorative Justice on the FHS Law degree, and supervises DPhil, MPhil and MSc students on these and other criminological topics. She is currently conducting research into applications to the Criminal Cases Review Commission concerning alleged miscarriages of justice, as well as continuing her ongoing research on the death penalty.



# Universal Abolition of Capital Punishment is Drawing Nearer

Prof. William A. Schabas  
Middlesex University London

**E**very five years the United Nations Secretary-General issues a detailed report on the status of capital punishment. The reports have appeared since the mid-1970s. The most recent of them, the ninth quinquennial report, came out in April 2015. It confirms consistent progress towards worldwide elimination of capital punishment.

According to the Secretary-General's report, 159 countries can be considered abolitionist, in that they have either abolished the death penalty in law or stopped using it in practice. Only 39 countries continue to use the death penalty. Of these states, more than half use it infrequently.

By comparison, the first of the Secretary-General's reports, published in 1974, indicated that 22 out of 68 States had abolished capital punishment, the majority of them only partially, which is to say for 'ordinary crimes' and excluding such offences as treason and those committed in wartime. The Secretary-General concluded that it 'remains extremely doubtful whether there is any progression towards the restriction of the use of the death penalty'.

But the four subsequent decades leave no doubt about such a trend. On average, two to three states every year abolish the death penalty. But also very significant, as the Secretary-General's latest report indicates, is the decline in use of capital punishment within those States that retain the practice. For example, China, which is at the top of the list in terms of absolute numbers of executions, provides evidence of important reductions including amendments to its penal legislation removing the death penalty for certain crimes. In the United States, which is close to the top of the list, use of the death penalty also continues to decline. Slowly, its component states are abolishing the death penalty. The latest to do so, Nebraska, is significant because it is considered to be relatively conservative.

Capital punishment has virtually disappeared from many parts of the world. In Europe, with the exception of Belarus, where a very small number of executions are carried out each year, it can be considered extinct. In the Western Hemisphere, only the United States has conducted executions over the past five years. Dramatic progress is also evident in Africa, where capital punishment has been abandoned by most countries.

The only part of the world where the practice may be on the increase is the Middle East. Iran, Iraq, Saudi Arabia and Yemen conduct large numbers of executions each year, sometimes in public and using brutal methods. Although the death penalty may be imposed for ordinary crimes like murder, its widespread use seems driven by the repressive politics of these countries rather than the normal imperatives of law enforcement.

In South-East Asia, the death penalty has declined dramatically. Nevertheless, some States cling to its use for crimes related to drug trafficking. This is contrary to international human rights law which limits the use of capital punishment to 'the most serious crimes', specifying that this mean acts with lethal or other grave consequences. These States argue that the death penalty provides an important deterrent.

*On average, two to three states every year abolish the death penalty.*

The deterrence argument has been debated repeatedly but to no avail for either side. Scientific studies are incapable of demonstrating whether or not capital punishment offers a significantly superior deterrent effect to prolonged life imprisonment, which is the alternative punishment. The best deterrent, of course, is better law enforcement and investigation, especially when crimes driven purely by monetary gain like drug trafficking are involved.

There are many misconceptions about the role of public opinion. In Europe, for example, it has often been said that abolition was the work of elites who took the initiative despite what ordinary people believed. But young people in Europe, who have grown up with out capital punishment, do not long for its return. Generally, they view it is a barbaric, medieval form of punishment, like the pillory or other forms of public torture. And with rare exceptions, even the most conservative political parties do not include the return of capital punishment in their programs. If the death penalty were really so popular, we would expect to see demagogic, populist politicians and journalists tugging at the heartstrings of the public. And we do not see this.

It seems that nothing can stop continued progress towards universal abolition. In the United Nations General Assembly, a bi-annual resolution calling for a moratorium on capital punishment attracts increasing support. Recently, in the most forthright statement on the subject from the Vatican, Pope Francis said that 'the death penalty is inadmissible, no matter how serious the crime committed'. If the trends continue, five years from now there will be 25 to 30 States with the death penalty, and in another five years 15 to 20, and then it will disappear.

**William A. Schabas** is professor of international law at Middlesex University London, professor of international criminal law and human rights at Leiden University and emeritus professor of human rights law at the National University of Ireland Galway. He is the author of many books and articles on the abolition of capital punishment, genocide, human rights and the international criminal tribunals. Professor Schabas was a member of the Sierra Leone Truth and Reconciliation Commission and Chairman of the UN Commission of Inquiry on the 2014 Gaza Conflict. He is an Officer of the Order of Canada, a member of the Royal Irish Academy and holds several honorary doctorates. He is the author of more than twenty books dealing in whole or in part with international human rights law. He has also published more than 350 articles in academic journals. and is editor-in-chief of *Criminal Law Forum*, the quarterly journal of the International Society for the Reform of Criminal Law





## Interview: Prof. Jeffrey Kirchmeier

CUNY School of Law, United States

**Capital punishment remains a controversial, highly contested issue in our society despite the Supreme Court’s determination of its legality as a matter of constitutional law. Opponents of the death penalty argue against its application on a number of grounds – morality, economy, medical practicality, etc.; why did you decide to focus your recent research on the racial aspect of capital punishment?**

Although my book *Imprisoned by the Past: Warren McCleskey and the American Death Penalty* covers the entire history of the U.S. capital punishment system, much of the book focuses on the racial aspect because race is so uniquely intertwined with our criminal justice system, the history of the death penalty, and the history of the United States. The evidence about how race affects who is sentenced to death highlights numerous other problems with the system too. Additionally, another reason the book centers on the theme of race is that I wanted to focus on the case of Warren McCleskey, one of the most important cases in U.S. history, as a turning point for the history of capital punishment. And the key argument in his case focused on the role that race plays in capital sentencing. But his case also connected to other issues that the book explores, including systemic arbitrariness, innocence issues, the morality of killing prisoners, and the way society executes inmates.

**In his dissent in a different death penalty case, *Callins v. Collins* (1994)<sup>1</sup>, Justice Blackmun asserted: “Experience has taught**

**us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death can never be achieved without compromising an equally essential component of fundamental fairness – individualized sentencing.” In what ways is the death penalty administered in a racially discriminatory manner?**

Justice Blackmun was making the point that the judgment of whether a person should live or die requires jurors to consider numerous factors in assessing the value of a human being’s life. But the problem is that this striving for fairness also allows jurors to consciously or subconsciously consider improper factors such as race. In Warren McCleskey’s case, his lawyers presented a sophisticated statistical analysis, known as “the Baldus Study,” which showed how race affects capital sentencing. In particular, the study found that jurors were significantly more likely to impose the death penalty when the victim was white than when the victim was African American. Numerous studies have found similar results about how race affects the probability that a person is sentenced to death. Historically, states had criminal laws and procedures that were intentionally designed to treat whites and blacks in different ways, and that past is still present in the biases brought to the criminal justice system by the people who participate in that system.

**Your recent book, *Imprisoned by the Past: Warren McCleskey and the American Death Penalty* (2015), contextualizes the problem of such systemic racial discrimination. Why did you choose to research and write about**



***McCleskey v. Kemp* (1987)<sup>2</sup> specifically? In what ways did the Court's decision signal a departure from the ruling in *Furman v. Georgia* (1972)<sup>3</sup>, an earlier death penalty case?**

When I decided to write a book that covered the history of the death penalty in the United States, I soon realized that the *McCleskey v. Kemp* decision was perfect for tying together the past, present, and future. The Court's reasoning in the case illustrates how the criminal justice system and the United States in general have failed to adequately grapple with our history of racial discrimination. Additionally, the case is a major turning point for the death penalty abolition movement and for those in the legal system. When attorneys began attacking the death penalty on constitutional grounds and found

recent years after *McCleskey v. Kemp*, and the Court will continue to do what Justice Blackmun called "tinkering" with the death penalty. For example, even though states began adopting lethal injection as an execution method back in 1977, the Supreme Court this year heard oral arguments about lethal injection procedures as states still struggle with the procedures. Similarly, the Supreme Court was recently asked to consider *United States v. Umaña*, a Confrontation Clause case where a defendant is challenging the reliability of hearsay evidence presented to the sentencing jury. The Court has accepted review in *Hurst v. Florida* to evaluate the way defendants get the death penalty in Florida. We have been trying to make improvements to the death penalty for hundreds of years, but we still cannot get it right.

...money makes a difference in the criminal justice system and in the capital punishment process,

some success with *Furman*, many continued to expect the U.S. Supreme Court to eventually end capital punishment in America. Once the Court decided *McCleskey*, though, everyone realized that in the immediate future the Court was not going to stop executions. This realization after *McCleskey* affected politicians, activists, attorneys, judges, and others in the way they viewed capital punishment.

**And even after *Furman* and *McCleskey*, the Supreme Court continues to play an important role in the way the death penalty is used?**

Yes, that's true. In the book I devote a chapter to the direction the Supreme Court has taken in

**There is a quote by Clarence Darrow that states: "The question of capital punishment has been the subject of endless discussion and will probably never be settled so long as men believe in punishment."<sup>4</sup> Darrow's prediction seems accurate in that the legality and enforcement of capital punishment varies widely across the United States. Why has the administration of the death penalty changed so significantly in recent years?**

In Clarence Darrow's lifetime, he witnessed a period where several states abolished capital punishment, and we are currently in a similar abolition period. We have yet to see if our current period of abolition will be more lasting than the one Darrow saw in the early 1900s. But I think it is different. I explain in *Imprisoned by*

*the Past* that recent changes, and in particular the fact that several states have abolished the death penalty in the last decade, occurred partly because of Warren McCleskey's case. The Court's decision and the evidence presented by McCleskey's lawyers profoundly impacted the modern death penalty. There are additional reasons discussed in the book, such as discoveries of innocent people on death row and such as politicians and judges educating the public about the problems with our capital punishment system.

**Does a defendant's "indigent" status increase his or her probability of receiving the death penalty? If so, how could this be remedied?**

As in many areas of life, money makes a difference in the criminal justice system and in the capital punishment process, where cases are complex and expensive. One way to start to improve the system is to ensure all regions of a state have quality public defender systems where the attorneys are paid well and not overworked with a large number of cases. But even with many outstanding capital defense attorneys across the country, states often fail to provide adequate funding for investigation and experts. One of the reasons that some states have recently abolished the death penalty is because legislators recognized that even though capital cases cost much more than non-capital murder cases, mistakes are still made. So, these states concluded that the best remedy for the errors and the expense was to get rid of the death penalty.

**Does the legacy of racial discrimination in the application of the death penalty shape our current enforcement of capital punishment? How does the ongoing discussion about**

**race and capital punishment inform our understanding of recent cases like that of Trayvon Martin, Eric Garner, Michael Brown, and Freddie Gray?**

Since the Baldus Study in McCleskey's case showed that one's risk of getting the death penalty is affected by the race of the victim, numerous studies continue to make similar findings about how race affects the capital punishment system. Some states, like North Carolina, have struggled with the question of whether to have a law to try to address the role that race plays in capital sentencing. But the problem persists. And as we have seen by the recent treatment of the men you mention, race continues to affect both the legal system and law enforcement. The title for my book comes from a dissenting opinion by Justice Brennan in McCleskey's case where he said that we as a country remain "imprisoned by the past" if we refuse to acknowledge racial discrimination's influence on the present. The majority of Supreme Court justices in McCleskey's case made the mistake of not fully recognizing how our past history affects us today. Similarly, when we discuss what happened to people like Trayvon Martin, Eric Garner, Michael Brown, and Freddie Gray – as well as when we consider the disproportionate number of African-Americans in jail and prison -- it is essential that lawmakers understand how these issues are connected to America's long history of mistreating African-Americans. Such an understanding is the first step of a necessary journey the country must take toward addressing the present and preparing for the future.

**Jeffrey L. Kirchmeier** is a Professor of Law at City University of New York School of Law. He is the author of the new book *Imprisoned by the Past: Warren McCleskey and the American Death Penalty* (Oxford University Press 2015), which chronicles the history of the U.S. death penalty and that history's connection to a landmark Supreme Court case on race and capital punishment. His other writings include law review articles about criminal procedure, constitutional law, and the death penalty.



Additionally, he has supervised and helped train capital defense attorneys throughout Arizona and was the editor of a quarterly legal publication on death penalty law. Professor Kirchmeier is a member (and former Chair) of the Capital Punishment Committee of the New York City Bar Association.

*Interview by Katherine Lugo*

# Medical Ethics, Globalization, and the Decline of Lethal Injection

Brian Evans  
Amnesty International

**A**mong the countries of the economically developed world, the United States is something of an outlier when it comes to capital punishment – in that it still uses it. Japan does too, and other economically advanced East Asian countries like Taiwan and South Korea also retain capital punishment though executions are exceedingly rare. But Australia and New Zealand, all European Union countries, and for that matter almost all of South America, are completely abolitionist.<sup>1</sup>

In our globalized economy and our increasingly interconnected and interdependent world, being an outlier is not easy. The frustrations of some Supreme Court justices at the April 29, 2015, oral arguments in the case of *Glossip v Gross* are a good example. Justices Alito and Scalia in particular pushed aside legal questions about whether the drug *midazolam* is effective enough to prevent a lethal injection from becoming an excessively painful “cruel and unusual punishment,” and instead railed against “abolitionists” for making it difficult for U.S. states to carry out lethal injections.

“[I]s it appropriate,” Justice Alito asked, “for the judiciary to countenance what amounts to a guerrilla war against the death penalty, which consists of efforts to make it impossible for the states to obtain drugs that could be used to carry out capital punishment with little, if any, pain?”<sup>2</sup>

States are resorting to the less effective *midazolam*, Justice Scalia added, “because the abolitionists have rendered it impossible to get the 100 percent-sure drugs.”<sup>3</sup>

It is unclear who “the abolitionists” are. There are many people who oppose capital punishment, from small grassroots groups meeting in church basements, to the Catholic Church itself. The powers that are causing lethal injection the most trouble are not activist groups, but European governments, medical associations, and transnational pharmaceutical companies.

The focus of these Supreme Court justices on vaguely defined “abolitionists” also ignores the dominant role medical ethics has played in the slow but accelerating decline of lethal injection. “First do no harm” is not an abolitionist invention but a centuries old cornerstone of the medical profession and the foundation of the trust it engenders with the public. Opposition to medical participation in executions on the basis of this ethic is deep and long-standing, as helping put prisoners to death is at fundamental odds with health care’s purpose of preserving and improving life. Medicalizing executions created a conflict that was slow in coming, but in hindsight seems pretty inevitable.

As early as the 19th century, a New York commission's plan to replace hanging with lethal injection was rejected by doctors who "were afraid the public would associate death with the hypodermic needle and medical practice."<sup>4</sup>

It is not surprising that lethal injection was first used in the 20th century in a place where medical ethics were non-existent – Nazi Germany. There, beginning in 1939, a form of lethal injection was used to kill children as part of the Action T4 program of "forced euthanasia."<sup>5</sup>

Its Nazi provenance notwithstanding, after World War II the United Kingdom considered adopting lethal injection for its executions. In 1949, a Royal Commission on Capital Punishment was created to "look for means of confining the scope of punishment as narrowly as is possible without impairing the efficacy attributed to it;" this included identifying the best form of execution "using humanity, certainty and decency as yardsticks."<sup>6</sup>

In 1950, the British Medical Association (BMA) reluctantly consented to offer its opinion on the various execution methods under consideration, reminding the Commission that: "As an organization of persons whose function is to preserve life, the Association ... finds a discussion of methods of taking human life particularly distasteful." The BMA also stated that "it will oppose any method that would require the participation of a medical practitioner or, alternatively, that would require a physician's participation in training another to perform this task."<sup>7</sup>

The Royal Commission cited this opposition in its rejection of lethal injection as a form of execution in Great Britain.<sup>8</sup>

In 1977, lawmakers in Oklahoma tried to get their state's medical association to offer similar consultation on the possibility of using lethal injection, but the Oklahoma Medical Association flatly refused to help, citing the ethical conflict. It was left to a single doctor, Jay Chapman, the state's chief medical examiner, to devise a lethal injection protocol that would ultimately be adopted by all the executing states.<sup>9</sup>

The larger medical establishment in the U.S. was not pleased. In 1980 an article in the *New England Journal of Medicine* declared the emerging lethal injection laws to be: "a corruption and exploitation of the healing profession's role in society."<sup>10</sup>

Later in 1980 the American Medical Association (AMA) issued its Opinion 2.06, later updated in 1994, 1996, 1999, and the year 2000. It states clearly: "A physician, as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution."<sup>11</sup>

In 1981 the World Medical Association<sup>12</sup> echoed the AMA, and in 1983 the American Nurses Association<sup>13</sup> did likewise.

The first U.S. lethal injection was carried out in Texas on December 7, 1982. By 1985, another

medically based objection had emerged. A legal challenge to the use of pharmaceuticals for a non-intended purpose (causing death) found its way to the Supreme Court. In *Heckler v. Chaney* the Supreme Court acknowledged that using controlled substances for unintended purposes was technically illegal, but that the FDA had to be allowed discretion and was within its rights to not seek enforcement of this particular violation of its regulations.<sup>14</sup>

Lethal injections could proceed. Botches soon followed.

The first difficult lethal injections occurred in Texas when executioners had trouble finding suitable veins in prisoners who had been intravenous drug users. In 1988, a syringe popped out of a prisoner after the drugs had begun to flow, spraying them across the room. In 1989, a Texas prisoner had a violent reaction to one of the drugs, causing one of the witnesses to faint.<sup>15</sup>

Despite the medical ethics issues, the technically illegal use of the drugs, and the botches, lethal injection prospered in the U.S. and eventually became the go-to execution method in every state that retained the death penalty.

But as lethal injection gained supremacy in the United States, the world outside was changing. Countries were abolishing the death penalty left and right, particularly in Europe. And Europe was consolidating itself into a Union that could project greater economic power and influence. Meanwhile, the pharmaceutical industry on which lethal injection relied was also consolidating, and globalizing. Botched executions that before would have flown under the radar suddenly became international incidents.

The most egregious of these was the failed execution of Romell Broom in Ohio. On September 15, 2009, Ohio executioners tried for 2 hours to find a suitable vein, at times with Broom's assistance, before the state's Governor eventually called the execution off. This embarrassing failure caused a stir on both sides of the Atlantic.

In Europe, disturbed that Ohio was still trying to execute Broom, the EU issued a statement and wrote to Ohio Governor Ted Strickland informing him that "to subject a person to a second execution attempt is contrary to widely accepted human rights norms."<sup>17</sup> In Germany, a documentary film called "The Second Execution of Romell Broom" was produced in 2012. (Broom remains on Ohio's death row.)

In the U.S., the Ohio warden who oversaw the failed execution retired in 2010 and in 2011 came out against the death penalty.<sup>18</sup> And by early 2010 two more U.S. medical professional associations had felt the need to make their positions clear.

In January 2010 the National Association of Emergency Medical Technicians (NAEMT) issued a position statement affirming that "it is a breach of the foundational precepts of emergency medical services, and a violation of the *EMT Oath*, to participate in taking the life of any person."<sup>19</sup>

The next month the American Board of Anesthesiology (ABA) incorporated the AMA's Opinion 2.06 into its standing policy. This was updated in May of 2014 to emphasize that "ABA certificates may be revoked if the ABA determines that a diplomate participates in an execution by lethal injection."<sup>20</sup>

On March 31, 2010, Hospira, the maker of sodium thiopental, the anesthetic used in U.S. lethal injections, sent a to-whom-it-may-concern letter to Ohio and other states.

"Hospira provides these products because they improve or save lives ... As such, we do not support the use of any of our products in capital punishment procedures."<sup>21</sup>

Ohio and other states did not heed Hospira's admonitions, so in January of 2011, Hospira announced it would cease manufacturing the drug altogether;<sup>22</sup> its intention to manufacture sodium thiopental at its Italian plant collided with the strong abolitionist leanings of that host country, which has been without executions since 1889 (excluding the Fascist era). Italian authorities insisted that Hospira guarantee its drugs would not be used in executions. Hospira did not believe it could do so, and chose instead to cease production entirely.

Other pharmaceutical companies followed Hospira's lead.

Swiss-based Novartis, which made a generic version of *sodium thiopental*, announced in February 2011 that it had ordered its subsidiaries "not sell the product to distributors or third parties that may be selling it into the U.S."<sup>23</sup>

In April, Kayem, an Indian company based in Mumbai, announced that it would no longer sell its *sodium thiopental* "where the purpose is purely for Lethal Injection and its misuse."<sup>24</sup>

**“...as lethal injection gained supremacy in the United States, the world outside was changing”**

And in November 2011, another Swiss-based pharmaceutical company, Naari, demanded of Nebraska that its *sodium thiopental* which "was wrongfully diverted [from Zambia] ... to the Nebraska Department of Correctional Services be returned immediately to its rightful owners."<sup>25</sup>

With mounting difficulties in acquiring sodium thiopental, states began seeking alternative sedatives. The first choice was *pentobarbital*, but in April 2011 the U.K. banned its export to the U.S.,<sup>26</sup> and by July 2011 Lundbeck, a Denmark-based company that manufactured pentobarbital, was taking steps to keep their drug out of U.S. prisons.<sup>27</sup>

At the end of 2011, the European Commission added sodium thiopental and pentobarbital to its "list of goods subject to export controls according to the anti-torture goods Regulation."<sup>28</sup>

*Propofol* was the next sedative states turned to, but Germany-based Fresenius Kabi announced

export restrictions on that drug in September 2012.<sup>29</sup> In May 2013, London-based Hikma announced export restrictions on its sedative phenobarbital as well.<sup>30</sup>

And finally, in May 2014 when U.S.-based Par Pharmaceutical learned that its sedative, *Brevital Sodium*, had been acquired for executions by the state of Indiana, it objected and promised to implement distribution controls “to preclude wholesalers from accepting orders from departments of correction.”<sup>31</sup>

Which brings us to the Supreme Court case involving *midazolam*. A majority of the Court’s justices seemed inclined to allow the use of midazolam, despite serious doubts that it is a sufficiently effective sedative, given the unavailability of alternatives. But in March a manufacturer of *midazolam*, Akorn, prohibited direct sales of the drug to prisons,<sup>32</sup> and U.S. organizations representing pharmacists<sup>33</sup> and compound pharmacists<sup>33</sup> are now both on record opposing assisting in executions.

Did “abolitionists” have a role in encouraging this escalating pharmaceutical company and medical profession opposition? Undoubtedly. But it is the “First do no harm” core of medical ethics that has brought us to this point. U.S. lethal injection seems boxed in, and its inherent conflict with the globalized health-providing professions may have reached a tipping point.

States that seek to continue executing have mooted returning to electric chairs, gas chambers and firing squads, thus removing, for the most part, the conflict with the health professions. This may solve their problem in the short term, but even independent of debates about the proper method of execution it has become clear over the last decade that in the U.S. the death penalty itself is weakening.

Since 2007, seven states have abandoned capital punishment, death sentences have declined significantly, and the popularity of executions is deflating. Just this May, in staunchly conservative Nebraska, legislators overrode a Governor’s veto to abolish their state’s death penalty. In Harris County, Texas, which alone is responsible for over 100 executions, a recent survey found that, given the alternatives of life without parole, life with parole, or death, only 28% preferred capital punishment.<sup>35</sup>

It is clear that the medical profession wants out of the execution business. What others want is less clear, but as states begin to try to reintroduce older, less clinical, methods of execution to a more squeamish public, we may find out.

**Brian Evans** has worked for 20 years in the human rights and criminal justice fields. Most recently he served as Director of Amnesty International USA’s Death Penalty Abolition Campaign where he wrote extensively on capital punishment and related topics for Human Rights Now, AIUSA’s blog. Prior to working on capital punishment, Brian spent ten years as the Bahrain, Oman and Saudi Arabia Country Specialist for AIUSA, providing the organization with human rights and country expertise. He has an M.A. in Middle East Studies from the University of Texas.





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# A Perspective from Death Row: The Case of Exonerated Inmate, Glenn Ford

Interview with Glenn Ford, Exonerated Death Row Inmate, Louisiana State Penitentiary (“Angola”); and Mr. William Most, Mr. Ford’s attorney

*In 1984, Glenn Ford was convicted of the 1983 murder of Isadore Rozeman, the owner of a jewelry and watch repair shop in Shreveport, Louisiana. Mr. Ford spent 29 years, 3 months, and 5 days in solitary confinement on death row in the Louisiana State Penitentiary. On March 10, 2014, Mr. Ford was exonerated when the State filed a Motion to Vacate the Conviction and the Sentence of Glenn Ford, citing “credible evidence” had become known which “support[ed] a finding that Ford was neither present at, nor a participant in, the robbery and murder of Isadore Rozeman.” Additionally, the State claimed in the motion that “if the information had been within the knowledge of the State [during the investigation], Ford might not even have been arrested or indicted for this offense.” At the time of his release, he was the longest-serving death row inmate from Angola Prison to be exonerated, as well as one of the longest-serving death row inmates in recent American history to be exonerated and released.*

*Mr. Ford passed away on June 29, 2015 from terminal lung cancer. The following two interviews were conducted shortly before his death.*

## **Interview with Glenn Ford**

### **What was a typical day like in solitary confinement on death row?**

I was on death row, so [I] was confined in a single cell. 23 hours a day in [a] cell, 1 hour out to do your shower and other things...exercise, stuff like that.

### **What kinds of routines did you maintain?**

[laughs] Well, I tried to keep myself busy: drawing, writing, reading, listening to music, twenty-four seven is what I’d do. Most of my waking hours, [that is] what I did. I learned how to draw in '88 sometime, from watching another inmate, Tracy Lee, drawing, and he gave me a challenge to draw because I had so many ideas

about what he should be doing. So I started, got [myself] some books and started drawing.

### **So you were able to communicate with other prisoners on death row?**

Yes, while I was out on the hour [a day I was allowed out of my cell]. I [was] on a tier that’s between fourteen and sixteen individuals. And [they’re] the only people you see twenty-four seven every day for years, until something good or something bad happen[ed]. You [are] with them, more than you are with your family. So they become good friends; you almost think of them as brothers from being just in constant contact. You can’t help but become attached to some people.

**How did it affect you when another inmate would depart to be executed?**

Well, the first couple times it happened, it hurt. That's like losing a younger brother. I mean, someone that I [had] been next door to, talked to, everyday for between nine and eleven or twelve years, and then all the sudden they're gone, they're dead, murdered, whatever you want to call it. That hurts. So I tried to distance myself, so you get a mental block to where you push people away. That's the only way to survive. Not to be attached. And so I disassociate from a lot of stuff.

**What is the emotional impact on you from being on death row for so long and now being out?**

There are mental walls you put up for disappointment, for hurts and losses, stuff like that – things that I refused to deal with at the time that this stuff happened. Through the years, I've [been] put through so much stuff, that I refused to deal with some of it. Now when each mental block falls, [I] have days where I'm good, happy, stuff like that. And then all of a sudden I might go from happy to really sad, like wantin[g] to cry, hurtin[g] and stuff. But I...deal with that by myself.

**How does it feel to reintegrate into everyday, ordinary life as a free man? What has been the biggest challenge you've faced since you were released?**

Hm [laughs]. Trying to understand this, the world

as it is now. Everything is the Internet. Even the video games that they play now [are] high-tech compared to what was out when I was out. And, I'm still amazed and puzzled by most of what I see. But I just try to make up for lost time, or time stolen, or whatever you want to call it, but I just try to see where I could possibly fit in...So far, the only place I fit is in California.

***Interview with Mr. William Most  
Lawyer for Mr. Glenn Ford, Law Office of  
William Most***

**How did you first become involved with Mr. Ford's case? What led you to represent his two federal lawsuits?<sup>1</sup>**

I was introduced to Mr. Ford by John Thompson, another death-row exoneree. After his release from prison, John Thompson founded an organization called Resurrection After Exoneration to help other exonerees.

When I met Mr. Ford, he was very close to the deadline for filing his lawsuits. I agreed to get his cases started and then assemble a team that could carry them forward, as I am a solo practitioner without the resources to carry both his lawsuits to trial. I began working on his case with another New Orleans attorney, Mummi Ibrahim of Ibrahim & Associates, LLC. Together, we researched Mr. Ford's claims and began his two federal lawsuits. Then we reached out to expand Mr. Ford's legal team. I am happy to say that Loevy & Loevy, a civil rights law firm with a great deal of experience in wrongful conviction suits, has joined Mr. Ford's team.

<sup>1</sup> Note: As of the time of this interview, there are two federal lawsuits seeking justice for the many alleged violations of Mr. Ford's civil rights. In total, Mr. Ford was involved in three still-active lawsuits: 1. a federal lawsuit related to his wrongful conviction and imprisonment; 2. a federal lawsuit related to the alleged inadequate medical care he received in prison; and 3. a state petition for compensation under Louisiana's wrongful conviction statute. William Most, Mummi Ibrahim, and Loevy & Loevy are attorneys on the first two lawsuits. Kristin Wenstrom at the Innocence Project New Orleans is the attorney on the third lawsuit.

...Mr. Ford's case shows how much power prosecutors have to convict an innocent person – even when the only evidence linking that person to a crime is a single witness who recants their testimony during trial.

**According to the two federal complaints, what were the constitutional violations committed by the Defendants?**

The defendants violated many of Mr. Ford's rights guaranteed by the U.S. and Louisiana constitutions, including freedom from cruel and unusual punishment, the right to a fair and impartial trial, and equal protection of the law.

**Could you briefly explain the necessity of the two federal lawsuits and state petition filed in Mr. Ford's case? Why was compensation previously denied?**

The federal lawsuits are necessary because Mr. Ford has so far been denied any compensation for his nearly three decades on death row for a crime he didn't commit. The only money the state has given him is the twenty dollars they handed him upon his release for a bus ride home. Because of his terminal lung cancer, Mr. Ford has great financial needs for medical care, but no ability to work; he has so far lived on the generosity of donors who have heard his story.

Mr. Ford filed a claim under a Louisiana law that is supposed to provide compensation for wrongfully convicted persons. Even though it was the government that admitted that Mr. Ford was innocent and filed the motion to release him from prison, the Attorney General decided for some reason to oppose his claim – which they do not always do.

Earlier this year, a state court judge ruled against Mr. Ford's claim for compensation. The judge relied on a provision of the state law that not only requires the wrongfully convicted person to

prove that he did not commit the crime he was convicted of, but also to prove that he did not commit *any other* crime based on the same set of facts used in his conviction.

**One of Mr. Ford's federal lawsuits seeks damages, in part, for his terminal lung cancer, allegedly caused and/or exacerbated by both unhealthy prison conditions in Louisiana State Penitentiary and the willful medical neglect of prison officials. Why was Mr. Ford denied attempts to see an oncologist even after such treatment was officially recommended by the Defendants (relevant wardens, assistant wardens, officials of the Louisiana State Penitentiary, and doctors or alleged doctors)?**

I do not know how our prison system could deny a man the opportunity to see an oncologist.

Another shocking aspect of the medical care at Angola is the fact that inmates often face punishments for visits to the doctor. A recently filed class-action lawsuit against the Angola prison for shamefully inadequate medical treatment of prisoners says the following:

Defendants threaten punishment to every prisoner who seeks emergency treatment, placing a written warning on the Health Care Request Form that states "if I declare myself a medical emergency and health care staff determine that an emergency does not exist, I may be subject to disciplinary action for malingering." Defendants frequently make verbal threats of malingering charges as well. As punishment for supposed malingering, Defendants may issue a disciplinary write-up with

consequences that include extended lock-down in a disciplinary camp, in addition to the denial of medical attention.

**What were the worst conditions present in the death row cellblock?**

Only Mr. Ford or another death row inmate can say what was the worst, but the condition that was the most shocking to me was the fact that the prison would frequently flood the death row cellblock with raw human sewage. I have heard this from multiple former death row inmates, and Mr. Ford told me he was sometimes given only a broom to clean his cell of sewage.

**Has there been any explanation given as to what constitutes the “credible evidence” that led to Mr. Ford’s ultimate exoneration?**

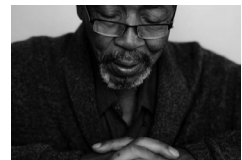
No. The evidence remains under seal as part of a grand jury proceeding, and the Caddo Parish District Attorney’s Office has not even said if they will unseal it after the grand jury process is over. They have said, however, that “if the information

had been within the knowledge of the state, Glenn Ford might not even have been arrested.” This is astonishing, as the legal bar for arrest is very low. What the supposedly new evidence is – and when the state actually knew of it – remains a mystery.

**How do you see Mr. Ford’s case in the context of the national debate on the death penalty?**

Mr. Ford’s case shows how much power prosecutors have to convict an innocent person – even when the only evidence linking that person to a crime is a single witness who recants their testimony during trial. In Mr. Ford’s case, the prosecutors had also indicted the actual killers, but they let the actual killers go once Mr. Ford was convicted. So not only did the state put an innocent man on death row, but they let murderers go free. Mr. Ford’s story should make anyone think about what kind of power is exercised in our criminal system, and what kind of accountability we need for those who wield that power.

**Glenn Ford** was a proud father and grandfather residing in New Orleans. He was born in Louisiana and raised in California. Shortly after his return to Louisiana, he was arrested and wrongfully convicted of a murder he had no part in. He spent more than twenty-nine years on death row at Angola Prison before his 2014 exoneration and release. With his newfound freedom, he called for prosecutorial accountability and powerfully conveyed his story to students, advocates, and the world. Mr. Ford passed away on June 29, 2015 from terminal lung cancer.



**William Most** is an attorney with the Law Office of William Most. Originally from the San Francisco Bay Area, he now practices civil rights and environmental law in New Orleans. He has represented or worked with a Louisiana death row exoneree, environmental nonprofits, California tribes and farmers, local, state, and federal governments, private landowners, and others. He is a graduate of Harvard University and the University of California, Berkeley, School of Law.



*Interviews by Katherine Lugo*

# President Muhammadu Buhari and the Abolition of the Death Penalty in Nigeria: No Promises Yet

Benson Chinedu Olugbuo

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## Introduction

President Muhammadu Buhari was sworn in on May 29 2015 as the new President of the Federal Republic of Nigeria. On March 28 2015, his political party, the All Progressives Congress defeated the ruling party, the Peoples' Democratic Party and former president, Goodluck Ebele Jonathan during the general elections. Among the many promises made during the campaign (as seen on the Buharimeter website (Centre for Democracy and Development, 2015)), one promise President Buhari did not make was to abolish the death penalty. This paper briefly discusses the death penalty issue in Nigeria, its relevance in the political life of the country and why the debate to abolish death penalty will continue as a discourse of national importance.

## The legal framework

Nigeria is party to several international human rights instruments including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples Rights. However, Nigeria has yet to ratify the Optional Protocol which seeks to abolish the death penalty (Amnesty International, 2015). The death penalty still exists in Nigeria. While Section 33 (1) of the Nigerian 1999 Constitution provides that every person has a right to life, and no one shall be deprived intentionally of his life; the right to life under the Constitution is not absolute.

On May 14, the former President of Nigeria, Goodluck Jonathan, signed the Administration of Criminal Justice Act 2015 into law. The Act harmonizes the Criminal and Penal Codes operating in Northern and Southern States in Nigeria. Section 401 of the Act provides that punishment of a death sentence be by hanging the convict by the neck or lethal injection. By this, it would appear death by firing squad has been removed as a means of execution. However, by provisions of the 1999 Constitution, the Act will only be applicable in the Federal Capital Territory. If enacted by a State House of Assembly, it can be applicable in that state. Furthermore, the law is procedural in nature and does not deal with sentencing issues. Therefore, Criminal and Penal and Sharia Codes in different parts of Nigeria can continue to apply the death penalty. Currently, offenses that may lead to the death sentence include murder, armed robbery, and kidnapping in the states of Anambra, Akwa Ibom, Imo and Abia; and adultery, sodomy, lesbianism and apostasy in states under the Sharia Penal Code.

Nigeria is party to the Rome Statute of the International Criminal Court; and there is currently a bill in the National Assembly to implement the provisions of the treaty. The bill provides punishment for genocide, war crimes, crimes against humanity and crimes against the administration of justice. Although the maximum punishment in the Rome State is life imprisonment, the Statute does preclude countries with the death sentence from imposing it (Rome Statute Articles 77 and 80).

#### The practice

In 2002, Nigeria adopted a self-imposed moratorium on death penalty. This was broken in 2013 when the former president, Goodluck Jonathan, encouraged State Governors to sign death warrants as a means of decongesting the prisons (Oniha, 2013).

According to Amnesty International, although no Nigerian citizen was executed in 2014, 659 persons were sentenced to death including 70 soldiers sentenced by military courts. In total, 1,484 people are on death row. Most of those were convicted of murder and armed robbery (Amnesty International, 2014).

As the statutes and provisions of the 1999 Constitution provide, one can conclude that the death penalty is still legal in Nigeria. In addition, the judiciary has also set judicial precedents through a number of cases upholding the death penalty including *Onuoha Kalu v. State*, *Adeniji v. State*, and *Okoro v. State* where the Supreme Court of Nigeria clearly stated that the death penalty is legal, constitutional and part of the Nigerian legal system.

The cruel nature of the death penalty, especially death by hanging and firing squad, raises the issue of human dignity and whether carrying out a death sentence violates provisions of Chapter IV of the 1999 Constitution. Another point of consideration is that the death penalty has not reduced the incidence of violent crimes in Nigeria. Ironically, it is the resurgence of kidnapping, terrorism and other related offences that have bolstered the resolve of legislatures to include the death sentence as a punishment for some crimes such as kidnapping and terrorism.

#### Conclusion

This paper supports the call by the Nigerian Institute for Advanced Legal Studies that the death penalty should be abolished in Nigeria. The death penalty is retributive in nature. It does not aim at any meaningful restorative justice. In addition, challenges with our criminal justice system mean that some innocent individuals can easily be sentenced to death for crimes they did not commit. The death penalty does not aim at reconciliation and, in fact, encourages revenge.

A moratorium on death penalty in Nigeria should be reintroduced and, thereafter, the new administration should ensure a comprehensive overhaul of the criminal justice system. As this paper has noted, the President has not made a promise or commitment on the abolition of the death penalty. There is a need to revisit the issue.

Nigeria is not alone in the death penalty voyage. Several countries in Africa still carry out executions despite the moratorium placed on it by the African Commission on Human and Peoples' Rights. Outside the continent, countries like, China, Japan, Indonesia, USA, and others still carry out the death penalty. In fact, Utah (USA) recently reintroduced the death penalty by firing squad as an alternative if there is a shortage in lethal injection drugs to carry out a death sentence. Although several African countries, including South Africa and Malawi have abolished the death sentence, others like Botswana, Cameroon, Chad, Comoros, Congo DR, Egypt, Lesotho, Liberia, Libya, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe still maintain the death sentence in their statute books.

The abolition of death penalty in Nigeria will happen one day. However, this doesn't appear to be in the near future as it is still a practice entrenched in the Nigerian legal system. Although the promises of the current government do not include the abolition of death penalty, the possibility of revisiting the debate in the future cannot be ruled out. As Nigerians celebrate the government of President Muhammadu Buhari, it is important to remind him that Nigerians voted him into office for change. The abolition of death penalty is part of that change. Even if it does not happen during his administration, it is still possible for him to lay the foundation for progress through complete adherence to the rule of law and respect of the dignity of the human person. This will create an enabling environment for Nigerians to discuss the issue of death penalty and agree whether to move forward through abolition or remaining at the status quo.

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# Sentencing Juveniles in the United States

James Lee Dold  
Campaign for the Fair Sentencing of Youth (CFSY)

In the United States, unlike any place else in the world, children are sentenced to life in prison without the possibility of parole.<sup>1</sup>

The Campaign for the Fair Sentencing of Youth has been a leading force in working with advocates, litigators, and those who have been incarcerated to abolish these unfair and outrageous sentences.

These death-in-prison sentences for children are in part the result of policymakers' reactions to the "super-predator theory" that emerged in the early 1990s.<sup>2</sup> Criminologists, responding to a rise in youth crime, predicted an uncontrolled crime wave committed by "fatherless, godless" young people who would have no regard for their victims and no concern about the consequences of their actions. Lawmakers reacted to the super-predator theory by easing the transfer process of young people into the adult system, subjecting them to adult penalties. This coincided with lawmakers' creation of longer and harsher penalties for adults, making it far easier to harness children with these extreme sentences.

Meanwhile, the juvenile crime wave never materialized, and instead youth crime has fallen to historic lows since that time. The originators of the super-predator theory also have recanted their prophecies. But despite their changes of heart, the impact remains: approximately 2,500 American children have been sentenced to life in prison without the possibility of parole. This is in addition to the thousands of other youth given extremely long sentences that are the functional equivalent of life in prison.

Research shows children's brains don't fully develop until their mid-20s – and most parents know this from experience. Because of their youthful brains, children are less able than adults to consider the long-term consequences of their actions, control their impulses, or avoid pressure from peers and adults. This also means that children can much more easily change and rehabilitate—reinforcing why they shouldn't receive prison sentences for life.

International bodies and the U.S. Supreme Court have quite clearly spoken out against this practice. The U.N. Convention on the Rights of the Child<sup>3</sup> expressly prohibits life-without-parole sentences for children, and the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment recently blasted the United States for being the only country that continues the practice.<sup>4</sup> The U.S. Supreme Court, relying in part on adolescent development research, has said that children are "constitutionally different" from adults.

Citing these "characteristics of childhood," the Court has scaled back the use of extreme sentences



in three recent decisions. In 2005, the Court abolished the juvenile death penalty.<sup>5</sup> In 2010, the Court ruled that it is unconstitutional to impose a life-without-parole sentence for a non-homicide crime committed by a person younger than 18.<sup>6</sup> And the Court ruled in 2012 that automatic life-without-parole sentences for children are cruel and unusual punishment, and required judges and juries to consider the mitigating factors of youth anytime a child faces a potential life sentence.<sup>7</sup>

In addition to conflicting with what we know about children's capacity for decision-making and future growth, these death-in-prison sentences disproportionately impact the most vulnerable youth in our society. Black teens are sentenced to life without parole at a per capita rate that is 10 times that of white youth. Nearly 80 percent of juvenile lifers reported violence in their homes, and 54.1 percent experienced weekly violence in their neighborhoods. 80 percent of girls and nearly half of all children who received these sentences had been physically abused and 77 percent of girls and 20 percent of all juvenile lifers said they had been sexually abused.<sup>8</sup>

The good news is that several states are making changes. Thirteen state legislatures have approved measures eliminating life-without-parole sentences for children, including eight since the Court's 2012 *Miller* ruling. Several others have significantly limited the use of the sentence. Throughout the country a number of states have passed and are considering major reforms as well.

These changes have taken place in such disparate places as Texas, Massachusetts, Vermont, and Wyoming. Just last year, a lawmaker who described himself as a conservative Republican was the lead sponsor of a bill in West Virginia that became the nation's most comprehensive juvenile sentencing reform legislation, eliminating life without parole for children and creating parole eligibility after they have served no more than 15 years. And this past May, Nevada and Vermont eliminated the sentence and created review opportunities for all youth sentenced in adult court. These new laws and court rulings will impact not only those youth sentenced to life without parole, but thousands of others sent to prison when they were too young to buy cigarettes or vote.

Simultaneously, there is growing support for reform among policymakers, opinion leaders, newspaper editorial boards, and others. More than 150 national and international organizations have called for an end to these extreme sentences.<sup>9</sup> The American Bar Association<sup>10</sup> and Pope Francis also have called for an end to life-without-parole sentences for children.<sup>11</sup>

The Campaign for the Fair Sentencing of Youth advances this movement by working as a convener to bring together advocates, litigators, national partners and directly impacted individuals, such as formerly incarcerated youth, family members of people who died as a result of violence committed by youth and family members of people serving these sentences. We also work with advocates who are working to pass legislation and provide guidance to litigators representing youth who may be sentenced to life without parole or people who have opportunities for review. We also engage in public education to both make sure people know that these sentences exist and change the narratives surrounding the people serving them. We have developed a national network of formerly incarcerated youth who serve as living examples of children's capacity for change.

We are poised for reform as the issues of over-incarceration gain momentum and visibility in the United States, and our country searches for its moral center in how it treats our children. We know that all children deserve a second chance, and that these extreme sentencing laws should never have been passed. Brain research, international law and standards, and common sense about teenagers show us that these sentences are inappropriate and not the best way to address the needs of our children. We will strive to implement accountability measures for youth that are age-appropriate, focus on rehabilitation and reintegration into society and make common sense as we work to ensure laws that forever cage people who were convicted of crimes as children are eliminated.

**James Lee Dold** serves as advocacy director for the Campaign for the Fair Sentencing of Youth (CFSY). In this role, James leads the CFSY advocacy team in national legislative efforts to eliminate juvenile life without parole and other extreme sentences for youth by working in partnership with coalition members, elected officials and other policymakers.



James is a graduate of the University of Nevada-Las Vegas and the University of Maryland's Francis Carey School of Law. Prior to joining the CFSY, James served as senior policy counsel for the Polaris Project, where he led successful state legislative campaigns that resulted in the passage of 40 new anti-human trafficking laws across the country. He received the inaugural 2013 Professor Louis Henkin Award by Rightslink at Columbia Law School, as well as the Josephine Butler Award for Law Policy Development for his efforts in advancing human rights protections.

A life-long advocate for disenfranchised and marginalized members of our society, James's passion for social justice developed while growing up in inner city Las Vegas with his parents and siblings. While in law school, James represented low-income individuals whose public benefits had been unjustly terminated or denied and also served as a law clerk at the ACLU of Maryland where he defended the First Amendment rights of street performers and religious groups. During this time he also interned in the offices of Maryland Delegate Dana Stein and U.S. Senator Ben Cardin.

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# International Anti-Death Penalty Advocacy and China's Recent Capital Punishment Reform

Dr. Michell Miao  
Oxford University, United Kingdom

Over the past few decades, promoting anti-death penalty norms on a global scale has gradually become a central plank of the diplomatic and political policies of the European Union (EU) and its member states. Beyond the geographical confines of the EU, abolitionist advocacy has gained more salience and meaning as the frontier of the campaign moves to an increasing number of retentionist countries. This article links this shifting global landscape with the most recent developments in one of the retentionist jurisdictions in Asia – the People's Republic of China (hereinafter China). China ranks top on the list of countries that currently retain and actively use the death penalty (Johnson and Zimring, 2009: 10; Hood and Hoyle, 2015: 75). The sheer volume and frequency of death sentences and executions it annually produces warrant a serious investigation there on the implication of the EU-led, global anti-death penalty advocacy, an important policy development in the field of human rights and international relations.

The EU's rising role as a "normative power" (Manners, 2002) on the international arena has great promises for the campaign against the death penalty. Across the discursive space within the EU, reasoning centering on how "we" should appropriately treat our own criminal fellow-citizens – a question intensely debated during the incremental abolition of the death penalty by individual Western European states, and subsequently, the Eastern enlargement process - has helped advocates to conceive and formulate a set of minimum standards according to which criminals in non-EU countries should be treated. The process of exporting abolitionist norms to countries outside of the EU coincides with a trend in which policy discourses on the death penalty have been elevated from domestic criminal justice agenda to transnational forums of human rights. Framing the abolitionist policy campaign in the universal language of human rights (Hood and Hoyle, 2015) helps to disseminate anti-death penalty norms across national borders and plant the seeds of abolition in foreign soils.

One way to examine the impact of the EU-led campaign against the death penalty in China is to explore China's relatively recent reform on the death penalty. Since the mid-2000s, China has launched a series of reform initiatives aimed at both reducing the use of the death penalty and enhancing the due process safeguards during the adjudication of capital cases. The death penalty reform was motivated by a blend of domestic events and foreign influences. Domestically speaking, after the turn of the century, a string of high-profile capital cases involving miscarriage of justice was exposed by the mass media. In order to repair broken public faith in the regime and minimize errors, a top-down revamp of the death penalty system seemed necessary. Internationally, since the turn of the century, greater monitoring and scrutiny of China's death penalty regime by abolitionist

advocates, experts and scholars inspired domestic rethinking of the function of capital punishment as an instrument to deter crimes and express retributive values.

The direct impact of international intervention and influences on the shaping of Chinese capital punishment practices, policies and legislation are visible in at least three ways. First, via professional training and academic exchanges, international anti-death penalty ideals and knowledge have gradually trickled down from the top of the information access chain to lower levels (Miao, 2013). Sensitive information, such as the international human rights standards on the use of capital punishment by retentionist countries, the global trends in the use of capital punishment, and the criticisms on China's excessive use of capital punishment by the international community (which were previously withheld in certain political, academic and professional circles) are now accessible to persons who are indirectly involved in the administration of capital punishment regime, as well as finally known by the general public.

On the level of policy and law making, high-level academic exchanges are forums where international human rights standards on the administration of the death penalty meet with Chinese domestic practices and law. Chinese representatives of the forums normally include renowned academics, national-level legislators and judges from the Supreme People's Court and provincial people's courts. They all play important roles in reshaping capital punishment policies, law and practices in different ways. Renowned Chinese scholars, in particular those who are well connected to governmental authorities, have immense impact in law and policy making processes. Invited to various committees

as special consultants, their opinions are valued and taken seriously.

Participants from the legislature and judiciary are also key players in the reform of capital punishment regime. They are best positioned to translate international standards and ideals into the practices, law and policies

*Once the draft of the Ninth Amendment to the Chinese Criminal Law takes effect later this year, the number of capital offenses in China will drop*

in China. Over the past decade, with the intensification of international academic exchange and professional training, China's top court and legislature worked hand in hand to promote policies of "kill fewer, kill cautiously" (Trevaskes, 2008) and "temper justice with mercy" (Zhao, 2011). The attitudes of cautiousness and leniency, cultivated by judicial, academic and legislative elites, led to a limitation of the scope of capital punishment in law and reduction of its use in judicial practice. Human rights languages and standards, which are a central theme in the forums of debates and exchanges, have been increasingly used to justify the elite-led, top-down reform.

Specifically, the legislature, through two amendments to the Chinese Criminal Law, has made efforts to align Chinese law with the international standards that the scope of "the most serious crimes" which are punishable by the death penalty should be limited to intentional crimes with lethal or other extremely grave consequences. Once the draft of the Ninth Amendment to the Chinese Criminal Law takes effect later this year, the number of capital offenses in China will drop to 46 types of offenses, which signifies a 32.4 % decrease over the past five years. Property offenses, fraud and financial

crimes, crimes endangering the order of the economic market, crimes threatening social order, and military crimes have been gradually removed from the law, with violent crimes against the person and crimes against public security becoming the main categories of capital offenses. Judicial endeavor to reconfigure and reduce the use of capital punishment focuses on the defendant's right to a fair trial. Since the mid-2000s, China's top judiciary, the Supreme People's Court regained, from provincial high courts, the power to review capital cases. According to the spokesperson of the Supreme People's Court, this heightened judicial review providing due process safeguards for capital defendants, in combination with new judicial policy oriented towards minimal use of the death penalty, has effectively reduced the number of death sentences by 50% from 2007 to 2011 (Dui Hua Foundation, 2011).

Second, the process of information dissemination from those who are directly exposed to the original sources of information to members of the larger society is also a process of public education. In the recent high-profile and controversial case of Lin Senhao, a Fudan University graduate student who poisoned his roommate, 177 voluntary signatures appealing for lenient treatment of the defendant were gathered across the university and submitted to the appellate court in Shanghai. One of the student leaders of the petition who was courageous enough to speak out in the middle of a whirlwind of media attention and public debate said that the petition was inspired by both the international trend to abolish the death penalty and respect for the sanctity of human life (Han, 2015). Although these individual petitions failed to sway public opinion towards empathy and tolerance in this particular case, they illustrate how domestic discourses in China begin to be shaped by international influences with the gradual diffusion of international trends, standards and information.

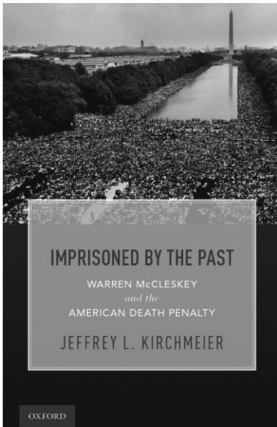
Admittedly, there are numerous occasions when international human rights advocacy and persuasion fell on deaf ears. This was the case when harsh criticism of China's practice was rejected by the Chinese authorities at diplomatic channels. Paradoxically, alongside with the process of attitudinal transformation induced by international abolitionist forces was the retention of censorship and secrecy on the administration of capital punishment. Statistics on the death sentences meted and executions carried out by courts have been classified as top secret and the disclosure of it a criminal offense. With the Chinese capital punishment regime gradually moving towards greater due process protections under international pressure, understandably, naming and shaming has a great influence in damaging the reputational capital China holds on the international stage. In the recent few years, even Amnesty International has stopped guessing the number of executions in China as it has been increasingly difficult to either extrapolate the national numbers of executions from statistics from a local county, or to gather the figures from newspaper reports across the country. That high-profile naming and shaming acts as a double edged sword, cutting both ways, has also been illustrated by cases where citizens of abolitionist countries are under threat of executions. In 2009, the failure of the high-profile diplomatic row over the case of Akmal Shaikh, a Pakistani-British businessman who was convicted and executed for trafficking four kilos of heroin in China, proves that high-profile coercion can be counterproductive compared to softer and interactive mechanisms of persuasion in fostering compliance and attitudinal shift.

In sum, the role of international human rights forces in shaping Chinese death penalty practices and norms have been significant. During the past decade, China's top policy and law makers have made

great efforts to align Chinese practice with international human rights standards through incremental judicial and legislative reform. International abolitionist norms and trends have inspired and guided the elite-led adjustment of Chinese capital punishment machinery. As identified above, the first two approaches, via which international intervention and influences have had a direct impact on Chinese capital punishment practices, have been successful in general. Persuasion and equal dialogues, other than the conventional methods of naming and shaming, between advocates and experts from the international community on the one hand as well as Chinese policy makers and elite scholars on the other hand, proved to be the most effective and fruitful mechanisms to promote and strengthen attitude shift towards compliance with international standards. It seems that the Chinese authorities are sensitive and susceptible to moderate pressures and well-crafted strategies. It is also suggested that international human rights advocacy needs to maintain a delicate balance in inducing attitudinal changes and arousing resistance and suspicion by framing discourses on capital punishment within a human rights language.

**Dr. Michelle Miao** is a British Academy Postdoc Research Fellow at University of Nottingham, School of Law. She was a Global Research Fellow at New York University, School of Law and a Howard League post-doctoral fellow at Oxford University's Centre for Criminology. Her research interests are the intersections between the domains of criminology, human rights, socio-legal studies and international law. Her doctoral thesis (2013) presents material from one of the first empirical studies on China's recent death penalty reform under the influences of international human rights law. The core empirical component of the thesis was a series of elite interviews with penal professionals at national and lower levels in China, including judges, prosecutors, and legislators, who are proximate to the sources of information held by state authorities, or closely involved in the day-to-day administration of capital punishment. Michelle holds a doctoral degree from University of Oxford and two Masters Degrees, one from Renmin University of China Law School and the other from New York University Law School.





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# China's Death Penalty Debate

Lijia Zhang

**T**he statement that “China executes more prisoners than the rest of the world” may still remain true but all evidence suggests that the country is actually loosening its once tight embrace of capital punishment.

Last October, during the Fourth Plenum, Beijing announced its plan to abolish nine non-violent crimes punishable by the death penalty, including illegal fund-raising and weapons smuggling. Other intended reforms include reducing the judicial use of the death penalty and amending procedural law to control its use. And last June, China's Supreme People's Court overturned the death sentence against Li Yan, a woman sentenced for killing her abusive husband after enduring years of domestic violence. Her original sentencing in 2013 led to nation-wide petitions to spare her life and heated debate on the internet about the death penalty in China.

Apart from human rights lawyers, such as Teng Biao, there are others in China who are actively advocating the abolition of capital punishment. One of them is 53-year-old Kong Ning, a procuratorate officer-turned artist in Beijing. Her witnessing of an execution changed her life forever.

It took place on a bitterly cold day at the end of November 1983. At that time, China's first wave of “strike-hard” campaigns against rising crime was in full swing. As instructed, she and her colleagues from Beijing Procuratorate turned up at dawn at the detention center, the Beijing Municipal Number One Prison. One by one, 34 death-row prisoners, all men mostly in their 20s and 30s, were dragged to a large room where they were informed they would be executed.

Prison officials tied the condemned men's hands behind their backs. The cuffs of their uniform pants were tightly fastened with hemp string; so if the prisoners lost control of their bowels they wouldn't dirty the floor too much. To calm them, prisoners were injected with a tranquilizer through their through padded cotton pants. The officials then force-fed the prisoners a steamed bread roll for their last meal. Some chewed mechanically but most spat them out.

After a public trial, the condemned were then taken in a van, accompanied by wailing sirens, to an execution ground in western Beijing. It was there Ms. Kong witnessed the executions. Traumatized by the experience, Ms. Kong quit her job and became a lawyer in hopes of defending people unjustly accused of crimes. But over the years she suffered mental breakdowns and, at one point, was admitted to a psychiatric hospital for a few months. She always dresses in black and wears a bullet-proof vest; and always keeps 34 white shirts in her car boots.



In 2006, Ms. Kong started to paint, which somehow eased her suffering. One self-portrait is composed of 34 faces and another abstract drawing shows a man's fear-stricken face. She has staged performing arts, reliving that terrifying experience and she has told her story to newspapers, magazines and other media. "I want to expose the cruelty of death penalty and call for its final abolition," she says. "We must learn to respect life."

Others have joined in the choir. In 2008, I interviewed a Xi'an lawyer, Zhu Zhangping. In 2001, he defended a man on death row named Dong Wei. Dong accidentally killed a man who had insulted his girlfriend. Zhu was convinced that Dong didn't deserve a death sentence but failed to convince the judge. Having witnessed Dong's injustice, Zhu, who used to be a strong believer in capital punishment, began writing articles calling for its abolition.

In the past decade, I've noticed increased debate among the general public, often triggered by high-profiled cases such as the victim of domestic violence Li Yan, cop-killer Yang Jia, and illegal fund-raiser Wu Ying.

It is a lot freer now for people to express themselves, especially on the Internet. Also, since everything regarding death penalty is always shrouded in secrecy – the number of execution is still a state secret - people are immensely interested in relevant information that slowly came out in the open. At the end of 2011, images of prisoners waiting for execution at a Wuhan prison sparked a fresh round of discussion on the issue.

The majority of the Chinese support capital punishment, citing the traditional saying "to repay a tooth with a tooth and to pay back blood with blood."

*The majority of Chinese support capital punishment...*

Such an attitude isn't too surprising for a cultural tradition that places less importance on individual life than does the western 'humanist' tradition.

However, as China's engagement with the rest of the world deepens, people's views are changing. Many have learned that most European countries and most states in America have banned capital punishment. And more and more people, those better educated in particular, have accepted the idea of respecting human life and dignity as well as human rights, even the rights of a criminal.

This trend is reflected in a steady decline in public support for capital punishment. In 1995, a survey conducted by China Academy of Social Science on the abolition of the death penalty indicated that 95% of the ordinary Chinese opposed the idea; in 2003, an online survey saw 83% of 46,000 polled opposed the idea and in 2008, an online survey by Sina, a popular website, saw that percentage fall to 67.2%. In this survey, 21.8% believed China ought to reduce the use of death penalty, especially on non-violent crimes.

Capital punishment has always been used by the Chinese Communists as a harsh tool to maintain social security, political order, and to curb crime. In 1983, as the result of the strike-hard campaign,

the right for approving the capital punishment was given to the high court of each province. According to a report by southcn.com, it is believed that 24,000 death sentences were issued. Many criminals met their deaths for non-violent crimes such as selling fake train tickets (a crime half of the 34 prisoners were found guilty of).

Professor Chen Weidong, an expert on the death penalty from Renmin University (Beijing), doesn't think it is the time to abolish capital punishment yet. "China is going through drastic social and economic changes, which has led to rising crimes, including violent and serious crimes," he says. "In addition, there are no religious or moral obligations. To abolish it now, the crime rate will soar and it may cause social instability."

Since 2007, when the Supreme People's Court rescinded the power of final review of death sentences, there have been fewer executions, following the guideline of "killing fewer and with extreme caution." The precise number of executions is still a state secret. Perhaps the authorities are making an effort to erase the black label of using capital punishment too readily; perhaps our leaders are using death penalty to showcase their determination to shift towards the rule of law.

I started to think about the big question of death penalty some 15 years ago after reading George Orwell's essay *A Hanging*, a short essay describing the execution of a criminal in Burma that he supervised as a British policeman. In the essay, he describes vividly how the condemned man steps aside to avoid treading into a puddle of rainwater on his way to the gallows. This makes Orwell to reflect: When I saw the prisoner step aside to avoid the puddle I saw the mystery, the unspeakable wrongness, of cutting a life short when it is in full tide.

I find Ms. Kong's works powerful because they force us to confront the cruelty of death penalty. Once again, they inspired me to ask questions that had risen in the wake of reading Orwell's essay: Do humans have the right to put a fellow human to die? What does it achieve? Can it really deter crimes? What's justice? To rehabilitate or to punish?

Thus I welcome the addition of Ms Kong's impassioned voice. During China's shift towards a more human society, it needs to heed voices of conscience from many areas, whether it be an artist like Kong Ning, an activist like Teng Biao, or principled pressure from the international community.

**Lijia Zhang** is a factory-worker-turned writer, columnist, social commentator and public speaker. Her articles have appeared in *The Guardian*, *The South China Morning Post*, *Newsweek*, and *The New York Times*. She is the author of the memoir "*Socialism Is Great!*" about her rocket factory experience. She is a regular speaker on the BBC, Channel 4 and CNN. She lives in Beijing with her two teenage girls.



## Interview: Said Yousif AlMuhafdah

Bahrain Center for Human Rights, Bahrain

**Your organization, the Bahrain Center for Human Rights (BCHR), has the following mission statement: “Our vision is a prosperous democratic country free of discrimination and other violations of human rights.” What kinds of human rights violations precipitated the establishment of BCHR? Are those violations commonplace in Bahrain?**

These are the common human rights violations in Bahrain that BCHR continues to advocate against:

- Violations to freedom of expression, including freedom of the press and internet
- Torture and inhumane treatment
- Arbitrary arrests and unfair trials
- Incommunicado detention
- Violations to freedom of assembly
- Violations of women’s rights and discrimination against women
- Violations of children’s rights

**What has been the greatest obstacle in your struggle to promote democratic change and human rights in Bahrain, thus far? Is it a problem you see extending into the future?**

BCHR members were subject to various attacks from the government. They have been victims of threats, smear campaigns and even violence, arrests, long detention periods, ill treatment in detention and torture, as well as unfair trials and prison sentences. BCHR has been dissolved

in Bahrain since 2004, which makes it hard for it to receive any official support or grants, and its continued work depends on the personal dedication of its members and volunteers.

**What kinds of reforms, if any, has the government instituted since the casualty-heavy, Shia-led demonstrations in 2011? Has there been a decrease in repressive policing?**

Only superficially; we have a fancy report generated by the Bahrain Independent Commission of Inquiry (BICI) that may look very nice in a museum, but actually its recommendations were not implemented. As a matter of fact, more people died after that report was released than before, and more people are in prison today than there were in 2011. Military trials stopped, but unfair trials continued in ordinary courts. More than ever, human rights defenders – the very people who document human rights issues and share relevant information about the topic with the world – have become targets of the government. Now most of the leaders of Bahraini NGOs are either in prison or in exile, like myself. BCHR’s own President, Nabeel Rajab, is back in prison only a few months after having served a two-year prison sentence. Demonstrations are not being granted official permission to assemble in the streets, including the non-political, annual Labour Day march that was banned this year. And if a demonstration takes place without permission, demonstrators can be sure they will be attacked

with tear gas and shotguns, as well as targeted with arrests. There are more police cars on the roads than there are public transport buses.

**The president of BCHR, Mr. Nabeel Rajab, is perhaps Bahrain's most prominent international human rights activist; he is also currently imprisoned. Considering that Mr. Rajab was arrested on the grounds of insulting the Ministries of Interior and Defense with the following tweet:**

***“many #Bahrain men who joined #terrorism & #ISIS came from security institutions and those institutions were the first ideological incubator”***

**what is the state of political expression and free speech in Bahrain?**

It is not allowed, and anyone who voices an opinion that the government doesn't like risks arrest. On the Internet people prefer to use nicknames, but even with a nickname they have lowered their tones, and you won't see as many critical tweets as there used to be in 2011. People have become cautious following the many arrests of online users. They are arrested not only for criticizing Bahraini authorities, but also for even tweeting about the Saudi king. Numerous photographers are in prison and some are sentenced for many years when their only "crime" is taking photos of the protests. The government doesn't want the world to see photos of their repression, or that show there are still people resisting the repression. Its judicial attacks towards Nabeel, for example, are not only a form of revenge against his human rights work, but also a lesson intended to silence everyone else. All the leaders of important political groups in Bahrain are currently imprisoned.

**Bahrain is a member of the U.S.-led coalition against ISIS, along with Saudi Arabia, Qatar, and the United Arab Emirates. Has the activity of the coalition affected the state of human rights in Bahrain? How has the presence of pro-democracy, Western governments been received by Bahraini citizens?**

Although Bahrain is an ally of democratic Western governments, Bahrainis have yet to see that alliance have any positive impact on their lives. The West has to do much more than just sell arms to Bahrain, it has to put real pressure on the government to stop its campaign against pro-democracy protesters, and honor its commitment to the protection of human rights internationally.

**Another aspect shared by Bahrain, Saudi Arabia, Qatar, the United Arab Emirates, and the United States of America is their retention of capital punishment (though Qatar is technically categorized as “de facto abolitionist” since it has not carried out a documented execution since 2003). In 2013, Bahrain expanded domestic laws to make more crimes punishable by execution. Which kinds of crimes are considered capital offenses in Bahrain? Are accused capital offenders afforded fair representation in the judicial system?**

Bahrain punishes murder and crimes of terrorism with capital punishment. Crimes of terrorism are determined by a law that fails to precisely define terrorism, leaving the life of a human being to the subjective interpretation of a prosecutor. And because the courts lack a system to guarantee fair trials, people can be sentenced to death based solely on confessions taken under torture, or based on the statements of biased witnesses. At least 8 pro-democracy protesters have been

sentenced to death in Bahrain in the last few years.

In comparison, just last month, the Court issued a death sentence in the case of a protester accused of killing a policeman, sentenced another seven to life in prison, and gave a few others ten years in prison; all of them also had their Bahraini nationality revoked. On the same day, a policeman was acquitted from the death of a protester who died in 2011 from a shotgun injury.

be under significant pressure. As per previous reports we've had, the detainee could be subject to further ill treatment in prison by other prison guards who would punish him for the alleged crime of killing their colleague. There was one detainee – imprisoned since 2011 and sentenced to death – who had his conviction recently overturned, but had also already spent three years in solitary confinement causing him to develop a mental illness. He is still going through the appeals process.

**Although Bahrain abstained on the 2014 Resolution on a Moratorium on the Use of the Death Penalty at the United Nations General Assembly – rather than vote against the resolution as it had in previous years – it has made use of capital punishment as recently as February 2015. Three men were sentenced to death by a Bahraini court for allegedly killing three policemen last March. Is the death penalty in these sentences likely to be appealed or commuted? If not, how is capital punishment carried out in Bahrain?**

The protesters have a chance to appeal the sentence. The appeal normally takes years during which the detainee and his family will

**Said Yousif AlMuhafdah** is the Vice President of the Bahrain Centre for Human Rights, a non-profit organization based in Bahrain and Denmark. Mr. AlMuhafdah resides in Berlin, where he has been forced to live in exile since October 2013, after being a target of arbitrary arrests and torture for his human rights work in Bahrain. To read more about Mr. AlMuhafdah's work and exile, please see: <http://mic.com/articles/74665/i-ve-been-forced-into-exile-for-defending-human-rights-in-my-home-country-bahrain>



*Interview by Katherine Lugo*

# OUR CRIMINAL JUSTICE SYSTEM IS BROKEN BUT NOT FOR THE REASONS WE THINK

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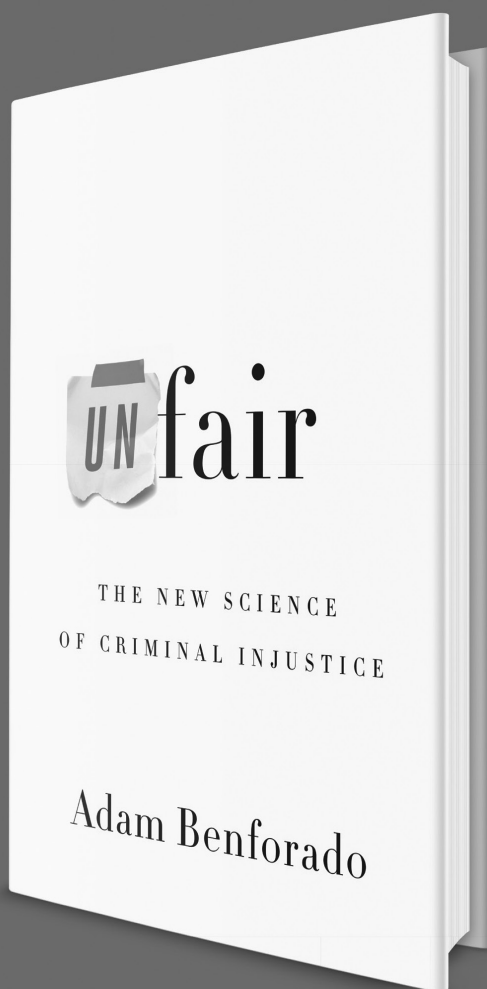
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# Capital Punishment in Guatemala: The First Steps to Abolition

David Augusto Dávila Navarro

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In Guatemala, the death penalty is applicable to both common crimes and military offenses. In the case of the former, the existing Criminal Code provides for the death penalty in the case of the following crimes: abduction or kidnapping, murder, forced disappearances, extrajudicial executions, parricide, cases resultant in the deaths of either the President or Vice President, and violations of Article 52 of the Drug Trafficking Act (offenses qualified by outcome), Decree 48-92, which states that if as a result of the offenses under this law one or more persons should die, the death penalty will be applied. For its part, Decree 100-96 “Law establishing the procedure for the execution of the death penalty,” regulates lethal injection as a method of execution of persons convicted of criminal offenses.

In the case of the Military Code, Decree No. 214 of 1878 provides for the death penalty for such crimes as treason, espionage, rebellion and sedition, as well as allowing the option of applying capital punishment to other, unspecified crimes. Executions for military offenses are carried out by firing squads. In the context of the military, it is unknown whether capital punishment has been applied in the case of such offenses.

The Political Constitution of the Republic of Guatemala (CPRG) – established and enforced since 1986 – includes Article 18 which provides the specific kinds of crimes for which the death penalty cannot be imposed. Additionally, it gives the Congress ample opportunity to abolish the death penalty through an ordinary reform, without the need to carry out a constitutional reform, making it clear that the Constitution was drafted in an abolitionist spirit, however restrictive.

Because Guatemala maintains capital punishment legislation, the United Nations still considers it a retentionist state. This is despite the fact that it will soon be 15 years since the country last carried out an execution. The last two executions, carried out by lethal injection, took place on June 29, 2000.

After these last two executions, former President Alfonso Portillo – who from the beginning of his presidency expressed that he did not want to decide on petitions for pardon or clemency – expressed support for the repeal of Decree 159, “Law concerning pardons,” which had been in force since 1892. This motion was itself repealed when Congress passed Decree 32-2000.

These shifting extremes left Guatemala without either a law or administrative body with the power to hear and determine petitions for the pardon or commutation of sentences. Nevertheless, petitions requesting pardons or commutations are still filed at present because both types of petitions are included in the international corpus juris, or “body of law.” Support for these petitions can be found



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in the American Convention on Human Rights, as well as the International Covenant on Civil and Political Rights. Therefore, because Guatemala is a member

state of these international human rights instruments, it is obliged to ensure the consideration of petitions requesting either pardons, appeals for clemency, or commutations of sentences in cases involving the death penalty, before the death penalty can be executed.

But the absence of any official, governmental body with the power to hear and determine appeals is what ultimately prevented death row inmates from accessing and utilizing such international human rights guarantees; as a result, Guatemala maintains only an unofficial moratorium on executions, even though it has not imposed the death penalty in many years. However, in 2008 and 2010 the opposition parties to former President Alvaro Colom congressionally approved two bills that sought to restore authority for hearing and determining petitions for pardon or commutation of death penalty sentences with the President. But these initiatives did not conform with either the judgments or sentencing regulations already laid out by the Inter-American Court of Human Rights, nor did they satisfy international standards. Additionally, these initiatives contained unconstitutional provisions, without ensuring an effective course of appeal for those convicted, since they were actually developed as a mere mechanism to carry out the executions of those sentenced to death.

With these opposing motivations in mind, former President Alvaro Colom vetoed both decrees, thus maintaining and prolonging the absence of any regulation governing the filing and resolution of applications for pardon or the commutation of sentences. In the present, there are still congressional initiatives that aim to again pass a law to return this authority to the President of the Republic; the last one was unfavorably received earlier in February of this year.

Interestingly, this unofficial moratorium on executions resulting from the absence of a statutory law establishing the procedure and the authority to hear and decide appeals for pardon or commutations of sentences, provided an opportunity for the first step towards the progressive abolition of the death penalty in Guatemala.

During these fifteen years comprising Guatemala's unofficial moratorium, civil society organizations dedicated to human rights, international organizations and the Institute of Public Criminal Defense (a state institution providing free legal defense services in cases involving the death penalty, "IDPP"), all initiated a legal strategy that led firstly to the filing of two complaints to the Inter-American System for the protection of human rights. In 2005, these coordinated efforts resulted in two judgments from the Inter-American Court of Human Rights (IACHR) in the cases of Fermín Ramírez v. Guatemala (2005) and Raxcacó v. Guatemala (2005).

In these aforementioned cases, the IACHR determined the responsibility belonged to the State of Guatemala for having violated several articles of the American Convention on Human Rights (ACHR). In particular, the Court paid special consideration in the case of Fermín Ramírez to the crime of



murder, regulated by national legislation in Article 132. The Article provides for a minimum sentence of 25 years and a maximum sentence of 50 years in prison for the crime of murder, but in its last paragraph contains a conditional statement indicating that: “if the convicted is deemed to present an especially dangerous threat to society,” the death penalty shall be imposed instead of the maximum prison sentence. Such a conditional statement permits for the application of the death penalty based solely on the personal opinion and evaluation of the convicted by an individual judge – a determination which is incompatible with any democratic system of law.

Therefore, the IACHR ruled that the State of Guatemala was responsible for the violation of Article 9 of the ACHR, and ordered the reformation of Article 132 (the crime of murder) of the Guatemalan Penal Code, removing the part that refers to an evaluation of “especially dangerous” criteria. Such a reform would consequently result in the repeal of the death penalty for this crime.

In the case of *Raxcacó*, the Inter-American Court analyzed the reforms made to the offense of kidnapping – contained in Article 201 of the Criminal Code – in 1994, 1995 and 1996; these modifications extending the definition of conduct punishable by the death penalty were not regulated at the time Guatemala ratified the American Convention (ACHR) in 1978. Nevertheless, the last amendment made by Decree 81-96 established the death penalty as the only permissible punishment for the crime, leaving no room for a judge to assess each case individually and decide on the appropriate penalty to be applied in each.

In this regard, the IACHR decided that with the reforms to the crime of kidnapping, the State of Guatemala was responsible for the violation of Article 4.2 of the ACHR, meaning that it had extended the application of the death penalty, since although the state kept the *nomen juris*, or term of law, of the crime the same, it had actually changed the factual considerations outlined in the Article. Therefore, the Court ordered this legal precept to be changed such that it stipulate clearly the different forms of kidnapping and sequestration, and in no case should extend the death penalty to new cases in contravention of the ACHR.

The issuance of these international sentences was a second step in the fight for the abolition of the death penalty in Guatemala. From this achievement, the Institute of Public Criminal Defense began an initiative to impose review processes in all cases in which the convicted was sentenced to execution for the crimes of kidnapping or murder, successfully replacing the death penalty sentences in those cases with maximum sentences of 50 years in prison. As a result of this change, Guatemala currently does not have anyone awaiting execution. In addition, it is important to note that not a single Guatemalan court has issued new death penalty sentences since 2005.

Therefore, although Guatemala has not made reforms to the crimes of kidnapping and murder, under the prohibitions arising from the judgments of the Inter-American Court, Guatemala nevertheless cannot apply the death penalty for these crimes. However, other crimes are still open to death penalty applications; in the case of such crimes as parricide, extrajudicial execution and various cause-of-death offenses, the conditional and subjective “element of danger” is still considered as reason to apply the death penalty. In the case of crimes like forced disappearance and the Law Against Drug

Trafficking from Article 52, such criminal offenses were incorporated into the Penal Code by way of reforms realized after Guatemala had already ratified the ACHR.

These complex interactions with international bodies mean that all types of crimes in Guatemala which provide for the application of the death penalty, in fact, generate violations of the American Convention (ACHR); by their very nature, the death penalty cannot be applied to these crimes. All such crimes must be reformed without the possibility of including the death penalty as a final sentence, which would, in effect, abolish the death penalty for ordinary (“common”) crimes in Guatemala.

Despite this potentiality, there is neither the political will on the part of the Deputies of the Congress of the Republic to reform these criminal offenses, nor is there the will to make use of the authority given by the Constitution to abolish the death penalty. In fact, the issue of capital punishment in Guatemala is currently ripe for widespread discussion because 2015 is an election year. Politicians continue to use the death penalty as a proposed solution for the problematic issues of insecurity and violence in the country – this is particularly evident in the case of a candidate who could be the virtual winner as President of the electoral process.

This means that the issue of the death penalty in Guatemala, although still a subject of legal debate, has also transformed into a subject of political debate; it has come to be used a political banner wherein the justification for maintaining the death penalty comes from the theory that it works as a general deterrent to crime.

Generating political will is the third step needed in order to achieve the abolition of the death penalty in Guatemala. From my perspective, for this to become a reality, several changes must first occur. First, it is essential to restore citizens’ trust in institutions comprising the legal and security sectors; in order for this to be realized, these institutions must continue to fight against the corruption and impunity which prevails in large proportions in the country. Second, a political change must take place such that the actors who come to hold public office, and especially positions in Congress, are people entrusted to guarantee the rule of law and ensure full respect for human rights.

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# The Slow Demise of the Death Penalty in the Commonwealth Caribbean<sup>1</sup>

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## Introduction

The United Nations classifies a country as being abolitionist *de facto* where it has not executed anyone for a continuous period of ten years. Based on that definition, all member states of the English-speaking Commonwealth Caribbean<sup>2</sup>, with the exception of Saint Kitts and Nevis, are so classified.<sup>3</sup> Saint Kitts and Nevis was placed in the “retentionist” column because it carried out an execution in 2008. That was the last execution carried out in the Caribbean. Mind you, it is not for want of trying that the Caribbean has been execution-free for such long periods of time. From the Bahamas in the north to Trinidad and Tobago in the south of the chain of islands, and in Belize and Guyana in Central and South America, attempts have been made from time to time to hang convicted murderers. The United Nations’ *de facto* abolitionist column may have been severely depleted were it not for the intervention of activist human rights lawyers using the robust and flexible written constitutions in the region to win commutations. This is why Professor Roger Hood prefers the epithet “thwarted retentionists” to describe the countries in the region.<sup>4</sup>

Amnesty International, on the other hand, classifies a country as abolitionist in practice where it has not executed anyone during the last ten years *and* is believed to have a policy or established practice of not carrying out executions, or has given an international commitment not to use the death penalty. Using this definition, Amnesty classifies only Grenada as abolitionist in practice and all the others as retentionist. It is not known on what basis Grenada has earned this more favourable classification ahead of its neighbours. It may be because no executions have in fact been carried out there since 1978. Even so, it is not clear how Grenada’s record of voting against the United Nations Moratorium on the Use of the Death Penalty impacts this classification, and indeed it appears to be inconsistent with it.

Even this cursory comparison of the international practice of classifying abolitionist or retentionist countries hints at the fact that the current position regarding the death penalty in the region is a rather complex consequence of tugging and pulling between competing forces - a political directorate from time to time under pressure to respond to public disquiet over the rising murder rate, on the one hand, and a judiciary intent on giving the bills of rights entrenched in written constitutions a generous interpretation which gives effect to international standards on the death penalty, on the other. I propose to briefly examine these trends in this short paper.

## Challenging the execution of the death sentence

The death penalty is a relic of the colonial era. It was imposed by common law judges and codified in legislation passed by colonial legislatures. It survived the enactment of written constitutions on independence, either because the constitutions themselves do not prohibit the taking of life as long as it is done in accordance with the due process of law, or because the death penalty is expressly saved from constitutional challenge.<sup>5</sup>

For some time after independence, executions were carried across the region at fairly regular intervals. Towards the end of the 1970s and into the eighties, there were attempts made to challenge the constitutionality of the death penalty on a number of grounds, but these largely failed. The first breakthrough was in the now famous case of *Pratt v Attorney General of Jamaica*,<sup>6</sup> where the Privy Council held that where a period of five years had elapsed since the conviction for murder, the execution of the sentence of death is presumed to be a cruel and unusual punishment. The presumption may be rebutted, for example, if the delay was caused by time-wasting and frivolous maneuvers by the condemned man. In computing the five-year period, the Privy Council catered for the completion of appeals against conviction within two years of conviction, and for the exhaustion of petitions to international human rights bodies and to the Mercy Committee within a further three years.

Following upon the decision in *Pratt*, more than 100 prisoners had their sentences of death commuted to life imprisonment in Jamaica and 50 in Trinidad and Tobago. In addition, necessary administrative adjustments and financial and technological investments were made in the criminal justice system, such that it is now the general rule that appeals against conviction are regularly completed within the two year period. The 10 prisoners hanged in Trinidad and Tobago in 1999 all completed their appeals against conviction and their petitions to human rights bodies well within the five-year period.

Constitutional challenges have also established that a condemned prisoner is entitled to a hearing before the Mercy Committee, which advises the Head of State on the exercise of the power of pardon.<sup>7</sup> An execution cannot be lawfully carried out until such a hearing has taken place. Further, it is a violation of the right to the protection of the law to hang a condemned prisoner while his petition to an international human rights body is pending.<sup>8</sup> The Mercy Committee is obliged to take the findings and recommendations of international human rights bodies into consideration, but is not bound to comply with them. Finally, a period of at least four days must elapse between the reading of the death warrant to the condemned prisoner and the date fixed for the execution.<sup>9</sup> This allows time for any constitutional challenge to be launched and for the prisoner to say goodbye to friends and family and make peace with his maker.

## The Mandatory Death Penalty

Most importantly, the mandatory aspect of the death penalty has been declared unconstitutional in Belize, Jamaica and for all of the countries in Eastern Caribbean.<sup>10</sup> It has been held to be a cruel and unusual punishment for the simple reason that it deprives the condemned man of the opportunity

of contending that the death penalty is a disproportionate response to the circumstances of the particular murder. In Guyana, murder has been categorized and the death penalty is reserved for the more serious murders, but this is at the discretion of the trial judge who is authorized to impose a sentence of life imprisonment instead.

Trinidad and Tobago and Barbados are the only countries in the region that maintain the mandatory death penalty on their statute books. In Barbados, however, the mandatory death penalty has been held by the Inter-American Court of Human Rights to violate the American Convention on Rights and Freedoms in a number of respects, and Barbados has accordingly undertaken to amend its laws to make the death penalty discretionary. Despite a similar ruling against it, Trinidad and Tobago has not followed suit. As it stands at present, therefore, Trinidad and Tobago is the only country that steadfastly retains the mandatory death penalty for murder.<sup>11</sup>

### Sentencing Principles

Following upon the abolition of the mandatory death sentence, the courts of the region have busied themselves developing the principles that are to be applied in determining when the imposition of the death sentence is appropriate in any particular case.<sup>12</sup> The first principle is that death should be imposed only in cases which on the facts of the offence are the most extreme and exceptional, “the worst of the worst” or “the rarest of the rare.” The second principle is that there must be no reasonable prospect of reform of the offender and that the object of punishment cannot be achieved by any means other than the ultimate sentence of death. The presumption is in favour of an unqualified right to life. The prosecution bears the burden of proving beyond a reasonable doubt that the case is the most exceptional and extreme **and** that there is no reasonable prospect of reform of the offender. In discharging this burden, the prosecution is bound to produce professional advice that would provide some insight into the character and psyche of the individual whose execution is being contemplated. The prevalence of murder and offences of a similar nature is not a relevant consideration in the exercise.

It should be apparent that the burden on the prosecution is a very onerous one. As the following cases demonstrate, it is to be expected that the cases where the death sentence will be found to be appropriate will indeed be exceedingly rare.

In one case,<sup>13</sup> the convict entered an elderly couple’s bedroom through a window while they were asleep. He shot them both while still in bed. The trial judge described him as a heartless, cold-blooded killer and his actions as “sheer evil.” He had eight previous convictions for robbery with aggravation, possession of ganja, burglary, housebreaking and larceny and indecent assault. A majority of the Jamaican Court of Appeal held that the murder did not cross the threshold of being the “rarest of the rare.”

In another case,<sup>14</sup> the convict shot his victim twice. When he fell to the ground, he then approached and shot him four more times. The victim was an off-duty police officer. The reason the convict gave for the shooting was that the policeman had roughed him up in jail. Eight months later, while in jail,

the convict counseled the killing of a witness to the murder. The witness was later shot dead. The convict was found guilty of both murders. A majority of the Eastern Caribbean Court of Appeal did not think the penalty of death to be appropriate.

In yet another case,<sup>15</sup> the convict approached the deceased, who was 68 years old, intending to rob him. He struck the deceased in the stomach and threw him to the ground. He then cut the decedent's throat with the decedent's cutlass and cut off his head with the same implement. He removed the trousers from the body and wrapped the head in them. He handled the penis of the deceased and made a ribald remark about it. He then slit the decedent's belly, explaining that he did so to stop the body from swelling. He then picked out six goats belonging to the deceased and later attempted to sell them.

The Privy Council found the crime was a brutal and disgusting murder, and "was undeniably a bad case, even a very bad case, of murder committed for gain."<sup>16</sup> However, it did not appear that the murder was planned and although the manner of the killing was gruesome and violent, there was no torture of the deceased, or prolonged trauma or humiliation of him prior to death. In these circumstances, their Lordships thought that it fell short of being among the worst of the worst, such as to call for the ultimate penalty of capital punishment. His case was not comparable with the worst cases of sadistic killings. Their Lordships also thought that the object of keeping the appellant out of society entirely could be achieved without executing him.

*...consistent efforts have been made by governments in the region to tinker with the system of criminal justice in order to circumvent the constitutional obstacles put in their way...*

## Summary

In summary, in all of the countries in the region, with the exception of Barbados and Trinidad and Tobago, the death penalty has been abolished for all murders except for those which are the worst of their kind and are committed by perpetrators who are incapable of reform and in respect of whom imprisonment will not satisfy the objectives of punishment. Given the decided cases just referred to, it is also probably not an exaggeration to project that there are unlikely to be many instances of the judiciary passing a death sentence. Indeed, since the mandatory death sentence was declared unconstitutional, life imprisonment has been ordered in all cases, either by the trial judge or by the appellate courts. The lone exception is the execution in Saint Kitts and Nevis in 2008, but there was no appeal because it was filed out of time and the execution pre-dated the decision referred to above. In Barbados it may also be said with some degree of accuracy that a moratorium is in place, at least temporarily. Barbados has given an undertaking to the Inter-American Court to amend its laws to make the death sentence discretionary. In relation to those condemned prisoners who successfully petitioned the Court, it also undertook to commute their death sentences to life imprisonment. It

follows that all persons sentenced to death under the mandatory regime will be entitled to the same treatment. Until Barbados introduces the discretionary regime, therefore, it will be constrained not to execute anyone.

In this scheme of things, Trinidad and Tobago is the “odd man out.”

#### Public Opinion

The region is a transshipment point for illegal drugs transiting from Central and South America to the United States. Gang culture has also taken root and is flourishing. It is not surprising therefore that the murder rates per capita in Jamaica and Trinidad and Tobago are considered among the highest in the world. It is also not surprising that a terrorized and traumatized public has consistently supported the implementation of the death penalty and has on occasion lamented that it is not carried out with sufficient frequency, even if at times the fires are stoked by politicians who, under pressure to produce results, point fingers at the judiciary, and in particular the Privy Council, as standing in the way of executions.

A recent survey carried out by Professor Roger Hood and Dr. Florence Seemungal<sup>17</sup> of a representative sample of 1,000 residents of Trinidad confirmed this general trend. The survey revealed that 91% of Trinidadians are in favour of the death penalty. However, this support is much more nuanced than one might think. Thus, it is significant that when asked what their position would be if evidence became available to prove that innocent people have in fact sometimes been executed, this number dropped to only 35%. As Professor Hood and Dr. Seemungal commented: “The high level of general support for the death penalty was contingent on it being enforced with no possibility that an innocent person could be executed.”<sup>18</sup> It is also significant that only 26% of the sample favoured the current law under which the death penalty is mandatory for all murders, whatever the circumstances, and 64% favoured a discretionary death penalty, i.e. one imposed by a judge after considering the individual circumstances of the offence and the offender. This was either out of recognition that not all persons convicted of murder “deserve to die” or because the death penalty should be reserved for the most “gruesome murders.”

#### Attempts to implement the death penalty

It should be apparent from the above that the relative period of inactivity in carrying out executions was not as a result of any resolve on the part of any government in the region to abolish the death penalty or to implement a self-imposed moratorium. In fact, over the period of 10 years of inactivity which earned the region an abolitionist *de facto* rating by the UN, consistent efforts have been made by governments in the region to tinker with the system of criminal justice in order to circumvent the constitutional obstacles put in their way. Thus, significant resources have been expended in both Jamaica and Trinidad and Tobago to speed up the system of justice so that local proceedings could be completed within the timelines set. Protocols have also been established to limit the time taken to complete petitions before international human rights bodies. And when these attempts at circumscribing the activities of the international bodies were themselves declared unlawful, Jamaica,



Guyana and Trinidad and Tobago took extraordinary steps to block access by condemned prisoners to these bodies. Thus, Jamaica denounced the Optional Protocol to the ICCPR on October 23, 1997.<sup>19</sup> On May 26, 1998, Trinidad and Tobago denounced the Optional Protocol but on the same date re-acceded with a reservation that sought to prevent access to the Human Rights Committee by death row prisoners. After the Human Rights Committee declared the reservation incompatible and proceeded to receive a petition from a death row prisoner,<sup>20</sup> Trinidad and Tobago denounced the Protocol altogether on March 27, 2000.<sup>21</sup> Similarly, on May 26, 1998 Trinidad and Tobago denounced the American Convention on Human Rights.<sup>22</sup>

Guyana originally denounced the First Optional Protocol on January 5, 1999 and immediately re-acceded with a reservation identical to the one lodged by Trinidad and Tobago. But even after the Human Rights Committee declared Trinidad and Tobago's reservation to be invalid, Guyana did not follow suit by denouncing the Protocol.

Even more dramatic measures have been taken. In 2002, Barbados amended its constitution to make the death penalty immune from challenge on the ground that the death sentence was mandatory or because of delay in carrying out the penalty or on the ground that prison conditions rendered the penalty a cruel and inhuman one. This move was clearly designed to reverse the effects of previous court rulings and to forestall the extension of the decision on the mandatory death penalty that had succeeded in the Eastern Caribbean. On the other hand, as noted, Barbados later announced its intention to comply with an order of the Inter-American Court of Human Rights to take steps to abolish the mandatory death sentence.

In 2008, in a conscience vote, the Jamaican House of Representatives voted to retain the death penalty. In the same year, Saint Kitts and Nevis carried out an execution. Then in 2011, an attempt was made in Trinidad and Tobago to amend its constitution along the lines of the amendment that succeeded in Barbados to make the death penalty immune from constitutional challenge.

And finally, in 2008 and 2010, all of the member states of the region, with the exception of Grenada in 2010, voted against the UN's Moratorium on the Use of the Death Penalty. Grenada abstained in 2010 but it is not clear yet exactly what this means.

## Conclusion

The picture that emerges, therefore, is a bit more complex than the classification used by the United Nations would suggest. Classifying a country as abolitionist *de facto* simply because of the absence of executions over a ten year period may be a bit misleading, particularly in relation to those countries, such as Trinidad and Tobago, where death warrants have continued to be read to convicted prisoners and public declarations of intent to "resume" hangings have been repeatedly made by senior Ministers. On the other hand, with the exception of Trinidad and Tobago, the circumstances under which an execution can be constitutionally carried out have been significantly narrowed. Given the strong, even if inconsistent, public support for the death penalty, it is probably too optimistic to expect that any government in the region will take the bold step of joining the vast majority of nations



in abolishing the penalty altogether. Attention must therefore continue to be focused on the individual case and the sentencing hearing. In Trinidad and Tobago, the stars are all aligned for the abolition of the mandatory aspect of the penalty. The public supports such a move, and the mandatory penalty has been rightly and unanimously condemned as being incompatible with modern constitutional norms. The trick is to find the right lever and the perfect timing to finish the job.

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In 2011, Mr. Mendes completed a Master of Studies in International Human Rights Law at the University of Oxford (with distinction).

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# Outsourcing Jihadists and Putin's Foreign Policy

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**T**he Kremlin has engaged in a variety of, and what seems to be, disconnected foreign policy moves. While continuing to support the al-Assad regime in Syria, it initiated the destruction of Syria's chemical weapons. Under Moscow's pressure, al-Assad not only agreed to but actually began to engage in the destruction of the weapons. Finally, the Kremlin is not too excited by NATO's withdrawal from Afghanistan despite increasing tension with NATO due to the conflict in Ukraine. Although this seems to be an unrelated position/activity, Moscow's actions/pronouncements are actually related. The Kremlin is much alarmed about transforming Syria and Afghanistan into training camps for terrorists who could then return to Russia. Even more so, it is alarmed by the prospect of terrorists in Syria acquiring either chemical weapons or at least the skills on how to use them. These Moscow fears are not groundless.

## Background

For many years, the Kremlin has not been much concerned about terrorists/potential terrorists from the North Caucasus or other Muslim enclaves of the Russian Federation going to Afghanistan to fight. One might assume that the Kremlin even supported such ventures if one would believe the late Emir Seifullakh, one of the leaders of the North Caucasian resistance. The reason for such calculation was quite clear: those who were training to fight would most likely never come to Russia. The Kremlin's concern was not the Russian Islamists who go abroad but the foreign jihadists, mostly Arab and Pakistanis of various ethnic backgrounds, who come to Russia. The foreign fighters bring not just stamina, dedication and expertise but also weapons and funds. Some of the foreign fighters, such as Ibn al-Khattab played an important role in the First Chechen War.

The situation, however, has recently changed. By the beginning of the Second Chechen War, the number of foreign fighters and funding declined considerably. At the same time, another trend emerged: increasing numbers of Russian jihadists went to foreign countries to fight, mostly to Afghanistan and, later, to Syria.<sup>1</sup> The numbers of Russia's residents who have fought abroad are considerable. According to some Western observers, at least several hundred mujahideens from Chechnya are fighting in Syria. Russian Secret Police (FSB) put the number to 200.<sup>2</sup> Putin confirmed this statement. In his view, at least 600 people from Russia fight in Syria.<sup>3</sup> Some believe that the numbers are actually much bigger. Members of the North Caucasian resistance also claimed that at least 1,000 to 2,000 people from the North Caucasus are fighting in Syria, including 700-800 people from the North Caucasus.<sup>4</sup>

While the North Caucasians are apparently the biggest group, they are not the only one. According to

a Russian survey, at least 50 Bashkirs were trained for terrorism in Pakistan and are at large.<sup>5</sup> There were apparently visible members of them who joined ISIS. The increasing number has naturally led to a diversification of the jihadists from Russia. It is most likely that they do not cling to one particular group of fragment resistance, which increasingly engages in fighting with each other. Some North Caucasian jihadists in Syria have apparently started to act on their own.

According to some reports, 800 Chechens took a village in Syria and imposed Shariat law.<sup>6</sup> Others decided to go back to Russia to proceed with the fight and applied acquired skills. Jihadists from Russia are hardly unique in their desire to return to their native land. Several European countries are explicitly concerned with their nationals' involvement in the Syrian and Iraq war, and who could return to the country of their formal citizenship not only quite indoctrinated but with the skills and appetite for terrorism. Moscow has become increasingly concerned with such a scenario, especially with the possibility of returned jihadists using acquired skills or materials to engage in terrorist attacks with the use of weapons of mass destruction.

#### Implications

Moscow might be increasingly concerned with the increasing flow of jihadists from the former USSR to Afghanistan since a Taliban victory reinforced by ISIS or general chaos is not in its interest. Still, the major problem for Moscow is not the numbers but the fact that folk do not always stay in the Middle East and die there but return to Russia. Moreover, some of Russia's top brass imply that the West, most likely the United States, want jihadists to come back to Russia. The members of the Russian elite apparently think about the West's plans in such a way. First, the Western elite preferred that jihadists move to Russia where they would be preoccupied and would not come to the Western countries. Secondly, Russians, seen here mostly as a foes, would be weakened by fighting with the jihadists. The vice-president of the First Service of the FSB (*zamrukovoditelia pervoi sluzhby FSB*), Aleksandr Roshchupkin, made this clear in one of his statements in May 2011. He said that the FSB did not exclude a situation where fighters who, upon receiving training in Syria, would return to Russia with the help of the "intelligence communities of foreign states" to engage in terrorist activities.<sup>7</sup> Later, the Chief of the FSB, Aleksandr Bortnikov, expressed a similar concern in June 2013.<sup>8</sup> According to Russian officials, the major avenue for going back and forth is most likely Turkey.<sup>9</sup>

Contributors to Kavkaz Center also implicitly support these notions and state with a sort of air of irony that the leading mujahideens could easily go back and forth.<sup>10</sup> The author of this piece also can confirm the role of Turkey as the place from which Syrian and other jihadists could head in any direction, including Russia. While attending a conference in Istanbul (2013), I was introduced to a young man who openly proclaimed his affiliation with al-Nusra, al-Qaeda affiliate, and said that he fights in Syria against al-Assad. He, and quite a few other participants—all from Syria—go back and forth through the porous Turkish/Syrian border, possibly even with the tacit approval of Ankara, which patronizes them as the way of dislodging Assad and diminishing Teheran's influence in the region. Indeed, as I was told by one of my casual acquaintances, quite a few jihadists live in Istanbul without any problems with the authorities. From Turkey, they can go to Russia; and this, in fact, has started to happen. Consequently, Russian authorities have started to deal with jihadists who, upon receiving training/experience in Syria, Afghanistan and Pakistan return to Russia.

In May 2013, Russian law enforcement killed a person near Moscow who was suspected of planning a terrorist attack and who had been presumably trained in the “tribal regions in Pakistan.”<sup>11</sup> Later, it was discovered that his name was Iulai Davletbaev, and he was from Bashkiriya. His helper, Robert Amerkhanov, was also from Bashkiriya and most likely was an ethnic Bashkir. While Russian law enforcement was able to deal with these particular Bashkir jihadists, they were not successful in another case. Indeed, on the eve of the Sochi Olympics two jihadists were featured in a video on YouTube. They proclaimed that although from Dagestan, they actually belonged to Ansar al-Sunna and were responsible for the terrorist attack in Volgograd in January 2014.<sup>12</sup> One might add that the North Caucasian resistance has tried to dissociate itself from al-Qaeda. One contributor to Kavkaz Center disapproved of the affiliation of al-Nusra to al-Qaeda.<sup>13</sup>

While the terrorist attacks in themselves create problems for Moscow, the Kremlin dreads the prospect of terrorist attacks using chemical weapons or other weapons of mass destruction. This fear should be taken into account when observers calibrate the Kremlin’s dealing with the civil war in Syria. When the massive use of chemical weapons

*...Putin’s desire to eliminate Assad’s chemical weapons is not a sham...*

took place in Syria, the President of the United States stated that the “red line” had been crossed and the U.S. would strike the al-Assad regime. Moscow protested and said that it was the jihadists who should be blamed; and observers noted that Moscow’s proclamation was just a way of preventing a U.S. strike. The observers were undoubtedly correct in one important respect: the Kremlin did not want a major war in the Middle East—and a conflict with Syria would most likely entangle Iran and Israel, leading to a much broader conflict—and for a variety of other reasons. Still, one should not look at Moscow’s policy just through this lens. The Kremlin people, while having no illusions about Assad have even fewer illusions about the jihadists and their willingness to use chemical weapons or any other weapons of mass destruction against their enemies. The Kremlin is afraid that those jihadists who decide to go back to Russia could either acquire the skills to deal with chemical weapons or actually bring them to Russia for terrorist attacks. One might add that Russian officials have the same fear as their Western counterparts.

Marat Musin, a Russian observer, believes that up to 4,000 people from Russia fight in Syria. The most dangerous thing is that they acquire skills to deal with chemical weapons and other weapons of mass destruction.<sup>14</sup> A contributor to *Ridus*, a Russian vehicle, noted that the North Caucasian fighters look for chemical weapons to “conduct mega terrorist action in Moscow.”<sup>15</sup> This is not just the assumption of Russian observers. There is, indeed, indication that the members of the North Caucasian resistance—as well as, of course, the members of jihadists elsewhere, would not mind using chemical weapons, actually any weapons of mass destruction, for their attack.

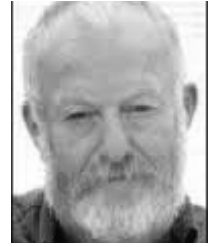
A contributor to *Kavkaz Center* noted, supposedly with reference to the *Bulletin of the Atomic Scientists*, that the Caucasian mujahideens have a lot of experience in dealing with radiological weapons<sup>16</sup> and, implicitly with any weapons of mass destruction. The plan to use such weapons either

directly or indirectly was not just empty talk. In October 2013, Russian law enforcement had arrested two young men from the North Caucasus who planned to blow up a factory in the Kirov region. The factory is engaged in destroying chemical weapons, and an explosion could well lead to mass casualties. The potential terrorists had a plan of the factory and possibly a helper inside among the factory personnel. They had passports for foreign trips and had plans to go to Syria.<sup>17</sup> As one of the locals noted, such an alarm (*perepolokh*) had not been sounded in the region, at least for the last ten years. Because of it, the authorities' had increased security arrangements in the Kazan Gunpowder factory.<sup>18</sup> Still, they were not able to prevent another terrorist attempt; and on November 16, 2013, an unknown individual shot a rocket at the petro-chemical plant in Nizhnekamsk.<sup>19</sup> A successful terrorist attempt could have led to mass casualties.

What was the broad implication for the Kremlin actions? To start with, Putin's desire to eliminate Assad's chemical weapons is not a sham and cannot just be reduced to a desire to provide Obama an excuse for not launching a strike against Syria and a possible broader conflict with Iran. The Kremlin genuinely wants to eliminate chemical weapons that could, especially in the case of the Assad regime's collapse, be in the hands of the people who could then transport them to Russia. The same consideration also plays a role in the Kremlin desire to keep Assad in power. The people in the Kremlin understand that the entire chemical weapon stockpiles might not be destroyed and the regime's collapse could well help potential terrorists get chemical weapons for future use in Russia. Secondly, the Kremlin has now started to understand that even those who are trained to fight in foreign countries could be dangerous individuals for they could return to Russia in the future. The Kremlin also started to see the clear danger of instability even far away from Russian borders and ended its policy of implicitly encouraging jihadists from Russia to go abroad to fight. Now, the administration has started to treat them in the same way as those who are preparing to fight inside Russia. For example, Russian law enforcement arrested the members of a terrorist organization who recruited people for fighting in the North Caucasus, Afghanistan and Syria.<sup>20</sup>

Finally, the Kremlin's desire to increase its influence in Central Asia is not due exclusively to the desire to receive economic benefits or to preventing America and China from controlling the region. It is also due to a genuine fear of an influx of jihadists from Afghanistan with experience in dealing with all types of weapons. Indeed, already in May 2013, at the summit of ODKB, the central military alliance of several republics of the former USSR in Bishkek. Here Putin expressed concern in relation to NATO's planned withdrawal from Afghanistan.<sup>21</sup> It is clear that the Kremlin, while pleased with the decline of the U.S. influences in many parts of the world is not pleased with the abrupt end of the American-led venture in Afghanistan, for the Kremlin assumed that the jihadists could well move North—to Central Asia and Russia proper. There is no doubt that Kremlin anxiety will increase when the actual withdrawal starts. It looks like Russia and the West's common interest would pull them together. Still, one should not expect this due to the conflict in Ukraine. It is clear that it is jihadists who would take advantage of discord between the United States, Russia and the European Union. And, in this respect, they could be quite similar to the Bolsheviks whose success was, in many ways, due to the lack of coordination /distrust between their major enemies. The point is that the Kremlin continues deeply suspicious of Western intentions.

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# U.S. Global Competitiveness: A Need For Infrastructure Investment and an Infrastructure Bank

Kyle Jarmon

**U**.S. hegemony, as generally perceived, focuses upon American military might. However, since the end of the Cold War economic power has become the greater “instrument of policy.” The economy has staggered since the 2008 financial crisis and, despite an encouraging recovery, is not yet fully robust or stabilized in terms of sustainable growth and wealth distribution. Unsettling is the U.S. dilemma of massive twin deficits of sovereign and current account debt. Data indicates improvement. However, in the long run, the figures could be warning signals of potential loss of global industrial competitiveness.<sup>1</sup> In order to reverse these potential trends, a revival of the economy and continued American authority in world affairs will depend upon a reinvestment in the industrial base and our communities. This article attempts to explain how a national infrastructure bank might not only be a mechanism for stable long-term investment for domestic and global markets, but also provide a boost to the U.S. economy, which might eventually be of epochal proportions.

In many places our national infrastructure is aging, obsolete, and/or on the point of collapse. Neglect, over-use, and an over-reliance on market mechanisms have driven transportation networks, energy grids, residential complexes, communication and utility systems to their limits. Because the lion’s share of these assets are in private hands, it will not just take political will from Washington to overcome these problems, but also business and fiscal incentives, which can only occur by means of a true partnership between the public the private sectors.

Marshalling these assets may require a similar spirit and vision evident in the immediate years following World War II. The primary institution resulting from such collaboration and effort was the European Recovery Act, or what was better known as the Marshall Plan. It was not only a success story, but also a continuing testament to American innovation and foresight that helped cast this country’s fortunes and lifted others out of various periods of ruin.

At the end of the Second World War, the Marshall Plan sought to rebuild a ravaged Western Europe and its devastated commercial infrastructure into a bulwark against Soviet expansion. With the benefit of thirteen billion dollars of U.S. economic aid, between 1948 and 1951 Western Europe experienced the fastest period of growth in its history. Despite representing less than 3 percent of the combined GDP, the Marshal Plan boosted industrial output of the recipient countries by thirty five percent. Agriculture also rebounded above prewar levels.<sup>2</sup> The program not only restored the European economy, but also undercut the ideological appeal of Communism.



This collaborative spirit and pragmatism has its roots in the very building of America. In the early decades of the twentieth century it took 62 days to travel from Washington to San Francisco by car. The quality of roads was inconsistent and dangerous.<sup>3</sup> By the 1950s America was poised for an economic burst, much the way but on a lesser scale, of the trajectory of the global economy. However, Dwight D. Eisenhower regarded the prospect of extended trips through parts of the United States as “impracticable.”<sup>4</sup> He was inspired to build a U.S. system of high-quality highways by his experience as supreme commander of the Allied Expeditionary Force in Europe during World War II. The contrast of the German autobahns against the chaos of the American network of un-uniform standards of construction, maintenance, safety, and coordination revealed to him national defense vulnerability and a barrier to economic growth. Economic and defense imperatives meld into a single cause. Not only was there a need to facilitate trade and commerce, but also the U.S. felt it had to have the ability to move military convoys, evacuate cities, and to have emergency landing strips in the event of an attack.<sup>5,6</sup> For these latter reasons the program was originally called the National Highway Defense System. Yet, by the time of its fiftieth anniversary the Eisenhower Interstate Highway System was hailed for “accelerating everything in America.”<sup>7</sup> However, the issue that propelled the program through Congress was linkage with national security.

In addition to the apparatus it offered to national defense, the Interstate Highway System “drove” the nation’s prosperity. Despite it only comprising 1 percent of the miles of public road, by 1996, it carried 45 percent of motor freight transport. It can also claim credit for an increase of more than a quarter of the nation’s prosperity. It made “just-in-time” delivery more feasible and economical.<sup>8</sup> As a comparison, the contribution the Internet has made to commerce and the quality of our daily life is incalculable. Add to these infrastructure investments the building of the Transcontinental Railroad and the creation of the inter-coastal waterway, and the story that emerges is not only the building of America but also the making of the greatest power in history.

The commercial infrastructure combines the skeletal and circulatory systems of the national economy and is at the core of the body politic. Nonetheless, and despite our history, experts estimate that the U.S. Government needs to appropriate \$48 billion annually for infrastructure.<sup>9</sup> The total under-investment, however, equals 129 billion per year.<sup>10</sup> These U.S. rates of investment are not only substandard in proportion to the scale of the nation’s economy, but also insufficient to maintain the current dismal ranking of 24th in the world in the quality of infrastructure.<sup>11</sup> The U.S. infrastructure is not only aging, in many areas it is near the point of collapse.

As the U.S. neglects its infrastructure, emerging economies move forward. China has been spending 8.5 percent of its GDP on its infrastructure. In addition to its own future, the PRC invests in Africa through the construction of roads, bridges, and rail projects. In contrast, our current assets are too insufficient to support the present demand even while we expand the Panama Canal and “Panamax” cargo vessels are being deployed.

While the United States devotes only 2.6%, India investment in infrastructure has been nearly 5% of GDP. The India power industry is an illuminating case study. The power reforms in the 1990’s, which were in direct response to the power shortages that plagued India at that time, redeveloped

the industrial and political landscape. These efforts culminated in the Electricity Act in 2003. The traditional ways of funding power allocation throughout the country were lacking and financially restricted by local state control. The new reforms unbundled local restrictions and enabled new effective forms of development based on competition and commercial merit from the private sector.<sup>12</sup> The aim and result was the formation of key relationships between public and private entities. This coupling, which combined different market capabilities, made possible the optimal domestic resolution of one of the nation's foremost social and economic problems - power shortages.

One of the key elements to the new market paradigm was the establishment by the Indian government of the Power Finance Corporation (PFC). As a financing agency, the PFC fills the gap in the financial markets for large power projects. The size of these projects, degree of risk, and the time lag between construction and revenue generation require substantial financing packages and long term loan conditions. As a government agency, the Indian PFC provided the necessary loan mechanisms in the early stages so that these projects could eventually become commercially viable and self-standing.

In addition to sizeable loan packages, these large projects, called Ultra Mega Power Projects (UMPPs), need cross sector and inter-jurisdictional cooperation to succeed. Therefore, UMPPs relies upon the PFC not only for financing, but also for administration and expertise. Once the terms of financing have been agreed upon, the PFC oversees the competitive bidding process, authorizes the appointment of power distribution companies, and arranges for the acquisition of land and state clearances. The PFC evaluates all project requirements and private involvement, along with more specific alternatives. It centralizes the need and allows for thorough project demand provisioning. More critically, the PFC opens doors to the secondary markets - leveraging private funds and the critical mass of public private partnership. Having been founded in 1986 as a wholly owned government entity, the PFC eventually issued an IPO in 2007. Today it is listed on the Bombay Stock Exchange and National Stock Exchange of India and is an example of what might be possible in public and private sector collaborations.

The PFC corresponds in concept to the proposed creation of an infrastructure investment bank in the U.S.. With public budgets exhausted, and corporate cash reserves robust but relatively dormant, a national or regional infrastructure bank can fill the similar role. Additionally, at the federal level, a centralized or national infrastructure bank will not only help integrate project financing from private funds, but also facilitate investment through the underwriting process. A national infrastructure bank will also help coordinate the array of scattered and redundant federal grant and lending programs now in place. Non-standardized procedures and protocols of federal and state jurisdictions have created complexity in the planning and public-private financing process, which has inhibited communication and progress.<sup>13</sup>

It is important to note that in the case of India, China, and other emerging economies, there is a different economic and political structure than that in the West. Infrastructure build out in these emerging markets has obstacles and circumstances apart from the preexisting infrastructure conditions of their Western counterparts. The benefits of a large and inexpensive labor pool

cannot be met in the West. These more “closed economies” also have the advantage of enforced innovative financing vehicles, political reforms, and the freedom from layers of entrenched interests at “sub-federal” jurisdictions. The strong central authority wielded at the national level allows these governments to avoid the free-for-all that has been the standard of political processes in the U.S., Western Europe, and Japan. As well, the ability to set national policy and initiate domestic programs without the same fear of political opposition or public resistance, although basic to Western societies, has usefulness in these policy-setting instances.

Nevertheless, the example of the PFC and the Indian power sector is a potential working model for infrastructure investment in the U.S. An infrastructure investment bank might be the institution for resolving funding decisions and focusing on demand for critical infrastructure points in the U.S. It might also be the appropriate authority needed to plan, finance, and coordinate infrastructure investment while creating jobs and helping to assure the future expansion of the U.S. economy. The current approach to infrastructure development costs the U.S. approximately \$1 trillion per year in forgone economic growth, according to the U.S. Chamber of Commerce.<sup>14</sup> A frail commercial infrastructure inhibits the ability of U.S. business to compete economically in the global system – currently and in succeeding years. Meanwhile, as investors fret over the future of a volatile equity market, this need for infrastructure investment also comes at a time when nearly as much as \$30 trillion is held by central banks, sovereign funds, and global pension accounts.<sup>15</sup> A dollar denominated, long term U.S. debt instrument that is risk/return sensitive could attract funds and financing, ratchet up economic growth, and restore stability to the financial markets.

Legislation calling for the establishment of infrastructure investment banks has already been proposed. The Obama Administration has acknowledged three major bills that would replace the traditional way of financing; all with an appropriated funding cost of 10 bn in the first 2 years. As presently proposed, the president would choose the upper management of the fund or entity while the board members would be selected by Congress. Having appointment from a bipartisan level of federal government would buffer out the influences of infrastructure project allocation at local levels. Generally, the projects would be financed through loan guarantees, which would have “callable capital” that would cover the liabilities in the event of a default. The fund or corporation would also be allowed to issue bonds, which could be sold on the secondary market. Infrastructure projects would offer guaranteed returns, create cash flow, and employment opportunity.

A central banking entity to coordinate critical infrastructure build out would not only be more efficient, but would also integrate analytical data to more comprehensively evaluate assets or projects. One of the problems in our traditional way of financing is that more infrastructure projects are considered by mode; as a result they are siloed and are not considered in a macro level. The same analytical approach applies to the financing of these projects. Therefore, the most cost-efficient way of project financing is not realized because of the inability to take into consideration spillover effects, regional and national economic potential and impact. On the other hand, a national infrastructure investment bank would avoid these inefficiencies by establishing and following a system of protocols and metrics for selecting commercially feasible projects for development. The ‘bank’ would also identify private dollars sources and act as an intermediary in the public-private partnership arrangement and

thus, close the funding gap that is currently a GDP opportunity cost. At the same time, a national infrastructure bank can eliminate the prevailing problem of jurisdictional barriers and the complex of confusing regulatory strictures, conflicting legislation, and parochial politics that accompanies the prevailing system.

The financial instruments created by a national infrastructure bank would replace the traditional way of financing through municipal bond market. It has been harder for the municipal bond market to satisfy either the needs of the project or the demands of the investors. As personal tax rates have declined over the years, tax-exempt bonds have gradually become less attractive than in earlier periods. Furthermore, these debt instruments favor wealthy individual investors with high tax liabilities and, therefore, mostly exclude consideration by pension funds and foreign sources. A U.S. National Infrastructure Bank security would reverse this trend. A higher taxable interest rate, the guarantee of a tied revenue stream, and the unique safety feature of the bonds would cast a wider net to lure investors. As with Indian example, the 'bank' could provide for a delayed payment feature funded by direct subsidies that would allow the project time to generate adequate tariffs or users fees once it matured past the earlier construction and development stages. The amount of subsidies would be revenue neutral to the federal government after factoring lost income receipts from the tax- exempt bonds. Under these conditions, maturity could extend past the usual ten-year period that is the current term of municipal bonds.

Large-scale, complex enterprises such as transportation, water treatment, and utility projects require years of planning, construction, expansion, and continuous upgrade. A maturity of twenty to thirty years makes the financing of these types of infrastructure projects less complicated.<sup>16</sup> The longer maturity term also provides the market with stability, and for the project it would diminish the level of commercial and business risk. Such a national financial institution may require oversight from 'bank' authorities and additional federal regulation in order to cobble together financing, construction, and operational processes that span state boundaries. As Mark Gerencser, former Managing Partner at Booz Allen Hamilton, notes:

*Deregulation, which began in earnest in the mid-1970s and accelerated into the 1980s and 1990s, may well have bequeathed short-term economic benefits, but it has also made long-range management, planning and investment decisions for infrastructure systems far more difficult. The infrastructure-related industries of the United States used to be part of a relatively stable public utilities market, but deregulation, corporate mergers and acquisitions, and outsourcing trends have put an end to that stability.<sup>17</sup>*

Under these conditions, the new environment for infrastructure build out will be a more integrated system. It will include multiple sectors in the development process, which include comprehensive analysis and financing. Eliminating the old complex ways of traditional financing will also allow the private sector to invest confidently in reliable revenue sources with acceptable rates of return. The impact will mean a more liquid secondary market and a return to a stable environment for long-term planning, management, and investment decision making that the U.S. economy now so very much needs.

Finally, the need for infrastructure investment is not only an economic imperative, but also a matter of national security. In much the same way the planners and policy makers of a generation ago justified the need for a Marshall Plan and the construction of the Interstate Highway System, the new national agenda must consider the corroding state of the nation's infrastructure and the need for re-investment as a matter of national defense. Economic and national security concerns are interlinked. However, rather than defending remote areas of the world to protect markets and sources of raw material to supply our economic engine, today our priority security assets are the parts, organs, and elements that make up the critical infrastructure.

These structures, such as ports, utility grids, transportation networks, information/communication systems, are under assault every day by electronic vandals, natural catastrophic events, and our own over-use and neglect. Approximately 87% of these facilities and networks are privately owned. Therefore, a public – private partnership is the only working arrangement that can address the challenge of re-building the economic framework. A national infrastructure investment bank might be a key linchpin. The moment and opportunity could not be more appropriate. Money center banks, global pension accounts and strategic sovereign funds hold trillions of dollars. The discount window remains open as long as historically low inflation rates prevail. The financial markets, and business in general, longs for stability. This is also an opportunity to insinuate best practices standards for security, which heretofore has been lacking in commerce. Voluntary security regimes, patchwork solutions, and ad hoc programs and measures have become accepted methods of dealing with the security threat. The result has been a network of breaches and the loss of trillions in productivity, business disruption, and intellectual property theft. A revitalization of the economic structure is chance to “bake-in” a security ingredient that would create a reliable and resilient commercial system, which would lessen the vulnerability of attack and help assure the nation's economic dominance.

The current U.S. defense budget accounts for 45.7 percent of total spending by the world's 171 governments and territories.<sup>18</sup> These sums support the U.S. military and the protection it provides for international shipping lanes and the energy supply routes. The Pacific Rim countries, including the Peoples Republic of China, and other nations, such as Saudi Arabia, buy U.S. federal debt instruments as indirect payment for a security force.

These and other governments can justify the investment as being more favorable than the alternative of developing their own capabilities and militarizing their domestic economies. It also allows these governments to devote and direct financial resources toward domestic programs. However, world events have never been more fluid. The United States is at an inflection point where, despite the rise of violence in the Middle East and around the world, public opinion may force Washington to turn resources inward and concentrate efforts on strengthening its global competitiveness through markets rather than by military presence. Even if national policy determines it must maintain its military hegemony, the United States may have no alternative than to rely upon open market sales of government securities for further financing. As Jonas Grätz of the Swiss Center for Strategic Studies remarks:

Military power will not be sustainable without independent economic might – even more so as key allies like Japan or the UK are being weakened economically as well. The prime challenge to U.S.

power is thus economic, not military.<sup>19</sup>

With the same foresight, energy, and intellectual spirit that help re-build post-war Europe, and create what became known as the “American Century”, the U.S. can revitalize its anxious economy and re-imagine its own future. In order for the U.S. to remain competitive and dominant, it would not entail a massive mobilization. It merely would mean a return to a previous history of prudence, innovation, collaboration, and political determination.



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# A Utopic Denouement for the Venezuelan Crisis

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It is no secret to anyone that a good economic performance makes a great difference when it comes to a legitimate government or a regime within a country. This was true during the military coup that came to power in Brazil in 1964 and ruled the country until 1985. The negative outcome of the world oil crisis of 1973 and 1979; however, had a significant and negative impact on the economic plan that the regime was carrying out. In the beginning of the eighties, the Brazilian external debt skyrocketed, inflation rates got out of control, and the whole economy started to collapse. At the same time, social discontentment flourished throughout the country while its citizens were demanding political democratic freedom and economic and social welfare.

When we look at that period we have to take into account the changes that had taken place in the international scenario. It was crystal clear, that the Communist threat was fading away and its complete fall would occur in only a matter of time. Therefore, the whole purpose of having dictatorships aligned to Washington to fight Communism made no sense. Reagan and Thatcher were then enforcing the neoliberal agenda that had been put into operation in Latin America as an experiment in Chile, by the Chicago boys, in the United States and England, respectively.

The nationalist and protectionist economy agenda, common to most dictatorships, had no use in the New Economic World Order that was about to take over the world.

When we look at Latin America today, we may conclude that the challenges that most governments are facing are due to their poor economic performance and their affects on day-to-day lives of the people in the region. These governments enjoyed a very good and long period of favorable international economic conditions that boosted the international price of their main exports: raw materials as oil, iron, copper, soybean, etc. In the last ten years Brazil, Venezuela, Argentina, Bolivia, and Ecuador took this opportunity to put into action economic and social policies in favor of the poor majority of each of these countries (for many, populist policies). In one way or another, these governments (Lula/Dilma in Brazil, the Kirchners in Argentina, Evo Morales in Bolivia, Chavez/Maduro in Venezuela and Rafael Correa in Ecuador) enjoyed very high rates of popularity that legitimated each one of these governments.

Now things are quite different. The commodities boom has come to an end, domestic demand has dropped, and there is no money left for the same social and economic policies that boosted the popularity of leaders of Brazil and Venezuela. In the case of these two countries, the diagnosis of the problem is the same, but their abilities to solve their problems are quite different from one another.

When it comes to Brazil, we have a country that has a diversified economy composed of a strong industrial sector, a very competitive agricultural segment, a huge domestic market, and a modern



financial system that knows the limits imposed by the international market. The Brazilian government knows what is at risk at this very single moment: as long as the Brazilian economy deteriorates, the chances to remain in power in 2018 diminish.

Venezuela has a much more difficult task. Unemployment and inflation rates are high. Shortage is wide spread, protests have been repressed, and opposition leaders are being arrested. The country imports almost everything. Since oil prices have dropped dramatically, Maduro has been lost its capacity to import and to put forward the same economic and social agenda implemented by its predecessor, Hugo Chavez. Maduro has already lost the control of the situation. There is no hope in the near future that his government will be able to put the country back on the track of development and economic growth. South American leaders have already expressed their worries with what is going on in Venezuela by pressing Maduro to ensure that legislative elections scheduled for the end of this year occurs, and that he does not try to rule the country through a leftist coup.

Despite the difficulties that Brazil is currently facing, the government will have to convince public opinion of its commitment to the recovery of the economy, as well as the strengthening of democratic values throughout the country in order to recover its popularity and to have any chance in the 2018 presidential election. The strengthening of democratic values seems to be a demand of the Brazilian opposition, due to the fact that that both Venezuela and Brazil are ruled by leftist governments. There is wide spread fear within the opposition in this regard within both countries, because of the traditional ideological alignment between Caracas and Brasilia. For many, what is going on in Venezuela may happen to Brazil in the future.

Finally, in the case of Venezuela, as the economy collapses and the government represses the opposition, Maduro has gotten into a more complicated situation. The president has lost his political support, both domestically and abroad. Maybe, a utopic and less disastrous solution rests on Maduro himself and, in a lesser degree, on the leaders of the region. Maduro and South American leaders, especially the Brazilian government, should recognize that Maduro has no political support or the economic tools to reorganize the Venezuelan economy. Despite the Bolivarian rhetoric, the financial market disapproval towards the economic situation of the country plays a good role in that game. When Lula came to power in 2003, he knew that he could not take the market for granted. In face of that reality, he implemented numerous economic policies that accommodated the demands of the national private sector, of the middle class and of those living in poverty. Now, for the good of Venezuelans, it is time for Maduro to realize the same lesson and start paving the way for the necessary peaceful and democratic changes in the political and economic structures of the country.



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# Election as Warfare: Militarization of Elections and the Challenges of Democratic Consolidation in Nigeria

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## Abstract

One major issue emerging from the governorship elections conducted in the Ekiti and Osun States of Nigeria is the presence of heavy security forces during their conduct. Platoons of security operatives, including military officers, were drafted to lock down the states shortly before, during and immediately after the elections with immediate consequences on peoples' rights and freedom. Members of the opposition were specifically targeted. The pertinent questions to ask then are: What accounts for this? What are the implications on democratic consolidation? This study seeks to interrogate the foregoing questions.

Keywords: Governorship Elections, Ekiti State, Osun State, Militarisation and Democratic Consolidation

## Introduction

The history of post-colonial electoral engineering in Nigeria is replete with instances of militarism and violence during election times. Fair documentation of such a culture of electoral violence has been attained through a number of scholarly literatures. Campbell (2010), for example wrote on the possible implications of the jettisoning of the People's Democratic Party (PDP)'s "unwritten" zoning formula for Nigeria's peace, stability and democratic consolidation. For Osumah & Aghedo (2010); and Ekweremadu (2011), Nigeria's recurring pattern of electoral violence should be seen as a manifestation of the growing disappointments and apprehension of the electorates and the inability of the Independent National Election Commission (INEC) to conduct widely accepted, free, fair, and open elections. Others have placed Nigeria's history of electoral violence within the door step of vote rigging, dodgy politics, ballot snatching at gun points, violence and acrimony, "thuggery", brazen falsification of election results, the use of security agencies against political opponents and the intimidation of voters over the years, [Oni et al. (2013); Bekoe, (2011); Omotola, (2010); Adigbuo, (2008)].

While to others, the seeming inability of INEC to discharge its responsibility effectively coupled with the political partisanship of the security agencies in the discharge of their duties during and after the elections has continued to threaten Nigeria's attempt towards democratic consolidation [Adigbuo, (2008); Omotola, (2010); Idowu, (2010)]. As Gueye & Hounkpe, (2010) argues, the mode of involving

security forces and how they carry out their duties while participating in the electoral process in Nigeria can also be adduced as part of the fundamental causes of violence and insecurity during elections. Onapajo (2014), drawing references from a number of elections conducted in Nigeria between 2007 and 2011 argues that, in terms of influencing election outcomes, the incumbent has been more associated with violence during elections than the opposition. In all of these scholarly assessments however, there has always been a particular constant — the role of Nigeria’s security forces in the ensuing violence that has greeted most of these elections.

It is therefore not surprising that over the last 7 years (2007-2014), one issue which has drawn criticism and public fury from Nigerians is the deployment of the military during elections in Nigeria. Most notable among these elections, were the governorship elections in Edo and Ondo States in 2012, in Anambra (2013), and in the Ekiti and Osun governorship elections in 2014. Rather than relying on the police to provide the security needed during the gubernatorial elections in the five states mentioned above, the Nigerian federal government deployed large detachment of soldiers and other security operatives in these states to assist and ensure peaceful conduct during the elections. In the Ekiti elections in particular, the protests reached high heavens, when prominent members of Nigeria’s main opposition party, the All Progressives Congress, were denied entry into the state capital by soldiers and other security agencies in a commando-styled operation, to participate in their party’s grand rally a few days before the election (Thisday, 20 June, 2014).

If the election in Ekiti State was “heavily militarised”, the military/security presence in the gubernatorial elections in Osun State was massive, with a deployment of a 73,000-strong security contingent to oversee security concerns during the election (Ajayi, 2014). Consequently, this paper examines what accounts for the “militarisation” of the gubernatorial elections in Ekiti and Osun States of Nigeria which took place on 21 June, 2014 and 9 August, 2014 respectively. Specifically, the paper interrogates the possible implication(s) of heavy deployment of security forces; particularly the military in elections in Nigeria vis-a-vis the country’s efforts towards democratic consolidation. This is particularly necessary given that elections ought to be a civic affair and its processes should be distinguishable from preparations for war against a foreign enemy.

To achieve these, the paper has been divided into four sections with the first serving as introduction. The second section focuses on the theoretical issues related to the discourse, the third, presents an analysis of the events as they played out in both the Ekiti and Osun elections, while the fourth and concluding section offers an insight into the possible implications of the seeming recurring pattern of electoral militarisation or heavy troop deployment in Nigeria, and what needs to be done towards stemming this tide.

Election and security in Nigeria: some historical and theoretical issues

Elections are fundamental to democracy and it is often said that whereas it is possible to have elections without democracy, it is virtually impossible to have democracy without elections. Owing to the centrality of elections to the democratic process, emphasis has always been placed on ensuring credibility. One of the ways to making an election credible is the issue of security (Igini, 2013).

Mathias Hounkpe and Alioune Gueye (2010:16-17) argue that election security constitutes a major component of the electoral process but has however, in respect of emerging democracies, been hampered by series of factors, which include faulty legal framework, poor technical management of elections, poor management of competition and opposition, poor management of electoral disputes, and past roles of security forces.

In a report compiled by IFES (2013), election security is often challenged by five types of conflicts:

1. Identity conflict, which occurs during registration process
2. Campaign conflicts, which occurs at campaign podiums
3. Balloting conflicts, which manifests on election day
4. Results conflicts, which manifests as disagreements over election outcomes
5. Representation conflicts, which occurs when elections are organised in such a way that they are nothing but zero sum (IFES, 2013).

Putting it in a better perspective is Attahiru Jega, who while arguing from an ‘umpire’ and practitioner perspective, identified the major impediments to election security in Nigeria as including: “physical attacks on electoral officials and facilities, attacks on security personnel on election duties, misuse of security orderlies by politicians, especially incumbents; attacks on opponents; attacks on members of the public; violence at campaigns; intimidation of voters; snatching of election materials; kidnapping and assassination of political opponents” (Jega, 2012:2). However what Jega failed to mention, and which is very important in the context of Nigeria, is violence perpetrated by the security personnel drafted to secure elections, such as intimidation of voters, oppression and victimization of members of political parties different from that of the government at the centre, excessive show of force and connivance with politicians to perpetrate rigging.

The Nigerian experience with elections dates back to her colonial past, and since the attainment of independence, elections are increasingly becoming major security concerns over how to secure the men saddled with the conduct of the elections; materials needed for the elections as well as the voters and the candidates standing for the elections (Jega, 2012:1). In other words, the first security challenge facing electoral conduct in Nigeria is that of securing the men and materials for the election.

As Jega further noted:

*In many ways election in Nigeria is akin to war. For one thing, mobilization by the election commission is massive, akin to preparations for a major war. The 2011 elections required the assemblage of close to a million poll workers, party workers, security personnel and election observers. The election entailed the acquisition of over 120,000 ballot boxes, printing of about 400 million ballot papers and managing a voter’s roll of over 73 million entries. In fact, in the registration of voters that preceded the elections, the machines used in the exercise would have formed a chain of over eighty kilometres if placed end to end and the over 400,000 staff used in the exercise out-numbered the collective strength of the entire armed forces of the West African sub-region (Jega, 2012:1).*

If securing men and material is challenging, securing the voters and the candidates in Nigeria is

even more daunting. With the exemption of isolated incidences, elections in post-colonial Nigeria have rarely been peaceful; they have become a matter of warfare that have resulted not only in killings, maiming and destruction, but also in the “death” of democracy itself, as recorded in 1966 and 1983 and 1993. Nigeria began its post-colonial life, with great expectation, under a democratic order modelled after the British parliamentary system. It was expected that the potential greatness in Nigeria would be better realised under a flourishing democratic life. However, this was not to be, as the experiment collapsed like a pack of cards just five years after its construction through a bloody military putsch that not only terminated the nascent democracy but also the lives of a number of principal political actors of the time.

There is a unanimity of opinions that the collapse of the First Republic owed largely to the 1964/65 general elections conducted by the Tafawa Balewa government (Diamond, 1988, Osaghae, 1998, HRW, 2007, Malu, 2009, Onebamhoi, 2011). The elections were fraught with complaints, violence, malpractices, fraud and intimidation, which triggered wild protests, inter-communal rioting, arson and the killing of over 200 people in the western region (Anifowose, 1982, Osaghae, 1998). The total breakdown of law and order, consequent upon the elections, was to become one of the alibis for the military careerists to come on to the political stage. Eventually, series of events after the coup, led to a thirteen-year soldiers’ reign in the country.

In 1979, Nigeria made a second attempt at democracy when the military handed power over to President Shehu Shagari after a successful transition programme. Like the case of the first Republic, the experiment lasted only four years and the collapse owed significantly to issues around the 1983 general elections conducted by the President Shagari administration (Diamond, 1988). The election was characterised by violence engineered by the ruling National Party of Nigeria using the electoral body and the security operatives to perpetrate rigging and manipulation. Reactions to the fraud assumed violent dimensions in various parts of the country (Onebamhoi, 2011:6). Perhaps, the most violent reaction happened in Ondo State where massive destruction of property and killings followed the manipulation of election result in favour of the ruling party (Babarinsa (2003), Adele (2012)).

A few months later, the soldiers struck and the military brass hats railroaded many of the principal political gladiators into detention centres, suspended the constitutions and all structures built around it; and by so doing, effectively put the democratic order in abeyance. In the history of post-colonial Nigeria, the most peaceful election ever conducted on June 12 1993 was annulled by Military President Ibrahim Babangida, its organiser, just before its conclusion; and this was to lead to series of events of cataclysmic proportions that almost brought the country to her knees. A final push to the precipice was averted when a “biological coup” was put to General Sani Abacha’s self-succession plan in 1998.

Once again, the country returned to a democratic order in May, 1999 but since the return, electoral conduct had not fared better in terms of violence and insecurity. Indeed, Most of the elections conducted have recorded massive violence in all the three phases - pre, during and post-elections. Although the 1999 election did not record violence, the same cannot be said of the 2003, 2007 and 2011 elections. In the rundown to the 2003 general elections, President Obasanjo raised the alarm

over cases of politicians raising private militias for political use (Adele, 2012). The same period witnessed instances of political assassinations such as the case of Harry Marshall and Dikibo; there were also protests and demonstrations over the preparations; the most spectacular being the November 2002 political disturbance in Kaduna that resulted in killings and destruction of property (Adele, 2012).

In terms of fraud and loss of credibility, as well as violence, the 2007 general election is in a class of its own. The election was generally regarded as fraudulent and marred with violence in various parts of the country where police stations, INEC offices and government buildings were burnt in protests (Lewis, 2003, Adele, 2012:211). Within a few weeks to the polls, there was an attempt to bomb the Independent National Electoral Commission (INEC) national office in Abuja through a bomb-laden petrol tanker. In 2011, the INEC office in Suleija was bombed and several poll workers were killed (Mosadomi, et al. 2011). In addition, protests over the election result resulted in the wanton killings, including the murder of nine young Nigerians on national service, who were working for INEC as an ad-hoc electoral staff (Jega, 2012).

Perhaps owing to the loss of lives after the 2011 general elections, the Nigerian government resulted to heavy deployment of security forces during elections as witnessed in Edo, Ondo, Anambra, Ekiti and Osun States. However, of all the mentioned elections, those of the last two were the highest where over a hundred thousand security forces, comprising the police, army, secret agents, civil defence corps and other paramilitary forces, were deployed. The two states were totally locked down with both human and vehicular movements restricted. For Nigeria's former President; Goodluck Jonathan, the heavy deployment of security forces for the elections is considered necessary given the country's recent violent electoral history.

Jonathan had argued that:

*We just finished 2011 elections and we are talking about three years ago or quite close to four years ago and we know what happened in Bauchi where about 10 youth corpsers were slaughtered in that elections. We know what happened in Kano; properties worth millions of naira were destroyed, and some of the people have not gotten back their houses. We know what happened in Akwa Ibom where some criminals even had to sever the genitals of some men in the name of politics – demons who want to hold political office. In that kind of situation, how would a person who calls himself a labour leader come out publicly to say government should not secure people? I don't agree with them. (Cited in Otuchiekere, 2014)*

Inherent in the rationalization of the Nigerian president is the notion of supreme power of the state to maintain the security of lives and property. This flows from the earlier experience of widespread destructions and killings during elections. This explains the presence of a high number of security forces, an occurrence that was witnessed for the first time in Nigeria. However, if the motive was to secure lives during elections, the activities of the security forces became a major controversy for, in what appears to be a ploy to persecute the opposition, a large number of members of All Progressive Congress (APC) were arrested and detained before the election, while leaving members of the

Peoples Democratic Party (PDP). This became a major issue in the Nigerian polity as several people rose in condemnation of the trend but the president continued to maintain his position that he will continue to deploy heavy military personnel during elections, and in the process, turn elections into something of warfare.

Thomas Hobbes had long held a pessimistic view of human nature by arguing that man is by nature not only controlled by greed and avarice, but can be controlled by superior power of force (Olurode, 2013). As a counterpoise to the violent inclination of human beings, Hobbes had conceptualized an all powerful garrison state. To him, an absolute state is the price to be paid for moving away from the lawlessness of the state of nature. In that sense, the state holds all the rights to ensure the protection of the people by all means. In order to prevent recourse to anarchy and break down of law and order, the state is justified to employ high tactics (Olaniyan, 2007). To a large extent, the Nigerian government's resort to excessive militarization of election can be said to derive from the Hobbesian tradition. Elections in Nigeria are likened to warfare, where casualties are recorded. In order to prevent this cycle of bloodletting, the state resorted to employing maximum force. But such became problematic because of several issues. What are these issues and how do they play out? This is the objective the next intends to achieve.

#### Towards understanding the troop deployment process in Ekiti and Osun States

As argued by Akinnaso, particularly when situated within the confines of electoral politics in Nigeria, the term militarisation, has come to acquire an extended cultural meaning, consisting of three semantic components: (1) the deployment of security forces, consisting of military, police, the Department of State Service, and other security operatives; (2) the deployment occurs during an election; and (3) the election takes place in an opposition state (Akinnaso, 2014). In both the Ekiti and Osun elections, all of these characteristics were constant features during and after the elections with both the proponents and opponents of the heavy troop deployment competing for space in Nigeria's political circles.

Some political observers argued that the militarisation of the Ekiti election was indeed necessary, considering the cases of violence that characterised the pre-election campaigns by the three main political parties; the People's Democratic Party, (PDP), the All Progressives Congress (APC), and the Labour Party (LP), which participated in the election. However, others have maintained that such a deployment was a deliberate attempt by the ruling People's Democratic Party (PDP) led federal government to intimidate the incumbent governor, Kayode Fayemi and the All Progressive Congress (APC), with a view to paving the way for the emergence of the PDP candidate, Mr Ayodele Fayose (Akinnaso, 2014).

Proponents of the deployment of troops for the elections, premise their argument on the fact that the Ekiti election, for the first time in a long while, was devoid of violence. Except for a few incidents, which saw the arrest of some APC leaders, the election was adjudged to be peaceful. As the PDP's National Publicity Secretary, Olisa Metuh argued:

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*“The primary responsibility of President Goodluck Jonathan is to protect the lives and property of all Nigerians; hence the deployment of security men to the state was to ensure this, in the interest of all. He further stated that the President had by the action, proven that he was committed to free, fair and credible elections across the country; and that the deployment of soldiers to states for election was not new since Edo, Ondo and Anambra where governorship elections had been held earlier. In all these state elections, PDP lost; meanwhile, the governor of Edo had cried out to the public that soldiers had invaded the state to rig the election for the PDP. But at the end of the day, the election appeared free and fair to him and PDP lost while he won. He came out on national television to commend the President, saying he is a statesman” (Metuh in Leadership, 21 June, 2014).*

Lending credence to Metuh’s position, the Transition Monitoring Group (TMG), a civil society group which regularly monitors the conduct of elections in Nigeria also justified the deployment of soldiers for elections in the country including the Ekiti election citing past experiences where politicians take elections as an act of war, as a case in point (Okpi, 2014). The group’s chairman, Ibrahim Zikirullahi, argued that the soldiers’ deployment was not new and that the success recorded by the Independent National Electoral Commission (INEC) in Ekiti may not have been possible if they were not on ground to ensure security. In the US and other places, elections might not result to insecurity, but in Nigeria elections have become war, even the campaigns look “warlike,” (Zikirullahi, cited in Okpi, 2014).

From the point of view of the Independent National Electoral Commission (INEC), Nigeria’s electoral umpire, the heavy troop deployment was necessary to provide security to officials of the commission and the voters. The commission through its Chairman, Attahiru Jega, noted that:

*The military performs what we describe as peripheral outer cordon. It is the mobile police that handle internal movement in terms of movements in the towns but away from polling unit. And it is unarmed policemen that you have on an average of three per polling units, and that is exactly what happened in Ekiti (Jega, cited in Olusanmi, 2014).*

However, for Nigeria’s federal government, the pocket of violent clashes witnessed before the Ekiti elections was enough reason to warrant the deployment of about 12,000 troops including, soldiers, men of the Nigeria Security and Civil Defence Corps, State Security Service (NSCDC), and police officers to keep the peace during the polling (Okpi, 2014). As attested to by Nigeria’s former Inspector General of Police (IGP), Mohammed Abubakar, the Police authorities had deployed three helicopters for surveillance in the three senatorial districts in the state with one Assistant Inspector General of Police and four commissioners of Police for effective coordination of security operations, as early as one week to the election (Okpi, 2014).

While confirming what we argue as the heavy militarisation of the Ekiti gubernatorial elections in Ekiti State, the police chief, admitted that the number of troops, armoured tanks and helicopters deployed in Ekiti were the highest ever to be deployed in any state in Nigeria for electioneering purposes, attributing the deployment to the resolve of the police to do anything humanly possible to provide security for election materials and personnel of INEC (Abubakar, cited in Okpi, 2014). Like a war zone, the troops took their positions. Almost every 100 metres from the entry point of the state, police



officers and soldiers mounted various check points, with blood-hound dogs sniffing for any likely breach of peace by supporters of the various political parties (Akinnaso, 2014).

What seemed to have bothered political observers about the military invasion in Ekiti was the incident that transpired 48 hours before the elections. Rivers State governor, Rotimi Amaechi, and his Edo and Kano State counterparts, Adams Oshiomhole and Rabiu Kwankwaso were denied entry into Ekiti State to attend the last APC mega rally by military personnel purportedly acting on the order of the Presidency (Akinnaso 2014). Other leaders of the party, including the Imo State governor, Rochas Okorocha, and the former governor of Lagos State, Bola Tinubu, were also barred from taking off at the Akure airport after the rally, leaving them with the option of travelling by road (Akinnaso, 2014). The siege by the military on Ekiti was so severe that moving from a 5-minute walking distance to the other was virtually impossible due to the heavy security lock down in the state on the day of the election. As Odigie-Oyegun, the national chairman of Nigeria's main opposition party noted,

*It is unfortunate that under the guise of providing security, Ekiti State has been turned into a war zone. It has been over-run by armed security personnel with the intention of intimidating the opposition and the voters as well. Our electoral laws are clear that every polling unit should have one unarmed policeman and the military should have no role in the election. But in Ekiti, armed police and military personnel have been deployed in their numbers and the question we are asking is whose purpose are they going to serve? (Odigie-Oyegun cited in Obogo, 2014).*

Commenting further on the siege which Nigeria's security forces laid on the prominent members of the opposition in the build up to the Ekiti elections, a Governor (Adams Oshiomole) elected under the platform of the opposition party (APC), argued that the decision by Nigeria's security agencies to prevent him and other senior members of his party from attending the political rally was instigated by the ruling People's Democratic Party (PDP). He expressed his frustration thus:

*I have the right to go to any part of Nigeria and if you can stop a Governor, you treat him as a miscreant, it's not about me, it's about the office, then you reduce the country to something close to a 'Banana Republic'. These things happen all the time, that's why I always argue that we need strong institutions rather than strong personalities (Oshiomole, cited in The Sun, 22 June, 2014).*

Lending their voices to the perceived militarisation of the Ekiti elections, civil society groups, under the aegis of the Nigeria Union of Journalists (NUJ) and the Nigeria Bar Association (NBA) also condemned the conduct of the law enforcement agent in a press conference addressed by the Chairman of the Ado-Ekiti branch of NBA, Joseph Adewunmi, and the chairman of the Ekiti State chapter of NUJ, Laolu Omosilade (Okoro, 2014). They argued that "the heavy presence of security personnel in the elections could provide an avenue for the rigging of the election even if the electorates are scared of coming out to vote, there will be surplus voting cards which unscrupulous politicians can use to the detriment of one another and more importantly, the credibility of the election," (Okoro, 2014).

Other observers described the events which played out in Ekiti not only "as an apparent rule of



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*others have argued that that it is illegal for the government to employ the use of the armed forces to maintain law and order during elections.*

force in a democracy, but a reckless display of raw power, a condemnable intimidation of civility and a flagrant abuse of fundamental rights of the expected voters.” (Agoro cited in Okoro, 2014). Agoro further noted that there were unusual movement of hundreds of thickly equipped vehicles and police helicopter ceaselessly flying over the skyline of Ekiti, for a simple election in a state controlled by a political party different from that at the centre is akin to casting votes under the barrels of guns an unexpected evil development in a democracy” (Agoro cited in Okoro, 2014). The views, as expressed above are indeed consistent with the submissions of a Civil Society group—“Say No Campaign” (SNC) on the Ekiti 2014 Governorship elections.

The group in its preliminary report on the elections condemned the heavy deployment of troops in the election by pointing out that:

*the over-whelming militarisation of politics, engenders a consequent politicization of the military, that may lead to a situation where a politicized military strikes and cashes in on a general crisis partly created and partly reinforced by the militarization of politics and civic life, and truncates the democratic experiment (SNC, cited in Daily Trust, 3 September, 2014).*

Similarly, in the 9 August, 2014 Governorship election in Osun State, the scenario was not particularly different, except that the number of troops deployed to provide security in the elections doubled the 36,000 strong security personnel deployed for the elections. A total number of 73,000 men comprising of the army, police, and Civil Defence operatives were said to have been deployed for the election in the state (PM News, 11 August, 2014). The National Leader of the opposition APC, Bola Tinubu, described what happened in Osun this way:

*The massing of the military and over sixty thousand security men to intimidate and harass a peaceful people is the sign of an unsecured government and party. It is a pre-condition to manipulate and perpetrate electoral fraud. Under any democracy, there can be no moral or political justification for the security armada against our party leaders and followers in Osun. The implications for our democracy foretells of dire consequences (Tinubu cited in PM News, 11 August, 2014).*

Speaking from a legal and constitutional perspective, others have argued that that it is illegal for the government to employ the use of the armed forces to maintain law and order during elections. Relying on Sections 215 and 217 of the Constitution, they noted though that the President of the country has the powers to deploy armed forces, but that such powers are only applicable to the suppression of insurrection, including insurgency and aiding the police to restore order when it has broken down (Falana, cited in PM News, 11 August, 2014). It is imperative to mention that the effects of the militarisation of the elections in both Ekiti and Osun States were believed to have been mostly felt by members of Nigeria’s main opposition party, the All Progressives Congress.

As argued by Lai Mohammed, the party’s National Publicity Secretary, the Osun 2014 gubernatorial

election represents “a total hijack of the process and direct violation of the rights of the people. Osun State has been turned into a theatre of war. An on-going state-sponsored political terror against the Osun people and the entire people of Nigeria has been unleashed by an elected President against his own people, against his own country, in an unprecedented act of political desperation” (Mohammed cited in PM News, 11 August, 2014). Other chieftains of the opposition party, including the State Governor, Rauf Aregbesola, similarly complained that in the course of the elections, “the State (Osun) was unduly militarized in an unprecedented manner through criminal intimidation and psychological assault on our people.

This election witnessed an abuse of our security agencies and amounted to a corruption of their professional ethics and integrity” (Aregbesola cited in Chukwu, 2014). In the Osun State, Aregbesola argues that:

*The security agencies were unprofessionally utilized in Osun State to harass, intimidate and oppress the people whose taxes are used to pay their salaries and provide their arms. Hundreds of leaders, supporters, sympathisers and agents of our party were arrested and detained. Also, hundreds of other innocent citizens, including women and the aged, were harassed, brutalized and traumatized. In spite of this condemnable repression and abuse of human rights, the unflagging spirit of our people triumphed (Aregbesola, cited in Chukwu, 2014)*

When one situates what took place in both the Ekiti and Osun Governorship elections within the confines of Nigeria’s 1999 constitution, some observers have faulted the decision by Nigeria’s Federal government; particularly the Presidency, to deploy soldiers for the maintenance of law and order during elections is without any constitutional resonance. Premising their argument on Sections 215 and 217 of Nigeria’s 1999 constitution, they argue that President is only empowered by law to deploy armed forces on such duties when they border on internal security are limited to the suppression of insurrection, including insurgency and aiding the police to restore order when it has broken down (Falana cited in Onanuga, 2014).

Falana argued further that “with the figure of 36,790 armed soldiers, police, state security service and civil defence personnel deployed for the Ekiti election not less than one million armed troops will be required for the 2015 election” (Falana cited in Onanuga, 2014). However, the courts have consistently enjoined the Federal Government to desist from involving the armed forces in the conduct of elections. That court reiterated its views in the case of *Buhari v Obasanjo* (2005) 1 WRN 1 at 2000 when Abdullah PCA observed that in spite of the non-tolerant nature and behaviour of our political class in this country, we should by all means try to keep armed personnel of whatever status or nature from being part and parcel of our election process. The civilian authorities should be left to conduct and carry out fully the electoral processes at all levels” (Falana cited in Onanuga, 2014).

Security forces, election militarization and democratic consolidation in Nigeria

We can begin an analysis of the scenario described in the foregoing from the motive of the Nigerian government in the massive troop deployment saga. This can be analysed from two angles of

motivations. The apparent reason offered by the presidency is to secure lives and property; and in the process, ensure transparent elections. Scholars have agreed that the basic essence of the state is securing life and property of the citizens and one of the ways to achieve this is the usage of security forces, acting on behalf of the government, to prevent the breakdown of law and order. The Hobessian conceptualization argues for the maximum use of state power to secure the lives of the people and their property. In a democracy, elections represent the acceptable platform for the emergence of political leaders. In that wise, it behoves on the state to ensure credibility of the process. One of the ways to achieve this is the protection of the men that will conduct the election, the materials to be used, the voters, the voting environment and the political gladiators (Hounkpe and Gueye, 2010, Jega, 2013, Olurode, 2013).

This is where the security forces come in as the only recognised state institution empowered to ensure security before, during and after elections. In essence therefore, securing election is a fundamental duty of the security forces, on behalf of the state. In this wise, massive deployment of security forces to secure election, as witnessed in the two states under study, is in order and highly essential. But the hidden motive of the heavy deployment points to desperate desire to influence the outcomes of the election through intimidation, coercion, oppression and suppression of members of the opposition parties. During the two elections, members of the opposition were singled out for arrest and detention. Not a single member of President's party was molested.

In Osun State, a dimension to the militarization was added with the appearance of hooded security operatives whose identity became difficult to know. Most of the arrests were done by the masked operatives. This was corroborated by the report compiled by the Civil Society Group that,

*There were reports of unexplained arrests and detention of some politicians. Some observers witnessed the arrest of voters by two masked security operatives who yanked these voters off the lines. There were reports by some observers that armed and hooded security officials were seen at the polling units standing in close proximity to the voting stations in contravention of electoral regulations (cited in Sahara Reporters, 2014).*

The major problem in the two case studies is therefore not in the overt reason for such an excessive deployment of troops, but rather in the covert underpinning motives of the deployment. In other words, there could be militarization to ensure safety and there could be militarization to intimate opposition. In the case of the states under study, the case seems to be the latter as evident in the selective harassment of members of the opposition parties. A situation where security forces are deployed to intimidate the opposition in order to secure a victory for the President's party leads does not bode well for democracy. This was agreed to by the Civil society group when they aver that "this culture of hooded gunmen ostensibly acting in the capacity of legitimate state operatives is thoroughly condemned and has no place in nurturing a democracy in which the citizens are not terrorized by agents of State" (cited in Sahara Reporters, 2014). Democracy thrives in the presence of vibrant opposition. Any threat to the existence of opposition is therefore a threat to democratic sustenance.

Conclusion

We argue that going by the various views expressed on the issue, and much as we desire to have a reasonably solid democracy devoid of any dictatorial incursion, Nigeria is still too far from this position. Added to this is the fact, most Nigerians, particularly the political class are yet exemplify the kind of democratic credentials which allows for what we prefer to call “politics based on principles and non-violence”. Given this foregoing, it may be difficult for Nigeria to have a completely demilitarised election as it happens in other popular democracies, attempts must however be made by the Nigerian government and more importantly, the country’s electoral body (INEC) to limit the role of the military to situations which cannot be brought under control by the Police and other para-military agencies, and not the outright involvement as we saw in our two case studies.

It is imperative that the country’s politicians and its citizens should hasten up and change their attitude and perception towards politics and governance, so that the democracy can mature fast, such that the military can be restricted to performing their constitutional duties. It is submitted that the deployment of the armed forces for the maintenance of law and order during elections as argued espoused above cannot be legally justified in view of Section 215(3) of the Constitution which has vested the police with the exclusive power to maintain and secure public safety and public order in the country.

Therefore, and as argued by Falana, “going by the combined effect of Sections 215 and 217 of the Constitution, it is abundantly clear that the power of the President to deploy the armed forces for internal security is limited to (a) the suppression of insurrection including insurgency and (b) aiding the police to restore order when it has broken down. To that extent, it is illegal and ultra vires on the part of the President to deploy the armed forces to maintain law and order during elections” (Falana cited in Onanuga, 2014). We therefore recommend that the government should consider strengthening the capacity of its police units to enable it discharge its constitutional role of ensuring internal security in the country, particularly during the conduct of elections, which are largely civic by nature and orientation.



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# Weakening Realism: Balancing Competition with Trade

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## Abstract:

Consistent with the realist view of competition as the predominant tendency in international relations, traditional formal strategic models (two-player games including Prisoner's Dilemma and Stag Hunt) present competition as the dominant strategy for rational actors. In this article, I highlight how this competition bias results partly from an oversimplified definition of cooperation that fails to differentiate between "live and let live" strategies, on the one hand, and trade strategies, on the other. Against realism, I argue that there is no reason to treat trade as a less fundamental or less likely motive of states than security or greed.

## Keywords:

realism; competition; cooperation; game theory; comparative advantage

## Introduction

Realists hypothesize an international state of nature in which anarchy creates a tendency toward international competition—although different types of realists explain this initial or underlying dominance of competition over cooperation in different ways. Classical realists assume that states prioritize competition because human beings are, by nature, greedy predators who value power over others as an end in itself (Morgenthau, 1946, pp. 192-194). Neorealists argue that, though states might be solely or primarily motivated by security, they are still biased toward international competition—not simply because of a posteriori circumstances, such as states' occasional need to monopolize scarce resources, but also because of the a priori (or "structural") features of international anarchy, including states' inevitable uncertainty about the intentions of their peers (Mearsheimer, 2001, p. 31; Waltz, 1979, pp. 88, 102, 118).

Security dilemmas—situations in which "one state's gain in security [...] inadvertently threatens others" (Jervis, 1978, p. 170)—are the general cause of competition between security seekers. Different types of neorealists disagree over whether, when and to what extent such dilemmas can be mitigated or eliminated, as they disagree over how far states would or should go in order to achieve security. For example, offensive neorealists insist that states must maximize their power over one another in order to maximize their security, so that only hegemony can be satisfied with the status quo (Mearsheimer, 2001, pp. xi, 2, 21). By contrast, defensive neorealists argue that states must strive mainly to maintain the status quo because they can rarely afford to maximize their power (Waltz, 1979, pp. 118-119, 126-127). Nonetheless, all neorealists agree that interacting states with no prior information about one another will automatically, by default, find themselves in a security dilemma,

and will, therefore, choose first to compete (not to cooperate) with one another.

Charles Glaser disputes this neorealist assumption. He argues that international anarchy needs not lead rational security seekers to competition because, he assumes, rational states must balance their strategies in light of the variability of both material and information conditions (with associated costs and benefits) in their environment (Glaser, 2010, pp. ix, 5, 9). Glaser argues that, by balancing strategies to anticipate different material and information possibilities, rational states will often favor cooperation over competition.

I argue that, while Glaser's account highlights that competitive strategies may not always be rational, it still fails to refute that international anarchy will always create an initial bias (or a rebuttable presumption) in favor of competition between security seekers. This fact is underscored by the results of applicable traditional formal models (Stag Hunt, in particular), in which competition emerges as the dominant strategy for rational actors when taking into account not only "Nash Equilibriums" and expected payoffs but also risk dominance.

However, I point out that one key reason why competition so dominates cooperation is an oversimplified definition of the concept of cooperation in traditional models and theories—which fail to differentiate "live and let live" strategies, on the one hand, from potentially more beneficial "trade" strategies, on the other. Furthermore, I argue that, contrary to the realist view, there is no clear reason to treat trade as a less fundamental or less likely motive of states than either greed or security.

Glaser's rational theory of international politics

Glaser's theory is based on the argument that variations in material conditions (states' relative resources, coupled with offense-defense distinguish ability and the offense-defense balance—as described below) as well as variations in information conditions (especially states' knowledge about others' motives between security and greed prior to any particular interaction or signaling) can either avoid, eliminate, or at least reduce the likelihood or severity of security dilemmas (Glaser, 2010, pp. 3, 8, 24, 34, 73).

First of all, regarding material variables in particular, Glaser agrees with defensive neorealists that rational states can sometimes not only distinguish offensive military capabilities from defensive ones (offense-defense distinguishability) but also accurately measure the opportunity costs between pursuing offensive strategies and pursuing defensive ones (the offense-defense balance) (Glaser, 2010, pp. 45, 72-73, 139). Accordingly, he logically infers, when circumstances make a defensive strategy more advantageous, then security seeking states will be more likely to reach their basic objective without having to threaten or otherwise compete against one another (Glaser, 2010, pp. 86, 119-120).

Second of all, regarding information about state motives, Glaser assumes that, when rational security seeking states are uncertain of their peers' motives, then they will balance between competitive and non-competitive strategies—in some consistent proportion to their likelihood of encountering

greedy states, on the one hand, or other security seeking states, on the other (Glaser, 2010, pp. 5). Furthermore, he suggests that all states necessarily share some basic inclination toward security, because, he reasons, some minimal baseline of security is required in the pursuit of other motives—in other words, “most greedy states would value what they possess and therefore be interested in security” (Glaser, 2010, pp. 90).

Glaser concludes that rational states will select cooperative strategies more often than realism allows. However, he fails to clarify the frequency with which offensive and defensive capabilities or opportunities could be distinguished. Moreover, he neither precisely explains nor demonstrates what a general presumptive balancing of offensive and defensive possibilities might look like, or how it might obviate any presumptive bias toward competition. Likewise, he neither precisely explains nor demonstrates how anticipating possible interactions with both security seekers and greedy states could, on balance, also obviate any presumptive bias toward competition. Meanwhile, traditional formal models of international relations seem to show that such bias would be strategically justified.

#### The realist bias of traditional strategic models

As Glaser accurately observes, traditional formal models of international relations often assume that states are greedy (Glaser, 2010, pp. 119). For example, in Prisoner’s Dilemma—a two-player game where each player must choose either to cooperate or to compete with the other—players are assumed to have the following order of basic preferences: competing when the other cooperates (with a putative payoff equal to 3, or payoff = 3) is preferred to cooperating when the other cooperates (payoff = 2); cooperating when the other cooperates (payoff = 2) is preferred to competing when the other competes (payoff = 1); and competing when the other competes (payoff = 2) is preferred to cooperating when the other competes (payoff = 0) (Dixit and Skeath, 1999, p. 256). In this game, competition emerges as the best strategy for each player—it is the only “Nash Equilibrium:” the only outcome in which neither player stands to gain by unilaterally switching his or her strategy, regardless of what the other does (Dixit and Skeath, 1999, p. 82). Indeed, in Prisoner’s Dilemma, a player who competes when the other competes would get a lower payoff by switching to a cooperative strategy, and, likewise, a player who cooperates when the other cooperates would get a higher payoff by switching to a competitive strategy.

This strategic dominance of cooperation in Prisoner’s Dilemma can be further established by computing and comparing the expected payoffs of competition and cooperation over the entire set of possible interactions—that is, a payoff of 3 when a player competes and the other cooperates, added to a payoff of 1 when both players compete, equals an expected payoff of 4 (for competitive strategies); and a payoff of 2 when both players cooperate, added to a payoff of 0 when a player cooperates and the other competes, equals an inferior expected payoff of 2 (for cooperative strategies).

In the alternative, we could represent international relations on the model of a Stag Hunt. This game simply reverses the dominant preferences of Prisoner’s Dilemma players: it assumes that players would prefer cooperating with one another to exploiting the other. This might better reflect the



assumption that states are pure security seekers (Glaser, 2010, p. 83, 130).

More precisely, in Stag Hunt, players are assumed to have the following order of basic preferences: cooperating when the other cooperates (with a putative payoff equal to 3, or payoff = 3) is preferred to competing when the other cooperates (payoff = 2); competing when the other cooperates (payoff = 2) is preferred to competing when the other competes (payoff = 1); and competing when the other competes (payoff = 2) is preferred to cooperating when the other competes (payoff = 0).<sup>1</sup>

Unsurprisingly, competition is a less attractive strategy in Stag Hunt than in Prisoner's Dilemma. Indeed, in Stag Hunt, both mutual competition and mutual cooperation figure as Nash equilibriums: a player who competes when the other competes would get a lower payoff by unilaterally switching to cooperation and, at the same time, a player who cooperates when the other cooperates would get a lower payoff by unilaterally switching to competition.

Furthermore, a similar result appears when we compute and compare the expected payoffs for each available strategy. We find that a payoff of 2 when a player competes and the other cooperates, added to a payoff of 1 when both players compete, equals an expected payoff of 3 for competitive strategies; and a payoff of 3 when both players cooperate, added to a payoff of 0 when a player cooperates and the other competes, equals an identical expected payoff of 3 for cooperative strategies.

However, though Stag Hunt allows for two Nash Equilibriums, it remains that one of them (the competitive equilibrium) "dominates" the other (the cooperative equilibrium). This is because competition still remains the least risky (or most robust) option for each player: a player who competes would be guaranteed a minimum payoff of 1 regardless of what the other player does, but the player who cooperates would risk a payoff of 0 if the other player alone switches to competition (Skyrms, 2004, p. 3-4).

Such "risk dominance" seems to confirm that rational security seekers must still have a competition bias—and that, by extension, the realist account of international relations might be justified. Cooperation equilibriums might well emerge over time, in repeated rounds of Stag Hunt, either through adjustments of information variables (as Glaser might expect) or through the evolution of social structures capable of constraining types of states—including the emergence of collective identities capable of introducing trust or even changing preferences within groups of states (as social constructivists would expect) (see Wendt, 1999). In fact, subjects in experimental Stag Hunt simulations have been found to cooperate on the very first round of play (Skyrms, 2004, p. 12). But, prior to such social developments, we must conclude that competition equilibriums should rationally dominate cooperative ones.

Nevertheless, it appears that the relevance of the Stag Hunt model depends on the assumption that strategic actors have a choice between only two basic types of move (and, by extension, that they may be animated by only two basic types of motives): competitive ones and cooperative ones. I argue below that this assumption oversimplifies the nature of cooperation, and that we should differentiate



between not two but rather three types of strategies or motives: competition, “live and let live,” and trade.

Redefining “cooperation:” Distinguishing “live and let live” from trade

I argue that it is possible to further weaken (if not eliminate) the competition bias inherent in traditional strategic models by slightly refining the definition of player motives and strategies. To do so, it suffices to add to such models one more strategic option, which allows for the possibility that some states might derive a higher payoff from cooperation than is possible in Stag Hunts.

...models fail to incorporate the possibility that states might benefit more from trade than from isolationism...

More specifically, whereas Stag Hunt reduces the concept of cooperation to a coarse concept of noncompetition, international actors might both conceivably and justifiably value not so much their mere security from peers (an interest whose ideal or extreme could be described as isolationism, mutual avoidance, “live and let live”...), or their own greed to dominate their peers (an interest whose ideal or extreme could be defined as expansionism, exploitation, unilateral aggression...), as they value trade with their peers.

The value of trade can be understood through the principle of comparative advantage—which describes situations where individuals or organizations are better off working with one another (coordinating and exchanging economic production in accordance with a division of labor) than working by themselves (Mankiw, 2008, pp. 55-56). This interest is clearly distinct from (and irreducible to) any interest in greed (which could be a preference in exploiting others instead of exchanging with others) or any interest in security from others (which could be a preference in avoiding others instead of exchanging with others).

Thus, the terms for player preferences in our model of pure security seeker interactions (Stag Hunt) could be redefined as follows, by substituting “being avoidant” for “cooperating:” being avoidant when the other is avoidant (payoff = 3) is preferred to competing when the other is avoidant (payoff = 2); competing when the other is avoidant (payoff = 2) is preferred to competing when the other competes (payoff = 1); and competing when the other competes is preferred to being avoidant when the other competes (payoff = 0).

Building on this, the model for states with a possible interest in trade (the “trade seeker” model) could be defined with the following player preferences: trading when the other trades (payoff = 4) is preferred to being avoidant when the other is avoidant or is trading (payoff = 3); being avoidant when the other is avoidant or is trading (payoff = 3) is preferred to either trading or competing when

the other is avoidant (payoff = 2);<sup>2</sup> trading or competing when the other is avoidant (payoff = 2) is preferred to competing when the other competes (payoff = 1);<sup>3</sup> competing when the other competes (payoff = 1) is preferred to being avoidant when the other competes (payoff = 0); and being avoidant when the other competes (payoff = 0) is preferred to trading when the other competes (payoff = -1). This trade seeker model seems to include three pure Nash equilibriums, instead of two: trade, mutual avoidance, and mutual competition (in order of payoff magnitude). A player who trades when the other trades would get a lower payoff by unilaterally switching to either an avoidant (“live and let live”) strategy or a competitive strategy; a player who adopts a “live and let live” strategy when the other does the same would get a lower payoff by unilaterally switching to either a trade strategy or a competitive strategy; and a player who adopts a competitive strategy when the other also competes would get a lower payoff by unilaterally switching to either a trade strategy or a “live and let live” strategy. As in Stag Hunt, mutual competition might still remain the risk-dominant pure Nash equilibrium; however, in the trade seeker model, the expected payoff of competitive strategies over the entire set of possible interactions, or  $(2+2+1) = 5$ , though equal to that of trade strategies, or  $(4+2-1) = 5$ , becomes, crucially, inferior to the expected payoff of “live and let live” strategies, or  $(3+3+0) = 6$ .

In other words, the trade seeker model suggests, as we might intuitively expect, that states stand to lose more from the presumptive selection of competitive strategies than traditional international relations models and theories take into account. The strategic nature or structure of international relations might well automatically introduce a certain amount of international risk, but the potential benefit of cooperation could well suffice to outweigh such risk.

The main question remaining then would be whether the trade seeker model is equal to or better than its traditional alternatives, as a representation of actual international relations. Here I argue that, contrary to the explicit or implicit realist view, the assumption that states are “more dangerous than useful to one another” (Waltz, 1979, p. 144) is unjustified.

To see this point, it is important to distinguish two concepts of (international) security. On one hand, security can be defined most broadly as an interest in the protection of what an actor already possesses (see, e.g., Wolfers, 1952, p. 494). In this sense, security is understood “as a derivative objective that is valued only because it is necessary to ensure consumption” (Glaser, 2010, p. 40). On the other hand, international security can be defined more narrowly as protection against threats emanating specifically from other states.

It bears noting that security threats sometimes emanate from sources other than peers. For example, health crises and natural disasters can arise from internal or other environmental factors. Moreover, there is little reason to assume that addressing possible threats emanating from other states should take priority (either initially or generally) over addressing possible threats coming from such other factors. For example, by some estimates, “the total number of deaths in wars and conflicts for the entire 20th century [...] comes to a total of between 136.5 and 148.5 million,” (Leitenberg, 2006, p. 9), whereas smallpox alone was responsible for 500 million deaths during the same period (Koplow, 2004, p. 1). To the extent that these estimates are correct, perhaps rational security seeking states

would “generally” worry more about the next epidemic than about the next war—assuming, at least, that their interest in security comes down ultimately to an interest in the material safety of their populations.<sup>4</sup>

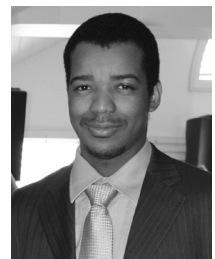
Therefore, even assuming that, as a matter of rationality, security in the broad sense should take precedence over other goals (that is, because the preservation of what is already possessed is necessary to the pursuit of other goals) (see Glaser, 2010, p. 90; Mearsheimer, 2001, pp. xi, 2, 21), this priority does not necessarily apply to international security in the narrow sense. Instead, international insecurity could be understood as just one type of contingent threat among other threats that are equally contingent.

States might not always be interested in one another’s resources—they might not always find anything worth trading with or exploiting in one another. In such cases, they should presumably favor a “live and let live” strategy. But no “structural” principle dictates when this scenario or its alternatives should occur. Accordingly, perhaps theorists should presume that the existence of international threats, on one hand, and the existence of opportunities for international cooperation, on the other, are equally probable features of the international environment.

#### Conclusion

Although traditional strategic models of international relations do suggest that competitive strategies are likely to dominate (by being less risky while at least matching the expected payoff of) cooperative strategies, those models fail to incorporate the possibility that states might benefit more from trade than from isolationism, and more from isolationism than from exploitation. Using strategic models in accordance with this possibility would reduce the often assumed attractiveness of international competition and, arguably, provide a more accurate representation of actual international systems.

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# China is What States Make of It: Evaluating the Possibility of “Peaceful Rise” using Wendtian Constructivism.

Barclay Bram Shoemaker

Abstract:

It is the purpose of this paper to evaluate the potential for China’s peaceful rise within the rubric of Alexander Wendt’s constructivist theory. The crux of the argument centers around the perceptions of China’s rise and how the systemic framework of the international system conditions such perceptions. The paper will note however that constructivism is flawed due to its a priori belief in anarchy, and that China’s rise may constitute the creation of a different world order altogether.

Keywords:

Wendt, Constructivism, China, China’s Peaceful Rise

Wendtian constructivism is an attempt to “build a bridge” between the rationalist and reflectivist approaches to the study of international relations (Wendt 1992 & 1999; Keohane 1988a: 379 first delineated them as distinct and incompatible). This project spawned the infamous phrase “anarchy is what states make of it” and outlined a radical way to conceive of the international system as a constitutive realm, and not as a strategic realm governed by systemic forces (Reus Smit 2009: 223). In this paper, it will be argued that viewed through the prism of Wendtian constructivism, China’s peaceful rise depends upon the intersubjective perceptions with which it is received. Thus, China is what states make of it, and the version of the international system in which it rises, i.e. Hobbesian, Lockean or Kantian, will greatly determine the trajectory of that rise. It will be shown that a double hermeneutic complicates this process (Giddens 1987: 19). This risks precipitating a vicious cycle of escalating tension and a diminished chance that China could rise peacefully. It will also be argued that despite fitting elegantly into the conceptual framework created by Wendt, China’s peaceful rise does not relegitimize what is ultimately an ontologically flawed project, due to its Euro-centric bias and a priori belief in anarchy.

Wendt’s 1992 article *Anarchy is What States Make of It* laid the foundations for an expansive social theory of politics (Wendt 1992). Wendtian constructivism is comprised of two main tenets. First, that the international system is a constitutive realm, not a strategic realm. The second tenet follows logically from this ontological point; “identities are the basis of interests” i.e. if systemic forces are not driving actors, then ideational forces and perceptions are (Wendt 1992: 398, Finnemore argued a similar point when she stated “norm shifts are to the ideational theorist what changes in the balance

of power are to the realist” Finnemore & Sikkink 1998; 894). Taken together, these concepts can help us to better understand China’s rise, and the potential for peace. During the course of this paper, due to the extreme brevity of the question, the discussion will be centered on a theoretic argument of the utility of these concepts in explaining China’s rise, and not the nuanced specifics of the rise itself.

Owing to the fact that “identities are the basis of interests,” international relations cannot be understood without knowledge of the underlying preferences of actors (Wendt 1992: 398). We cannot presuppose any interests as being ontologically prior to the identities of the actors themselves, as proven by Wendt’s convincing thought experiment of two states “ego” and “alter” meeting each for the first time. In this framework, we cannot presuppose a priori that China’s rise will cause certain reactions from the US or other major actors, without understanding their perceptions of China and of themselves. Wendt argues that the perceptions of actors and the extent to which a constitutive consensus internalizes norms, three distinct macro level structures would develop from the “permissive” nature of anarchy (Wendt 1992: 403, Wendt 1999: 255). These structures, Hobbesian, Lockean and Kantian, are mutually constituted and inhabited by actors in the international system (Geertz 1977, Wendt 1999).

Wendt asserts that he is “statist, and a realist” (Wendt 1992: 425). He does so because it is clear that despite anarchy within the international system, mutually constitutive norms such as statehood have emerged. This is either because the norm of statehood is “guaranteed” by a credible enforcer, or because the norm has been internalized, thus alleviating this need (Kratochwil 2000: 87). In the former case, the macro-level structure is Hobbesian and realist. If this is the structure of the contemporary international system, then statehood and the broader normative structure is underwritten by American hegemony (see Gramsci 1971, Cox 1981, Linklater 2009 and wider Historical Materialism literature for a similar argument). Under this formulation, institutions are epiphenomenal to the interests of the strongest states in the system, and relative gains take primacy. In a Hobbesian world, China’s rise inevitably strains the system as it puts pressure on the ability of the guarantor to underwrite the international system.

The nature of the system is not apodictic. This is the ontological foundation of Wendt’s theory. If China today rises in a Hobbesian world, it is only because this is the current normative structure that has been socially constructed and mutually reinforced by the actors in play. To assess the extent to which the world is Hobbesian, we could point to the plethora of China threat literature and objectively note the U.S.’s “pivot to Asia” policy, among many other instances of realpolitik in the region. Moreover, there is a double hermeneutic at play which complicates matters (Giddens 1987: 19). To the extent that China’s peaceful rise may be misinterpreted by others, that misinterpretation will affect Chinese policy, which could create the risk of self-fulfilling prophecies. The U.S. pivots to Asia because it is worried of the threat of a rising China, China is worried about the threat of an encroaching US and thus bolsters its forces, and consequently, the U.S. sees recourse to ever increasing troop build-ups.

The predominance of realist scholars in the US and in China further reinforces the idea that the international system is Hobbesian in construction (for the U.S., see Mearsheimer 1990, Waltz 1979, Dyer 2014, and for China see Pei Minxin 2014, Yan Xuetong 2006 and Colonel Liu Mengfu 2013

[however it must be noted that a plurality of voices exist in China's Foreign Affairs communities, and these range on a scale from the arch-realist PLA to the more moderate Foreign Affairs Leading Small Group]). The more these thinkers dominate the discussion, the more likely that policy and perception will be driven by realist thinking. Thus, there is a risk that territorial issues such as the Senkaku/Diaoyu island disputes, and increasing Chinese presence throughout the developing world is likely to be normatively constructed as threatening and will precipitate policy responses from other actors (for an example of this kind of negative construction in relation to Sino-African relations, see Hirono & Suzuki 2014). The notion that perceptions and signaling are key to China's rise is hardly unique to Wendt's theory (see Ramo 2004: 8, Nathan & Scobell 2012, Shi 2001, Haggard 2003, and on the role of signaling see Kang 2005: 552 and Fearon 1994), but the notion that a macro-level normative construction is a consequence of, and informs, these perceptions is uniquely his.

However, this is not to say that China cannot rise peacefully. A Hobbesian world is the easiest to escape normatively because culture matters little and norms are not deeply shared (Wendt 1999: 255). This is not to say that the building of a Kantian society, in which common norms and perceptions are securely embedded, is easy. It is unlikely that such a system could universally exist, given the deep divergence in the culture and history of dominant powers such as the U.S. and China. Certain aspects of the system, such as the predominance of states, however, are deeply embedded. In this tension between Hobbesian and Kantian aspects of the international system, we can argue that the international system broadly resembles a Lockean construction. Therein common norms exist and mitigate the egregious risks of a purely Hobbesian system (Kratochwil 2000: 87). It is in such an international system that China could rise peacefully, as long as the double hermeneutic risk of a downward spiral does not reinforce realist tendencies (see Buzan 2013: 33 for an English School interpretation of this phenomenon).

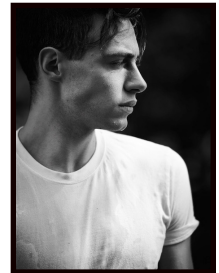
We must remember that Wendt's theory is but one of a vast plurality that seeks to explain the international system. All theory is an inevitable abstraction necessarily simplified to provide utility (Donnelly 2009, Waltz 1988). Wendt's theory, however, has a deeper problem than mere oversimplification. Ontologically it is flawed, particularly in reference to the East Asian experience. The crux of Wendt's theory posits that in the international system nothing is axiomatic (Reus Smit 2009: 223, Wendt 1992 & 1999). The system of statehood, the notion that states may balance against each other, as well as the idea of democratic peace, are socially constructed. However, Wendt posits anarchy as an ontological certainty. In this context, he inadvertently subscribes to a Waltzian conception of the international system (Kang 2004: 171, Waltz 1979, Wendt 1992).

In *Theory of International Politics*, Waltz defines hierarchy as the opposite of anarchy and extrapolates that the two cannot co-exist within the international system (Waltz 1979). This is also Wendt's ontological foundation, but it ignores the history of East Asia (Kang 2004: 177). Even a casual reading of the history of East Asia would see a hierarchical system with China: the *zhongguo* (middle kingdom) seen as *tianxia*; the center of the system, with a heavenly mandated emperor (see; Ren 2009: 135, Feng 2011: 210, Gong 1984, Kang 2004, Bennett & Stam 2003). In place of anarchy and the consequent creation of a sovereign system of competitive states, East Asia was historically hierarchical and suzerain (Pilling 2013). It may well be the case that a similar system could come into being

again, which would render euro-centric theories of IR predicated on the existence of anarchy incompatible with a restored Eastern hierarchy of states.

To conclude, Wendtian constructivism provides a useful conceptual framework to understand China's rise from a European perspective in which the international system is anarchic. In this understanding peaceful rise is possible if the macro-level structure avoids Hobbesianism, and rival actors do not misinterpret China's rise. However, we must remember that historically anarchy does not exist *a priori*, and thus a hierarchy of states may emerge. This uniquely East Asian international system would categorically undermine Wendt's theory, and the wider ontological foundations of International Relations as a whole. More research is clearly needed, but this essay serves as a brief sketch to outline some of these under-explored issues with China's peaceful rise.

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# Saudi Arabia: The Forgotten Land of the Arab Spring

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## Abstract

When mass protests in the form of the Arab Spring came into fruition in late 2010, many scholars were caught by surprise. For decades the Middle East had remained stable, albeit mostly under repressive governments. If the ultimate goal of the Arab Spring was to spark the rise of representative democracies across the region, the results have varied. As of this writing, there have been cases of relatively successful democratic transitions like Tunisia, cases of clear failures of transition and successful government suppression of protests like Algeria, and cases that have carried on in the form of civil war as in Syria. Saudi Arabia, a major actor in the region, has so far successfully escaped the threatening winds of the Arab Spring. This paper seeks to explain the underlying reasons for the Saudi government's success in maintaining power throughout the Arab Spring.

## Introduction

On December 17, 2010, Tunisian street vendor Mohamed Bouazizi set himself on fire in front of the local governor's office that ultimately led to his death. Bouazizi was neither mentally ill nor suicidal, and the self-immolation was not a coincidence but rather the result of a combination of social, economic, political, and even religious grievances of the Tunisian population in particular and the Arab world in general. The Egyptian uprisings followed shortly thereafter, resulting in the downfall of the decades-long military dictator, Hosni Mubarak. Likewise, the wheel of the Arab Spring kept turning as Libya descended into a civil war as a result of brutal repression by Muammar Gaddafi; albeit to a lesser extent than in Syria where, according to the Syrian Observatory for Human Rights, the death toll has surpassed 200,000 with no sign of President Bashar al-Assad looking to abdicate power.<sup>1</sup>

In the midst of the Arab Spring one country has so far been left nearly untouched: Saudi Arabia. For the Al Saud family—who had founded and has ruled Saudi Arabia since 1932—the Arab Spring was more than a question of how much reform would be necessary to quell protest, if at all. Soon the Saudi family realized it would also be a quest for survival at a time when seemingly most of Saudi Arabia's neighbors were giving in to popular demand. As Bernard Haykel, a professor of Near Eastern studies at Princeton University notes in a Center for Strategic & International Studies report on Saudi Arabia, "There was genuine concern in Riyadh that the wave of revolts was unstoppable and that its domino effect would topple well-entrenched regimes in quick succession."<sup>2</sup>

Many experts on Saudi Arabia believe the Kingdom will continue its rule unabated despite the growing



demand from both Sunni and Shia Muslim populations within the country. One such scholar is Rachel Bronson, a senior fellow at the Chicago Council on Global Affairs. In February 2011, as the flares of the Arab Spring were gleaming in front of distant observers, she claimed, “The notion of a revolution in the Saudi Kingdom seems unthinkable.”<sup>3</sup> Still, others think that the Al Saud family is losing control of the country, but provide only tangential explanations as to how it has such a firm grip over society. Indeed, many of the reasons for the lack of popular political and economic demands like the ones seen in Tunisia, Libya, and Egypt extend far beyond the problems on the surface.

The Al Saud monarchy has much to fear from the Arab Spring, especially since the inklings of uproar can be heard in the predominantly Shiite Eastern province of Saudi Arabia.<sup>4</sup> There are four deep-rooted explanations as to when and how the Al Saud has managed its relentless hold on power: a seemingly endless oil wealth, a robust domestic coercive apparatus, patronage from the U.S., and Islam as practiced in the Kingdom.

#### Financing the Stability: The Oil Curse

Saudi Arabia is a classic example of a resource cursed country. Burdened with natural resources, the entire economy, government, and stability are dependent on the uninterrupted extraction and sale of oil. Oil accounts for 90-95 percent of Saudi Arabia’s exports and 35-40 percent of its GDP, pulling in hundreds of billions of dollars in revenue each year.<sup>5</sup> Saudi Arabia’s oil wealth, perhaps the root factor of Al Saud’s ability to successfully quell dissent, has also served as an impediment to development and democratization.

Many scholars, including Michael L. Ross, have developed on the idea that oil impedes democracy. In a paper titled, *Does Oil Hinder Democracy*, Ross uses pooled time-series cross-national data from 113 states between 1971 and 1997 to verify the oil-impedes-democracy claim. His findings indicate states that rely heavily on oil and minerals for exports tend to be less democratic than states that do not.<sup>6</sup> According to Ross, one main factor that fosters this relationship is the concept of the rentier state.

In the Arab world the rentier effect is perhaps most pertinent in Saudi Arabia. Because rentier states like Saudi Arabia derive most of their revenue from external rents—such as oil, minerals, or other commodities—these rents in turn allow governments to exempt their citizens of taxes, in effect cutting any representation in government.<sup>7</sup> Furthermore, they allow the government, as is the case in Saudi Arabia, to offer subsidized and often free services like healthcare, education, energy, and housing.

But when these services are not met (or poorly met as in Saudi Arabia), public pressure for reform can lead to pressure for regime change, a nightmare for the Al Saud. When a pre-planned “day of rage”<sup>8</sup> protest took fruition, the Saudi government was quick to hand out a generous offer of \$130 billion for social benefits, housing, and jobs, in an effort to stifle it.<sup>9</sup>

Even with such mammoth amounts of state revenue from oil, corruption and inefficiency in government are widespread.<sup>10</sup> According to Karen House, an expert on Saudi Arabia and author of

*On Saudi Arabia: Its People, Past, Religion, Fault Lines – And Future*, “40 percent of Saudis live in poverty and at least 60 percent cannot afford a home.”<sup>11</sup> Moreover, the “government fails to provide basic services like quality education, health care, or even proper sewage and drainage to protect from floods”—referring to the flooding of Jeddah twice in a little over a year.<sup>12</sup> Thus, instead of turning oil wealth into a blessing, the Al Saud has turned it into a curse, which may backfire in the form of regime-threatening uprisings. Although the Al Saud have successfully fended off large-scale protests by essentially buying social peace and support for their regime, this explanation is not yet sufficient to explain the reluctance of the Saudi population to rise up in threatening proportions against the Al Saud.

### The Coercive Institutions

If Saudi oil money has been the financial supporter of stability thus far for the Al Saud, the Saudi coercive apparatus has served as the enforcer of the long-standing stability. Oil wealth in Saudi Arabia flows into various institutions of the coercive apparatus—including the intelligence agency (*mukhabarat*), the religious police (*mutawa’a*), and the senior religious scholars (*ulama*) that use their power to keep Saudi society in check. As the influential sociologist Max Weber writes in his essay *Politics as a Vocation*, a monopoly on the legitimate use of violence is essential for a state’s existence.<sup>13</sup> Once the state has such legitimacy—which the Al Saud usually obtains through religious decrees put forth by the same *ulama* that are on Al Saud payroll—public discontent can be suppressed. When Saudi police shot and killed Faisal Ahmed Abdul-Ahad, the organizer of the “day of rage” protests a week before the protests were to take place on 11 March, 2011, state security successfully diluted the efficacy of future protests.<sup>14</sup> Similarly, when protests erupted in neighboring Bahrain the next week—where a minority Sunni government rules over the majority Shia population—Saudi Arabia sent 1,000 of its own security forces into Bahrain to help dismantle the uprisings.<sup>15</sup>

To the extent that an Arab Spring-type revolution would be necessary for the Al Saud to be ousted from power and make way for the demands of protesters, Saudi Arabia’s coercive apparatus would either have to be resistant to inflicting harsh repression on its society; or lack the means to do so. Eva Bellin, an expert on Middle East politics and professor at Brandeis University, agrees, claiming that, “the strength, coherence, and effectiveness of the state’s coercive apparatus distinguish among cases of successful revolution, revolutionary failure, and nonoccurrence.”<sup>16</sup> Certainly, the Egyptian military’s refusal to crack down on protesters after initially doing so and ultimately paving the way for public mobilization and allowing democratic elections in 2012 is a case in point.

But Saudi security forces are not limited to its military. As House explains, the *mutawa’a*, or religious police, “patrol shops and streets, on foot and in cars, to enforce their stern standard of proper Islamic behavior.”<sup>17</sup> The seemingly ubiquitous religious police are embedded within Saudi society, discreetly preventing the mixing of opposite sexes in the workplace, coffee shops, and educational institutions (with the ironic exception of the King Abdullah University of Science and Technology, or KAUST).<sup>18</sup> Again, for the Al Saud to maintain such a pervasive coercive apparatus, oil revenue is crucial. Yet, as Bellin notes, “the robustness of the coercive apparatus is also shaped by successful maintenance of international support networks.”<sup>19</sup>

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## Foreign Patronage From the United States

Indeed, the degree to which Saudi society is kept under scrutiny may not escape international purview without extensive backing from an influential foreign patron, namely the United States. Saudi Arabia enjoys a unique relationship with the United States that dates back more than half a century when U.S. president Franklin Roosevelt met King Abdul Aziz aboard the USS Quincy in 1945.<sup>20</sup> The two countries have enjoyed a tacit agreement in which the Al Saud provides oil at reasonable prices to the United States in return for regime-support and national security.<sup>21</sup> For example, when Iraq invaded Kuwait in August of 1990, the United States deployed troops and a missile defense system into Saudi Arabia to fend off incoming Scud missiles from the Iraqi military.<sup>22</sup>

Comparably, in countries where the United States has withheld its support for a repressive government, the protestors have successfully toppled their leaders. In the case of Egypt, its military had received more than \$57 billion between 1946 and 2012.<sup>23</sup> But once the United States withheld aid and support to the military-dominated government of Hosni Mubarak in and his ground forces refused to repress protests further, his downfall became inevitable in 2011.

Unlike Egypt, Saudi Arabia has received untethered U.S. support despite much condemnation of Saudi Arabia's record on human rights (and women's rights in particular).<sup>24</sup> In her book, *Of Empires and Citizens: Pro-American Democracy Or No Democracy at All?*, Amaney Jamal, a professor of Middle Eastern politics at Princeton University, points out another reason for why Saudi Arabia enjoys extensive U.S. support:

*"[D]emocratic reformers [in the U.S.] understand that a push toward democracy may result in bringing anti-American forces to power—which would mean jeopardizing U.S. Patronage—and therefore prefer the status quo...and invest in regime stability and cooperative governments over democratization."*<sup>25</sup>

For example, the reason for U.S. withdrawal of support for the Egyptian government during the uprisings can also be tied back to the fact that the majority of Egyptians were willing to maintain good relations with the U.S.<sup>26</sup> But the same cannot be said about Saudi popular opinion toward the United States<sup>27</sup>, leading many policymakers in Washington to feel uneasy about the idea of supporting potential protestors' demands for reform in the oil-rich country. Thus, Al Saud stability has been successfully maintained partly due to the patronage provided by the United States.

## Islam as a Tool for Stability

Finally, scholars have looked into the possibility of Islam serving as a hindrance to democracy and, if so, how governments exploit it to further their agenda. Are predominantly Muslim societies less prone to democracy and, if so, what are the causes?<sup>28</sup> Stephen Fish, Professor of Political Science at the University of California, Berkeley, uses quantitative analysis to answer this question. Fish compares the mean scores of predominantly Muslim countries and non-Muslim countries using control variables: Freedom House freedom rating, polity score, economic development, sociocultural

division, economic performance, British colonial heritage, communist heritage, and membership in the Organization for the Petroleum Exporting Countries (OPEC).<sup>29</sup> Statistical data based on his multivariate analyses posit that predominantly Muslim countries are indeed less democratic than non-Muslim countries.

One reason why Muslim-majority countries are undemocratic yet stable, Fish argues, is the subordination of women.<sup>30</sup> In Saudi Arabia, female involvement in the labor force, for example, is about 18 percent, compared to over 75 percent of male participation.<sup>31</sup> And although the problem of gender inequality is slowly improving in Saudi Arabia, there is clear and omnipresent subordination of women in public and in the workplace, which essentially alienates half of the Saudi population from any attempt at demanding social, political, and workplace freedoms.

In an IPSOS poll conducted in 2011 on the importance of religion in one's life, two findings are worthy of attention. First, 94 percent of those with a religion in Muslim countries say their religion is an important factor in their lives, compared to 66 percent in Christian countries.<sup>32</sup> Second, 100 percent of those polled in Saudi Arabia said religion was an integral part of their daily lives.<sup>33</sup> Taking this poll and Steven Fish's findings into consideration and applying them to Saudi Arabia where the population is ruled by Islamic law (*sharia*), avenues for democratic demands — let alone a full-fledged democratic government — have thus been elusive at best.

And because Saudi Arabia practices Hanbali law, the most legally restrictive of the four Islamic schools of law — also known as Wahhabi Islam — Saudi society has become acquiescent, due partly to the over-arching presence of Islam in public. As mentioned previously, roaming the streets of Saudi society are the religious police, enforcing conservative Islamic law. Furthermore, religious scholars (*ulama*) issue decrees (*fatwas*) that shape daily life. As professor Haykel of Princeton University observes, "The Saudi Council of Senior Scholars issued a *fatwa* that declared all public protests illegal in Islam."<sup>34</sup> And according to studies conducted by the Washington Institute For Near East Studies, Muslim societies are more likely to accept the status quo, however disadvantageous, and not ask "how" or "why."<sup>35</sup> The extent to which Islam is embedded into Saudi society can also be seen in the government's establishment of an official Website for approved fatwas.<sup>36</sup> As House notes, there is a "pervasive presence of religion, which hangs over Saudi Arabia like a heavy fog and has been a source of stability, along with the Al Saud, for nearly three centuries."<sup>37</sup>

## Conclusion

Saudi Arabia is not impervious to certain problems regarding stability. Challenges to the implementation of the four methods of public control are evident. First, although Saudi Arabia has over 265 billion barrels in oil reserves<sup>38</sup>, reports indicate that production may not be enough to sustain growing domestic and international demand.<sup>39</sup> And as the flow of information becomes easier and more Saudis gain access to the Internet, it will be harder for the Al Saud and its coercive apparatus to impose its legitimacy, especially on the Saudi youth and the country's increasingly discontented Shia population. Protests in Saudi Arabia's neighbors and in the broader region have not gone unnoticed from scrupulous observers within Saudi society.

Furthermore, although the U.S.-Saudi relationship is unique, it is based primarily on oil. But in light of growing U.S. independence from oil as an import<sup>40</sup>, a new principal focus is needed to base the U.S.-Saudi relationship. Finally, Islam's role in the lives of young Saudis is slowly diminishing.<sup>41</sup> As House observes, "religious authorities are faced with the problem of trying to issue fatwas that are relevant to modern life yet more often end up merely pointing up the inadequacy of religious rulings to current issues confronting young people."

Still, Saudi Arabia's counter-revolution attempts have been successful so far not because of a single factor or multiple rudimentary factors but rather because of a combination of the aforementioned methods that reach nearly all echelons of society, directly or indirectly: the distribution of Saudi oil wealth, an omnipresent coercive apparatus, the status of Saudi Arabia as a foreign patron supported by the United States, and its Wahhabi version of Islam that is deeply embedded within society. Karen House agrees:

*"No single problem in Saudi Arabia...is likely to be fatal to the [Al Saud] regime. Rather, it is the confluence of so many challenges coupled with the rigidity of the regime, the sullenness of the society, the escalating demands of youth, and most important, the instability inherent in generational succession that could prove fatal to Al Saud rule."*<sup>43</sup>

If the Al Saud wants to prolong its rule, it will have to use its oil wealth to alleviate the legitimate concerns of the Saudi population (for example, the housing problem)<sup>44</sup>, strengthen its coercive apparatus, use the perceived threat of growing Iranian (Shia) influence in the region to maintain its relationship with the United States, and utilize Islam in ways that appeal to the younger generation of Saudis. If not, the Al Saud may very well have an uninvited guest in the form of the Arab Spring.

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# Collective Inaction Constraints of National Designs in the Continuing Struggles of EU Environmental Policymaking

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**O**n September 21, 2014, hundreds of thousands<sup>1</sup> from cities around the world gathered for the People's Climate March to take an active stance against human-made climate change. The protest which took place two days prior to the UN Climate Summit in New York intended to remind heads of states and supranational institutions of the surging public interest in environmental responsibility and sustainable development; 'change the politics, not the climate' is one of the recurring mottos of this march. Solidarity spanned most major European cities, like Berlin, Paris, or Amsterdam. In London, approximately 40,000 people joined the demonstrations (NBC News 2014). The position of the European Union also has changed considerably over the past decades, mostly as a result of this growing consciousness and public opinion. This has not always been the case. In the beginning, EU environmental policy was basically non-existent, largely a by-product of economization (Benson and Jordan 2010, p.370), always bound to bend to economic pressures; Huelshoff and Pfeiffer talk about the "market-first perspective on environment" (1992, p.147). Today, EU environmental policy includes complex areas such as sustainable development, emission trading, and ecological modernization (Benson and Jordan 2010, p.359). This begs the question, what has the European Union done so far concerning the environment and how? What are the determining instruments of how environmental policy is made? In this essay, I will outline the evolution of environmental efforts by the European Union. The purpose is to make out the development of its environmental stance to assess different mechanisms of decision-making by nominal success and actual effect. It will show that EU environmental policymaking is heavily reliant on neo-functionalist methods, spillover and the incremental increase in competences, while at the same time emphasizing the role of nation states in terms of implementation. This leads to either political interplay between states, multi-speed integration or non-compliance; some scholars suggest that the EU rather behaves like a federation in this respect. In the last part, I will explore this argument by comparing Spain and Germany in the 1990s to display the means of the European Union to affect national environmental policymaking. Environmental policymaking is a positive example of neo-functionalist spillover in terms of legislation, while implementation gaps reinforce the domestic government's role in integration.

One of the most striking features of EU environmental policy is the fact that it has ascended from being a non-issue in the formative years of the European Union to one of the most expansive policy fields, with subdivisions and delegation in different competence areas, to even extending its mandate, and permeating into previously unrelated fields such as agriculture, transport, and energy (Staab

2013, p.174). Janez Potočnik, current European Commissioner for Environment, notes the EU's position has become a role model for international and supranational organizations "trying to out-green each other" (in: Jordan and Adelle 2012, p.xviii).

To understand environmental policymaking in the EU, its ulterior motives, it is necessary to have a look at its origins. When the EU was founded in the late 1950s, no designs for a comprehensive model for environmental policy were envisaged. The European Union understood itself as a mostly economic network to promote trade and overcome political obstacles after the war (Benson and Jordan 2010, p.359). It was only after the EEC summit in Paris 1972 that heads of states asked to address the issue of environmental protection. Reasons were not solely based on a growing understanding of hazards to human health, but more likely a lingering fear that different environmental standards might create trade barriers, distort the market and restrict competitiveness (Jensen 2010, p.76). Consequently, the European Commission authored the first Environmental Action Programme (EAP) in 1973. After the second EAP in 1977, the Directorate-General for Environment was created in 1981 (info brochure 17). These initial steps marked the beginning of the rapid progression of European environmental policymaking. Instead of stipulating a single, comprehensive European position through few, extensive pieces of legislation, studies show the EU's attempt to incrementally broaden its scope and increase its influence in many small steps (see figure 1). However, instead of being an end by itself, environmental policy was subordinate to economic pressures; only later in the late 80s and early 90s was an emphasis on the importance of environmental protection, including risk prevention, apparent. Recent EAPs stressed sustainable development (Benson and Jordan 2010, p.361), while the current EAP from 2012 sees the need of global cooperation and reconcilability of economic growth and environmental protection (eur-lex.europa.eu 2015). The aforementioned figure from the Institute for European Environmental Policy suggests both incrementalist and neo-functional mechanisms of policymaking. More than 500 directives, decisions, and regulations have been approved since 1992 (IEEP.eu 2015). However, the underlying processes and spillovers remain untransparent and unpredictable as the EU touches new policy areas. (Benson and Jordan 2010, p.361). According to Héritier, EU policymaking resembles a "patch work" (in: Benson and Jordan 2010, p.363). But what is neo-functional spillover and how does it work?

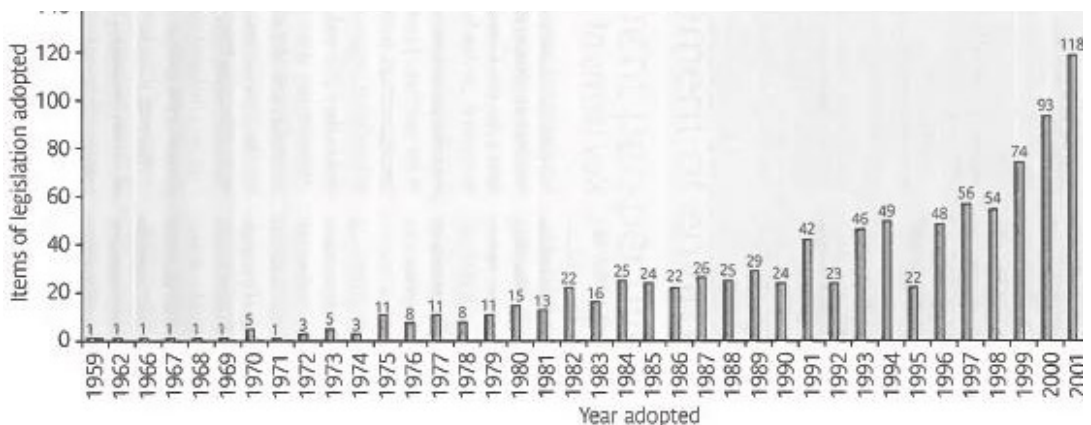


Figure 1



Neo-functional spillover is the assumption that to accomplish one goal, cooperation extends to indirectly related fields, further boosting the authority of the overseeing institution (Jensen 2010, p.75); states are voluntarily giving up their sovereignty, and spillover is the encroaching expansion of these power transfers through precedents and externalities (Huelshoff and Pfeifer 137). One recent example of how externalities shape policy and create spillover is Germany's reaction to the nuclear reactor incident in Fukushima, Japan. While the plans to switch from nuclear (and fossil) to renewable energy sources is not entirely new, the Atomausstieg movement to push for changes gained sizable momentum. Societal changes and technological insights can enable the enlargement of EU competences. Given the expandable nature of environmental issues, it is not surprising to see this chain reaction, this integration "by stealth" in environmental policymaking (Weale in: Benson and Jordan 2010, p.364). In theory, domestic governments would be increasingly intertwined with the EU, encouraging them to upload more of their sovereignty to the Union (Jensen 2010, p.83). The mission statement of the DG Environment explicitly reads that it is aiming to "integrate environmental concerns into other policy areas" and to "work closely with business and consumers in a more market-driven approach to identify solutions" (Dawn and Maher 2002, p.8). Public opinion towards the environment has made it necessary to include businesses and interest groups in the decision-making process to ensure legitimacy. Lobby groups have become actors in environmental policymaking trying to "push for integration" for their interests (Jensen 2010, p.73). In 1992, for instance, corporate interest groups succeeded in lobbying national governments to prevent a carbon emission tax (Benson and Russel 2014, p.7). Nonetheless, the final decision and implementation is still made by nation states as the EU lacks "uniform environmental governance" (Weale in: Benson and Jordan 2010, p.367).

Some of the most important early initiators were national environmental ministers within the Council of Ministers who saw opportunities to circumvent rigid national governments to achieve environmental policies on a European level as seen in Germany, Netherlands, or Denmark (Keleman 2000, p.150, Benson and Jordan 2010, p.364). However, higher standards did not always compel 'laggard' states like the UK to follow suit. The "lowest common denominator" policies granted 'leader' states to enact their higher standards. The EU would only step in and enforce integration if different national standards prevented the free movement of trading goods (Jensen 2010, p.76). Policing remained imperfect (Huelshoff and Pfeiffer 1992, p.142). Different preferences, methods, and capabilities inevitably lead to uneven, multi-speed integration. The fear of falling behind was incentive enough to see a "push-pull effect" of 'leader' and 'laggard' states (Benson and Jordan 2010, p.364). Ultimately, implementation is only an option if it is instrumental to national interest; the "nation state remains the core element in an understanding of international relations" (Jensen 2010, pp.77, 80). This integration deficit might therefore be a result of both a collective action problem and of "policy dilution", an avoidance to implement regulation with full effect to prevent economic disadvantages (Liberatore in: Benson and Jordan 2010, p.368). The EU realized that:

*many environmental challenges are global and can only be fully addressed through a comprehensive global approach, while other environmental challenges have a strong regional dimension. This requires cooperation with partner countries, including neighboring countries and overseas countries and territories. (eur-lex.europa.eu 2015)*



Agreement on a global level is easier reached than implementation on a local level is achieved (Huelshoff and Pfeiffer 1992, p.157). The internationalization of discourse, for instance through the negotiations of the Kyoto protocol, is a good example of European model behavior. The Union, as a single actor in a larger international network seized the opportunity to position itself as a role model (Benson and Jordan 2010, pp.367-368). The minimal enforcement mechanisms of the European Commission, however, led to some cases, in which regulations were being waved through without any intentions to implement them (Benson and Jordan 2010, pp.369-370). Looking at these developments, it might be useful to explore the actorness of the EU from a federalist perspective to analyze these political games.

The EU's tendency to rely mostly on regulation, suggests that the EU behaves like a federation of its member states. There is no doubt that the EU does not meet all requirements of a federal government, thus making it not useful to examine it solely through this lens. However, Keleman argues that its conduct in environmental policy suggests that the EU is more akin to regulatory federalism and that the low implementation rate is still within the scope of other federations, such as the US or Canada. In essence, this perspective allows us to explain EU environmental policymaking, while maintaining member states' discretion to implement laws (2000, pp.133-5, p.152).

One element of this approach is the realist understanding that member states are solely pursuing national interests, while federal governments focus on cost-effective authority maximization at the cost of other members. Voluntary power transfer happens only if a popular policy cannot be achieved alone; failure by the federal government absolves the respective states of any blame (Keleman 2000, pp.137-138). Division of powers leads to a constant bargaining of competences between levels. Who is in charge of policy design, implementation, and funding? Who is blamed for failure? What are the consequences for poor implementation? The tendency of federal governments to "under-fund" regulation and leaving integration to members to save bureaucratic expenses, leads to "uneven implementation", or multi-speed integration (Keleman 2000, p.141). Mistrust between states, however, necessitates intervention by the EU in form of functional spillover: laggard states accuse their partners of market protectionism, while leader states fear disadvantages for their allies' non-compliance (Keleman 2000, p.150). Interestingly, interest groups have taken a bigger role in implementation through lawsuits as the Commission is "encouraging an adversarial, litigious approach to regulation" (Keleman 2000, p.136). The Commission wants "private parties to act as watchdogs" (Keleman 2000, p.160). They can enforce implementation, while also saving money on bureaucracy. "When central governments cannot deploy bureaucrats, they can respond to political demands by allowing citizens to deploy lawyers and lawsuits" (Kagan in: Keleman 2000, p. 161).

To illustrate previous findings of the persisting importance of nation states and to demonstrate the intrinsic features of European Union environmental policymaking, a case study of environmental efforts in Spain and Germany and EU involvement until the mid-1990s will be examined. Susana Aguilar Fernández argues that the Commission's heavy use of regulations can be seen as a reaction to member states rather than its own initiative. The ultimate power remains in national governments. However, she does acknowledge the ability of the EU to influence states indirectly, through agenda

setting and standardizing limits and assessment methods of pollution (Fernández 1994, pp.40-41). She concedes though that this might be correlational, since national governments had their own incentives to implement these measures. The internationalization of environmental policies might therefore not exclusively be caused by members uploading parts of their sovereignty to the EU by vertical integration (neo-functional spillover), but also by the horizontal influence exerted by progressive members. The driving factors of environmental policymaking are therefore “deeply rooted in history and tradition [...] at the domestic level.” (Fernández 1994, pp.41-42).

The main differences between Germany and Spain in institutional design are the levels of cooperation between state and industry. While Spain’s state protectionism does not allow a lot of leeway for special interest to influence policymaking (except in the case of former politicians), Germany enables industrial players to take part in policy design (Fernández 1994, pp.43-44). These differences are owed mainly to different historical developments. As for Germany, the aversion of a too powerful government relates to experiences of German totalitarianism, thus enabling a state system that is open to outside input and exchanging ideas, an active engagement of interest groups and public discourse (Fernández 1994, p.44). These differences make Spain and Germany good examples to analyze EU influence in environmental policymaking as they form two sides of a spectrum “where the distinction between government and social groups is totally blurred to those where the public and social realms are clearly separated” (Fernández 1994, p.45).

As previously mentioned, lower levels of state-public cooperation correlates with a “higher implementation deficit” and vice versa (Fernández 1994, p.46). The author explains that EU directives have little to no effect on actual implementation at a domestic level. The size of the Directorate General for Environment does not allow a comprehensive oversight on member states’ commitments (Fernández 1994, p.47). Spillover is mostly only a theoretical reality, as the international consensus about the European Union’s competences and committing to implement regulations are two separate things. Given the lack of effective enforcement mechanisms, the EU’s power in environmental policy implementation lies more in providing an atmosphere where domestic structures can change internally and organically. In the case of Spain, the EU succeeded to some extent in opening up the domestic policymaking process to “interest group participation” (Fernández 1994, pp.47-48).

In Germany, because of strong public awareness, domestic pressures have generally been higher than international influences by the EU. However, given the unsatisfying results of environmental policies, concerns about the close cooperation of corporate representatives in environmental policymaking started to arise (Fernández 1994, p.48). The success of the Green Party coincided with a questioning of the industry’s position to assess environmental issues independently, scrutinizing their ability to self-regulate (Fernández 1994, p.49). The issue with NGOs and environmental activist groups like the European Environment Bureau is that despite their exponential growth over the past decades, they still lack the funds to stand against industrial lobby groups (Benson and Jordan 2010, p.365). So to hinder an “agency capture” by special interest groups, the EU steps in as an “animator and not an implementor” to indirectly encourage participation in the political process (Fernández 1994, pp.46, 49-50); it tries to affect national implementation indirectly as mediator through cultivated

spillover (Jensen 2010, p.76). The author affirms her argument about the EU's heavy use of regulation by saying that "it is one thing if a country decides to change its substantive policy due to a discussion at the EU level. It is another if it changes its traditional consultation procedures with private interests" (Fernández 1994, p.52).

To conclude the discussion on EU environmental policymaking, the findings have shown that this particular policy area has run through a rather unique development. Given its negligible size in the beginning, it is remarkable to see how it has evolved into one of the most pervasive policy field within the European Union; it has even extended its mandate to already established policy areas like agriculture and energy. The legislation process itself has always appeared as somewhat chaotic and opportunistic; reason for this is the ever expanding scope of environmental protection. Today, as the biggest disputes about competence and discretion have been settled, policymaking has also calmed down, while still being far from static (Jordan and Adelle 2012: p.xix). When looking at the numbers of passed environmental legislation, it has definitely become a standard for any international institution. The number of directives, however, does not reflect to what extent national governments implemented them; to this point, actual integration is still far from being perfect as the EU lacks effective enforcing mechanisms. Theories of neo-functionalist spillover can only account for some of the success of Europe's environmental efforts, given the persistent importance of national actors and governments. Still, considering the EU's unique actorness, its hybrid nature, it is hard to make assumptions based on net outcomes. Looking at the EU from a federal perspective, these shortcomings in terms of implementation deficit can be seen as within the norm, rather than a failure. The strength of this approach is that it gives non-state actors agency to influence integration through civil lawsuits based on the rights given by European Community law. The examples of Germany and Spain have demonstrated the EU's ability to indirectly affect national institutional design by opening up the policymaking process to private actors in the case of Spain's rigid, protectionist government; in Germany serving as an umpire, a mediator between the government, the industry, and environmental groups. Despite being the decisive players, not all states possess the same means and environmental interest. In the end, this leads to the conclusion that in the current state of power fragmentation, even if the EU is taking on a leadership role as environmental actor in the international system, the outcome is still reliant on the national governments and their voluntary compliance to binding, but effectively optional directives. "Regulation remains the EU's instrument of choice" (Benson and Jordan 2010, p.370), but if it wants to "strive towards an absolute decoupling of economic growth and environmental degradation" (eur.lex.europa.eu 2015), then it has to use its authority to impose economic consequences for violators, even if it is at the cost of an extensive bureaucratic apparatus.

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# Myanmar Booms – In Ways Good and Bad

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## Booming Burma

The economy of Myanmar, formerly known as Burma, will grow a projected 7.8% this year. The United States, Japan, Thailand, Singapore, India and especially China all court the Myanmar government in Naypyidaw, offering tantalizing investment dollars required to help the country fulfill its long-term economic potential. FDI flows are up tenfold compared to five years ago. The telecoms, tourism and resource sectors are burgeoning, a middle class is emerging, and new high-rises even begin to obscure sweeping views of Yangon's Shwedagon Pagoda, the country's most sacred Buddhist site.

Despite the wealth of business opportunities that Asia's largest untapped consumer market offers, Western nations are but small players in these developments. Washington's restrictions on investment in Myanmar linger while Naypyidaw struggles to rein in its military shadow economy and curb human rights violations (Tweed and Thu, 2014). Japan, by contrast, is an increasingly strong player in Myanmar and fuels Naypyidaw's logistical vision for the future. Tokyo has an active hand in the development of two deep water ports, the first at Thilawa, south of Yangon, which supplies the erstwhile capital, and the second at Dawei, on the narrow strip of Burmese land on the Andaman Sea that abuts Thailand. The former is already Myanmar's largest container port; the latter is an ambitious project to construct from scratch an SEZ with port facilities that would connect Myanmar directly with its Thai hinterland.

Further, proposed railway upgrades are creeping down from China through Laos and Thailand to Myanmar's borders. In January 2015, Japan and Thailand made public tentative plans to jointly construct the link's western extension to Kanchanaburi, a Thai town some 150km east of Dawei (Promchertchoo, 2015). China has vowed to connect Yunnan Province with Bangkok via Lao capital Vientiane. Out west, India, as part of its 'Look East' policy, aims to improve cross-border infrastructural links with its eastern neighbor of Myanmar (Maini 2014). These combined upgrades bring tantalizingly close, should they materialize as projected, the idea of Myanmar as a Southeast Asian Netherlands; a major goods and energy throughput hub for wares flowing to and from China's western provinces, fanning out to upper Indochina, and critically, connecting the two giants of China and India via a long-elusive land route.

Still, of all these foreign players, only China has a real foothold in Myanmar, and its investment record busts that of all competitors. Unencumbered by ethical restrictions, and buoyed by a 2000km shared border, China seeks not just markets but geostrategic advantage and energy security. Exemplary

of these objectives are the deep-water port and energy facilities that have risen up on tiny Ramree Island, near Kyaukpyu, on Burma's Bay of Bengal coastline. The complex sports two pipelines – oil and gas – that wind their way through Myanmar's plains and unstable north-eastern borderlands to ultimately reach Kunming, an energy-hungry city of 6.5 million central to China's 'rejuvenate the Southwest' development strategy ("Stretching the Threads", 2014). Plans exist to supplement these hard infrastructural links with a railway connection running parallel to the pipelines.

Already, over 6% of China's gas needs are filled by the Kyaukpyu-Kunming pipeline (Watts, 2013). For China, the pipeline means sending fewer Middle Eastern oil tankers round the Malayan peninsula, cutting several weeks – and thus expenses – off transit time. It also provides an alternate energy terminal in case the Malacca Straits are ever inaccessible in time of conflict, denying ships access to the Guangdong-Shanghai-Beijing seaboards. For Naypyidaw, oil and gas transit fees provide a handsome revenue stream, complemented by joint foreign-domestic exploration of the enormous offshore Shwe and Yadana gas fields.

Myanmar's resource bounty and untapped consumer market are increasingly pushing towards the background – at least for Asian investors – the fundamental problems in Burma's evolving political system. The first of these, the harrowing tale of Burmese democratization and Aung San Suu Kyi's audacious struggle to make it happen, is well-known in the West. The second, involving a very different kind of conflict, is only just beginning to make limited headlines.

Growing Lowland Liberty...

The origins of renewed Western investment interest in Myanmar lie in the country's political liberalization that commenced in 2011. The junta policy reversal initiated by general-cum-president Thein Sein and the West's subsequent laudatory response and rapid engagement hardly require introduction. In the space of a year, Burma released hundreds of political prisoners, relaxed press censorship and permitted free by-elections. The Obama administration trumpets Myanmar's commitment to self-transform from human rights-abusing pariah state to aspiring member of the democratic club as a prime foreign policy success (Bandow, 2014).

Of course, fundamental obstacles to full Burmese democracy remain. Opposition icon Aung San Suu Kyi is barred from taking up the presidency under a law that forbids those with a foreign spouse or children to hold the country's highest office. Further, the military continues to reserve a quarter of parliamentary seats for itself, barring constitutional change – which requires a 76% majority vote. There is no such thing as an impartial judiciary, and the military, which runs a shadow economy that extends its tentacles into the country's most profitable industries, constitutes a formidable special interest group that requires on-going accommodation in the political process, not to mention ultimate dismantling if Myanmar is ever to rise on global corruption rankings.

Such entrenched interests are risky to take on, but Naypyidaw continues to make the right noises. Responding to foreign and National League for Democracy (NLD) pressure, the military-dominated

government signed off a law in mid-February that allows for a referendum on constitutional amendment. This creates a helpful official pathway to political change, even if none is expected under the status quo. The military has emphasized continued support for the reform process, stating a military coup is 'not possible' (Wong, 2015). The critical test of these resolutions will come in late 2015, when general elections are planned in which Aung San Suu Kyi's NLD is expected to win a landslide victory. Subsequent politicking may be make-or-break for Myanmar's reforms.

But while the world concentrates on Myanmar's development and Naypyidaw's progress in accommodating Burmese opposition demands, the country remains home to devastating civil strife in its northern provinces that threatens to derail and discredit the Burmese transformation as a whole. One could say two Myanmars currently exist side-by-side. One is the burgeoning Burma fuelled by foreign direct investment. The other is the Burma of same-as-ever center-periphery dynamics, characterized by inter-ethnic distrust coupled with armed conflict that boils over intermittently. Indeed, the Burmese military – known as the Tatmadaw – their handling of renewed large-scale unrest in Myanmar's borderlands calls to mind the familiar adage that despite all of Naypyidaw's positive signaling, perhaps the Tatmadaw leopard cannot change its spots after all.

...and Upland Plight

At least since British colonial times, Myanmar has been a story of center and periphery. Ethnic Burmese, who populate Myanmar's central lowlands, have controlled the reins of national government since independence in 1948. The rugged, mountainous areas along the country's circumference are home to ethnic tribes historically but loosely affiliated with Yangon. Together, these ethnically Burmese 'divisions' and minority 'states' make up the Burmese Union. Propelling over half a century of modern-era strained relations between center and periphery is controversy over the 1947 Panglong Agreement, which granted minority groups regional autonomy as well as stipulating the right to secede from the Burmese Union. Neither, for a complex host of reasons, has ever materialized, sparking 60 years of armed rebellion that peaked in the late 1980s and early 1990s and displaced and destroyed entire communities.

By the start of the new millennium, however, the worst of the fighting seemed to be in the past. Bilateral ceasefires had been concluded with the dozen or so periphery-dotted insurgent groups. To be sure, these agreements did not equate to lasting peace – little to no disarmament took place and both sides maintained garrisons in conflict regions – but they created sufficient stability for Chinese wealth to flow into the north-eastern borderlands and begin to bring prosperity to historically impoverished areas. Rebel demands, too, have largely shifted towards greater autonomy from Naypyidaw, better regional administration, and more economic opportunities rather than outright independence.

Moving forward from this steady trickle of bilateral ceasefires, the military-dominated government had hoped to sign a *national* ceasefire on Union Day, February 12, this year. It was to be the culmination of two decades of gradual trust-building between Tatmadaw and ethnic rebels that have markedly

reduced conflict levels and combat deaths on both sides.

However, in early February renewed fighting broke out between the Tatmadaw and the ethnic rebel groups Shan State's Ta'ang National Liberation Army (TNLA) and Myanmar National Democratic Alliance Army (MNDAA), which has escalated dramatically in recent weeks. As twenty-five years before, civilians swarmed the roads, crossing the nearby Chinese border *en masse* to seek refuge. As a consequence of this significant borderland instability, only four out of Myanmar's 16 major armed ethnic groups signed a hastily negotiated, comparatively insignificant February 12 commitment to work towards national pacification. Conflict spoiled the ceasefire party.

Prospects for a peaceful resolution thus appear to be fading. Yet, it is far from clear that the military approach which has replaced rapprochement can accomplish for Naypyidaw what diplomacy failed to do – provide the lasting national peace the country so desperately needs if it wishes to profit economically from its adjacency to China and India. Pacification through the barrel of a gun has been the Tatmadaw's approach of choice, yet after 60 years of trying has remained inconclusive. To harvest insights on why this is so, we can consider the tale of the Kachin and their ethnic rebel forces, the Kachin Independence Army (KIA).

The KIA is one of the largest, best-organized, and best-equipped of Burma's ethnic armies and militias. Though the territory under its control has shrunk over the decades, the group shows no signs of breaking. They survive for a multitude of reasons, several of which are worth highlighting here. First, the KIA is a strong organization, hardened by decades of combat, a legacy of Japanese wartime resistance, and erstwhile CIA training. Second, their resilience is aided by the inhospitable, mountainous jungle terrain that favors the rebel guerrilla tactics. Despite the asymmetric nature of the conflict – the Tatmadaw boast helicopters and jet fighters armed with missiles whilst the insurgents rely on rusty AK-47's – Naypyidaw seems incapable of definitively subduing the insurgents. The terrain, which is reminiscent of Cold War conflicts in Vietnam and Malaya, cancels out the Tatmadaw's technological edge. And sure enough, raw firepower alone is poor at ending jungle and mountain-based guerrilla warfare, the history of Asia warfare teaches.

Thirdly, the KIA is backed by tacit support from the wider Kachin population group, or at least a sizeable segment of it, providing it with a stream of fresh recruits, means of statewide infiltration, and additional revenue streams. Much popular support for insurgency is of the Tatmadaw's own making, stemming from reprehensible action that inflames anti-regime sentiment. For instance, some bloodshed is driven by greed, such as the 2011 Burmese army offensive aimed at seizing Hpakant Township, locus of Myanmar's highly profitable and poorly regulated jade mining industry. Other bloodshed rests on opportunism: in November 2014 the Tatmadaw shelled a KIA military academy without provocation, killing two dozen cadets.

In the absence of total rebel defeat, what such military action accomplishes is the creation of more Kachin mistrust of government, complicating any peace negotiations. Couple this with the maladministration of Kachin areas currently under central control (corruption and self-enrichment are



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endemic, while ordinary Kachin suffer from economic deprivation, military rapaciousness, and an out-of-control heroin scourge) and it is little wonder many Kachin are weary of Naypyidaw and its military arm. Motivated by these unaddressed grievances, the

Kachin feed their sons to the KIA insurgency machine, which may in turn, financially and logistically support other rebel armies in the northern borderlands and perpetuate the conflict. Locked in this cycle of conflict and mistrust, where can Myanmar go?

### From Guns to Governance

If Naypyidaw is serious about national pacification, it must find an alternative to military offensives spurred by officials hungry for land grabs and resource riches and perhaps a desire to achieve a ‘quick fix’ to insurgency. Instead, it must consider providing good governance in the Shan and Kachin territories it rules directly. The pacifying power of competent administration enjoys clear historical precedent across Asia; for example, in the case of late colonial Malaya. There, improved civil administration and public service provision – policies collectively known as ‘Operation Service’ – were instrumental in building a modicum of trust between disaffected groups and the central government that, in combination with clever use of coercive measures, drained popular support for Communist guerrillas.

Of course, very different objectives underpin ethnic resistance to Naypyidaw than motivated Communist insurgency in Malaya. Yet, the principle of crucial tacit communal support for armed resistance may hold up across a wide variety of contexts. Should Naypyidaw indeed succeed in ‘winning hearts and minds’, then it can force ethnic armies (back) to the negotiating table and seek a collective peaceful solution.

### Signs of Change?

To those who believe that the junta may indeed be capable of changing course, subtle signs of policy deliberation are detectable. News agencies reported in early February on a meeting between Tatmadaw commander-in-chief Min Aung Hlaing and Singaporean ex-PM Goh Chok-Tong, in which Hlaing solicited Singaporean nation-building advice. Over the years Singapore has been integral to the junta’s survival by providing much-needed banking services whilst global sanctions over its human rights record crippled its finances. That the junta is now drawing on another of Singapore’s points of expertise – its historical success at crafting a unitary state out of conflict – is perhaps an indicator that alternative, non-military strategies are considered in Naypyidaw’s halls. As it is, ex-PM Goh knows from experience how government performance – and economic growth in particular – can legitimize a quasi-democratic system and appease its citizenry.

Internally, too, cautious adjustments to the administration of Kachin State in particular are evident. In

the economic sphere, The Economist reported in January 2015 on the novel phenomenon of Kachin-Naypyidaw private-public partnerships in developing Kachin State's decrepit infrastructure ("Eager Mindsets", 2015). It appears some space is opening up for greater Kachin input in regional economic affairs. In further positive developments, a new education law may be on the cards (though police are cracking down on protesters) that locks in the Kachin right to educate children in their native language – long since a bone of contention. National education spending is increasing marginally.

However, it is difficult to rhyme these initiatives with present aggressive Burmese military action. On the one hand, Naypyidaw is reaching out to the Kachin through tentative attempts at cooperation, perhaps encouraged by a China weary of destitute refugees crowding into Yunnan province. But simultaneously, the Tatmadaw's time-worn tradition of armed suppression of minority interests continues uninterrupted in a neighboring province; a development that will not go unnoticed in Kachin areas, and will to underscore existing suspicions that the Kachin, as well as the country's other ethnic groups, harbor of the government.

These seemingly contradictory policy signals lead one to wonder whether the Tatmadaw tail is wagging the Naypyidaw dog. The Burmese government's internal dynamics are as opaque as those of any authoritarian state, and one must exercise caution in drawing conclusions from limited observations. Still, it is possible that regional elements of the administration and the military in particular, are not subscribing to national-level attempts at reconciliation. Losing the grip on a disgruntled military establishment, still the most powerful unified force in the country, is undoubtedly the nightmare scenario for Thein Sein and his civilian(ized) allies. Perhaps because of this, military expenditure remains high (12% of the national budget; Lwin, 2014) and barely shrinks in real terms, gobbling up 'good governance' resources.

#### The Road Ahead

Optimists hope that solving one problem – that of political transition to democracy – holds the key to ending Myanmar's 60-year civil strife. Surely, it is hard to imagine an NLD government led by Aung San Suu Kyi carrying out airstrikes against ethnic minorities. However, even if Suu Kyi truly were to assume the presidency in late 2015, formidable obstacles to political stability remain. Much will depend on civil-military relations, or the degree of control the NLD exercises over the military, and whether the NLD can induce the Tatmadaw to reform from a self-serving armed oppressor to protectors of the public good. Additionally, the sprawling military underground economy, which extends to virtually every profitable industry in the country, will require dismantling without invoking backlash, or even a coup. Hopefully, learning effects from neighboring Thailand, which has experienced a dozen military coups since 1932 – the latest in 2014 – do not occur. Either way, *political reform* may in fact be the easy part. Much harder will be the breaking of established patterns of institutional behavior, and the military may continue to jealously guard its economic interests, with force if necessary.

Whatever the remainder of 2015 may bring, the pursuit of armed solution is not beneficial to Myanmar's international image nor its development ambitions. Wedged in between China and India,

Burma's borderlands hold the key to its national development, as infrastructurally linking Asia's giants would undoubtedly bring prosperity to the middleman. Unstable borderlands deter Chinese investors in the northeast; borderlands that over the past decade have profited considerably from billions of investment dollars flowing in through Yunnan and constitute territory that any infrastructural links must traverse. And if Myanmar is serious about balancing PRC influence in the country with investments from India and the developed world, it must prevent further mass displacements of people and the repeated violations of human rights that sustain Western sanctions.



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# Chile & New Zealand: A Comparative Study in Environmental Policy

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## Abstract

Chile's economy over the past two decades has highlighted the environmental repercussions of business activity and non-renewable energy production. Consequently, various environmental concerns and issues have risen to the forefront of Chilean politics, including but not limited to: renewable energy, greening the mining sector, land conservation and water contamination. The political climate in Chile is currently split between civilian pressure for greater conservation efforts and the private sector advocating for lesser environmental regulation. Federal legislation institutionalized Chile's environmental policy with the creation of the Ministry of the Environment in 2010. Three of the most pressing issues currently affecting Chile's environmental policy include (1) an unsustainable rate of natural resource consumption, (2) the social exclusion of indigenous groups in the political process, and (3) a lack of funding of the Ministry of the Environment. New Zealand has found considerable success in resolving these three issues, and thus is a good example for Chile. Following New Zealand's model, this paper suggests Chile (1) implement a consolidated Resource Management Act (RMA) via cross-coalition collaboration, (2) establish an Office of Indigenous Affairs within the Ministry of the Environment, and (3) invest in renewable energy research and development in order to garner more funding for the ministry.

## Introduction

The Republic of Chile is a thriving state in Latin America, exhibiting sound governance, technological innovation and macroeconomic stability. Chile boasts an estimated population of just over 17 million, and its GDP per capita is almost \$19,000, one of the highest in Latin America.<sup>1</sup> The Chilean economy thrives on export-led growth and demonstrates considerable stability with an inflation rate of 3 percent<sup>2</sup>. Chile has historically struggled with a high rate of income distribution inequality, but this statistic has improved in recent decades. This issue still remains a top priority on the policy agendas of most Chilean political parties.

The noticeable correlation between export-led growth and environmental degradation first led Chile to form a domestic environmental policy in the early 1990s, prior to which there was a random assortment of legal statutes and provisions that minimally regulated the natural environment.<sup>4</sup> Chile's innovation of environmental policy corresponds with the global shift in environmental policy from localized projects to systemic change, as principally exhibited by the 1992 Rio Conference. Former

Minister of National Assets Luis Alvarado explains that initial environmental policy revolved around policy design, drafting and institutionalization.<sup>5</sup> Policies quickly materialized and evolved throughout the 1990s and early 2000s. However, the Chilean government had a tendency to continue designing new environmental policies rather than enforcing policies that were already in existence — a trend that continues to this day.<sup>6</sup> In 2009, Chile enacted the Action Plan on Climate Change and formally created the Ministry of the Environment in 2010 through legislative action.<sup>7</sup> Soon after, the Council of Ministers for Climate Change was created to serve as an inter-Ministry body that includes the ministers of finance, environment, energy, foreign affairs and agriculture as well as the presidential secretariat.<sup>8</sup>

Chile's multilateral environmental policy platform revolves around the principle of democratic environmental participation according to the Rio Conference.<sup>9</sup> Chile advocates internationally for sustainable development, regional environmental cooperation, environmental education and transparency in environmental management.<sup>10</sup> Its delegations to the United Nations have signed the 1985 Vienna Convention,<sup>11</sup> 1987 the Montreal Protocol,<sup>12</sup> and the 1997 Kyoto Protocol.<sup>13</sup> However, Chile has not accepted the Kyoto II Amendment made during the 2012 Doha Round.<sup>14</sup> Chile is also a member of numerous international environmental entities, including but not limited to the Antarctica Treaty System, the International Whaling Commission, the Law of the Sea, Organization for Economic Cooperation and Development, and the Trans-Pacific Partnership.<sup>15</sup>

The Trans-Pacific Partnership (TPP) will likely grow to have a very dominant role in Chile's multilateral environmental policy in the coming years. The TPP is currently in negotiation, having evolved from the 2006 Trans-Pacific Strategic Economic Partnership (TPSEP or P4).<sup>16</sup> A draft of the TPP Environment Chapter was published by WikiLeaks in early 2014,<sup>17</sup> and has subsequently received heavy criticism by many prominent non-governmental organizations, such as the Sierra Club,<sup>18</sup> for lack of transparency in treaty negotiations,<sup>19</sup> lack of enforcement mechanisms<sup>20</sup> and the promotion of corporate agenda.<sup>22</sup> Other commentators, however, have lauded the TPP for using a progressive way to promote a strong environmental agenda through trade liberalization. The Brookings Institute released a chapter from the upcoming book "Trade Liberalization and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement" regarding the environmental provisions of the TPP, in which the author discusses how the TPP has the potential to serve as a vehicle for mutual economic growth and the promotion of environmental responsibility.<sup>23</sup>

#### Issues in Chile's Environmental Policy

There are currently three major problems affecting Chile's environmental policy: (1) an unsustainable rate of natural resource consumption, (2) the social exclusion of indigenous people groups and (3) a lack of funding for the Ministry of the Environment. Chile's natural environment has suffered greatly from centuries of natural resource exploitation, and neither environmental policy nor federal legislation have yet to directly address this issue. As demonstrated by Yale's Environmental Performance Index, there is a lack of proper administration in fisheries and water resources.<sup>24</sup> Chile's income-progressive distribution of energy consumption has emphasized the need for sustainable sources

of renewable energy. However, its reliance on coal-fired power plants starkly contrasts this need.<sup>25</sup> Chile ambitiously aims to reform land and water rights in the mining sector, an industry of particular historical and economic significance.<sup>26</sup> President Bachelet repealed former President Piñera's "Strategic Environmental Regulation" proposal in early 2014, stating that the execution of such a plan would not be faithful to how it was originally presented to the other executive ministers.<sup>27</sup> The denial of former President Piñera's "Strategic Environmental Regulation" proposal could indicate instability and inconsistency in environmental policy.

There is an inherent intersection in environmental policy between indigenous relations and public policy caused by the cultural services provided by the natural environment.<sup>28</sup> Chile's environmental efforts currently suffer from a lack of social inclusion of its indigenous and marginalized people groups. This has particularly impacted the Mapuche, Chile's largest indigenous group.<sup>29</sup> There are currently an estimated 1.5 million Mapuche living in Chile, who comprise approximately 8.5 percent of the total population.<sup>30</sup> The government and industrial corporations have repeatedly encroached on the Mapuche's legally allotted reservations in order to extract natural resources and transform ecosystems for industrial means.<sup>31</sup> This represents cultural insensitivity, marginalization and disregard of provisional legal statutes meant to guard indigenous peoples. The Mapuche derive their identity from two sources, the natural environment and their ancestors.<sup>32</sup> Therefore, their exclusion in the political process and the exploitation of their territory has culturally strained the way in which they relate to the rest of Chilean society.

Chile's Ministry of the Environment receives a low amount of government funding compared to other Government ministries.<sup>33</sup> In the 2014 fiscal year, the government of Chile apportioned \$36,294,871,000 CLP (approximately \$61,847,912) to the Ministry of the Environment.<sup>34</sup> Only three governmental entities received lesser funding, and two of those three were the Office of the President and the Secretary of the President.<sup>35</sup> Lower funding reflects areas in which Chile needs infrastructure development and also emphasizes how young the Ministry of the Environment is as a governmental entity. The Ministry of the Environment is responsible for regulating more than 756,000 square kilometers of land area, which encompasses ecosystems ranging from severely arid deserts to glacial ice fields.<sup>36</sup> This proves the ministry's very difficult and diverse task. The amount of funding it currently receives may hinder effective regulation and environmental management.

#### New Zealand's Approach to Chile's Problems

New Zealand has faced many of the environmental problems Chile is currently facing. Prior to the creation of the Ministry for the Environment and the Department of Conservation in the mid-1980s, New Zealand struggled with unsustainable levels of natural resource extraction.<sup>37</sup> This was addressed in 1991 with the ratification of the Resource Management Act (RMA), which consolidated 78 environmental statutes and regulations into one piece of legislation.<sup>38</sup> Originally considered a triumph of collaboration in environmental policy, the RMA has since been subject to revisions and alterations under changing majority parties, which has led many to be skeptical of RMA's effectiveness.<sup>39</sup>

Current census results show the indigenous Maori people comprise approximately 15.5 percent of New Zealand's population.<sup>40</sup> The Ministry for the Environment, the larger of New Zealand's two environment regulating ministries, actively seeks to include the Maori in the political process and recognizes their place in New Zealand's natural environment.<sup>41</sup> They do so by closely monitoring the relationship between the ministry and the Maori according to the Treaty of Waitangi, leading negotiations regarding the use of natural resources and implementing agreements and legislations within the Maori iwi (community).<sup>42</sup> New Zealand has thus found considerable success in the social inclusion of its indigenous populace in environmental policy.

New Zealand's estimated government expenses for the 2014 fiscal year totaled approximately \$62.8 billion.<sup>43</sup> The government allotted a sum of \$395,288,517, approximately 0.63 percent of its budget, to the Ministry for the Environment and the Department of Conservation.<sup>44</sup> These two ministries are jointly responsible for managing approximately 267,710 square kilometers of land area.<sup>45</sup> In the same fiscal year, Chile budgeted \$56.1 billion in government expenditures and allotted \$61,847,912, approximately 0.11 percent of its total budget, to the Ministry of the Environment<sup>47</sup> – almost six and a half times less than New Zealand's budget to manage a land area almost three times the size of New Zealand.<sup>48,49</sup> The much larger budget of New Zealand is mainly due to the fact that tax rates are much higher, and taxes thereby comprise 38.9 percent of government revenues,<sup>50</sup> in comparison to Chile where taxes account for 21.9 percent of government revenues.<sup>51</sup>

## Recommendations

This paper therefore proposes the following recommendations for Chile's environmental policy.

1. Ratify an overarching legislation for natural resource management: It would be beneficial for Chile to enact an overarching piece of legislation for the purposes of natural resource management similar to New Zealand's RMA. This would provide concrete guidelines for the government to regulate its own extraction/consumption practices as well as those of the private sector. It would also give two political parties, the left-winged Concertación coalition and the right-winged Alianza coalition, an opportunity to collaborate and thereby prevent future policy instability.
2. Establish an Office of Indigenous Affairs within the Ministry of the Environment: The Chilean government should create an Office of Indigenous Affairs within the Ministry of the Environment. This would be mutually beneficial for both parties in that it would give a voice to the indigenous people in the political process and would also improve the government's relations with these groups. Establishing such an office might even lead to a tonal shift in the discussion of social inclusion in Chilean politics and could create positive internal pressure for other ministries and government entities to follow suit.
3. Invest in alternative energy research to garner funds for the Ministry of Environment: Chile's Ministry of the Environment should intentionally focus a portion of its budget on the continual research, development and refining of renewable energy sources. A diffusion of cost-effective and sustainable energy practices through Chile could create surpluses in the ministry's budget, and



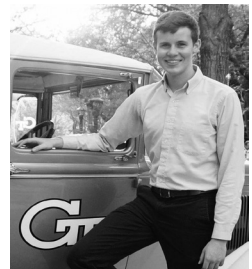
the scientific achievements could garner additional funding in years to come. Chile can greatly benefit from its partnership with New Zealand in the field of renewable energy research. Such collaboration can be streamlined by formalizing a bilateral environmental partnership in the form of an Environmental Cooperation Agreement (ECA) to supplement their interactions in other intergovernmental forums.

### Conclusion

Both Chile and New Zealand have a reputation for being (relatively) “green” in different capacities. While the cooperation of the two for the purposes of environmental collaboration might be unorthodox, both states have a great deal to offer each other politically, educationally, and economically. Chile’s environmental policy is currently facing many issues that New Zealand has faced and resolved in the past, and New Zealand can serve as a viable model for Chile to follow. New Zealand’s environmental policy was not enacted via groundbreaking legislation or a singular executive overhaul; rather, it was gradually constructed and expanded following the creation of the Ministry for the Environment and the Department of Conservation in the mid-1980s. Similar to this time period in New Zealand, Chile’s environmental policy is still in its infancy given that the Ministry of the Environment was established just five years ago. Chile could alleviate its policy shortcomings if it were to proactively apply solutions that New Zealand has adopted in its three decades of concrete environmental regulation.

Unsustainable natural resource extraction practices could be replaced with a sustainable system of harvest and cultivation following the implementation of a Resource Management Act (RMA). Environmental policy in Chile could be more representative and democratic if its indigenous and marginalized people groups were given a voice in the political process. Increased investment in alternative energy research can reduce Chile’s dependence on non-renewable energy production and garner more funding for the Ministry of the Environment. Chile is poised following the creation of the Ministry of the Environment to implement solutions from New Zealand’s model and thereby create leeway to strengthen its domestic policy.

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# P5+1, Iran-US Cooperation, and the Future of Iraq

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Since 2003, Iran and the US have engaged in a regional tug-of-war, with Iraq as the main battlefield. Iran's natural role as a hegemon in the Persian Gulf region has only increased since the US invasion of Iraq removed the tripolar system previously in place (Iran-Iraq-Saudi Arabia), allowing the Islamic Republic to emerge as the main opposing power to longtime US ally, Saudi Arabia.<sup>1</sup> Most American analysis has viewed Iran's growing power in Iraq as a negative for US interests in the region. However, there are strategic benefits to a US-Iran partnership in Iraq, particularly in fighting ISIS and any other forms of Sunni insurgency. Both the US and Iran also need Iraq to emerge as a stable, unified country. For Iran this means maintaining control over its neighbor and benefiting from a prosperous Iraq politically, economically, and security-wise, while keeping it from reemerging as a regional powerhouse. For the United States, a successful Iraq would reverse the popular notion that the 2003 invasion has only brought less democracy and more instability into the region. A stable Iraq would also cease to be a breeding ground for terrorism and protect Iraqi oil exports. Since the United States and Iran have little to no open diplomacy, a public moment of collaboration is necessary in order to lay the groundwork for further cooperation in Iraq.

A successful P5+1 agreement on Iran's nuclear program in June would allow the United States to explore different options in regional policy. A potential partnership with Iran has been ignored in the past, to the detriment of both parties.<sup>2</sup> The public diplomatic victory of P5+1 talks could allow the Obama administration to work more openly with Iran on common security goals in Iraq. This paper will give an overview of how Iran is pushing for a more stable Iraq, free of ISIS, and the potential opportunities and issues for the US, the Islamic Republic's involvement presents.

Since the devolution of Iraq into civil war in the mid-2000s, Iran has shifted some of its funding away from Shi'i<sup>3</sup> political parties and towards militias. The main conduit for the funds was the Al-Quds Brigade commander Qassem Soleimani, whose ties to Iraqi militias include Moqtada al-Sadr.<sup>4,5</sup> Soleimani has traveled extensively to Iraq since IS's advances in the North during the summer of 2014, making him the most visible symbol of Iran's presence on the Iraqi battlefield.<sup>6</sup> His presence and frequent meetings with Shi'i militias, compounded by the inflow of arms, signify Iran's willingness to commit to a long-term security strategy in Iraq.

Even before the incursion of the Islamic State into large swaths of Iraq, supporting Shi'i militias has been beneficial for Iran. Firstly, Iran uses transnational Shi'i identity to expand its authority amongst the Arab Shi'a community. Secondly, the militias provide protection for the Shi'i holy sites in Karbala and the traditional seat of Shi'i learning in Najaf.<sup>7</sup> As Iranians stream into Iraq year after year for pilgrimage and study, Iraq's ability to secure these cities takes on a more pressing nature. More than one million Iranians performed pilgrimage to Iraq during the mourning period of Shi'i Imam

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Hussein in 2014, and the Islamic Republic needs Iraqi militias to keep IS from attacking these sites and their access roads.<sup>8</sup> Preventing a security breakdown in Iraq allows Iran to foster the dependent relationship without Iraq devolving into a chaotic state that would jeopardize its interests. It also allows the Iranian government to achieve the security “it was not able to win in the Iran-Iraq war” by influencing these militias, particularly since the Iranian public generally sees a stable Shi’a controlled Iraq as an ally, not a threat.<sup>9</sup> Shi’i militias that align with Iran receive tangible and immediate rewards, including more sophisticated arms, training, and advisors in Tehran to help plan attacks against the IS.<sup>10</sup> This mutually beneficial partnership has led to strong relationships between the Iran and most of the Shi’i militias patrolling Southern Iraq. Iran’s support for the Shi’a militias has provided the largest amount of boots on the ground in fighting the IS, boots that the United States can no longer deliver. With the collapse of the US organized Iraqi Army, the Iran backed Shi’a militias, in combination with the Peshmerga, are the best opportunity to keep the IS from advancing further in Iraq. The infrastructure Iran has provided in parts of Iraq also provides for an easier control and surveillance of the country, essential for the Iraqi state to secure its territory.

Iran has also provided support for Iraqi Kurdistan and its forces, the Peshmerga. Masoud Barzani, the current president of the semi-autonomous region, publically acknowledged that Iran provided the Kurdish militias with arms to fight against the IS from the beginning of the campaign.<sup>11</sup> Iraqi Kurdistan and Iran have continued to strengthen military ties throughout the campaign against the IS<sup>12</sup>, especially as the professional nature of the Peshmerga has been celebrated both in Iraq and abroad.<sup>13</sup> The Islamic Republic has used the connection between the Iranian and Iraqi sections of Kurdistan to strengthen these ties and keep the border relatively porous. Iran’s military alliance with Iraqi Kurdistan shows that the Islamic Republic is willing to use transnational identities to back any formidable force that can provide stability to Iraq, not just Shi’i groups.

These two groups, Arab Shi’a and the Kurds, are the same armed groups that benefited from the US’s patronage in fighting the Sunni insurgency in the mid-2000s. Now they can be utilized to prevent the spread of the IS, which the US sees as one of its most pressing concerns in the region. US Secretary of State John Kerry has already indicated that Iran-US cooperation is a possibility, a statement that would not likely have been made if Iran was refusing to engage in the P5+1 negotiations.<sup>14</sup> Rouhani also indicated an openness to engage to with the U.S. on fixing the worsening situation in Iraq.<sup>15</sup> This possible alliance, limited to the Iraqi case, could quickly transform the situation on the ground, and perhaps undermine the IS’s strongholds on Syria as well.<sup>16</sup> If the US and Iran work together to support the Kurds and Shi’as in fighting for a stable Iraq, both countries would make regional security gains, while keeping their favored Iraqi groups in power. If this cooperation were to happen it would be the first time the US and Iran openly worked together on regional security since 1979, and would signal a shift in the US’s regional policies. However, there is danger in arming the Arab Shi’i militias since they have been accused of committing sectarian based crimes against Sunni civilian communities.<sup>17,18</sup> The Kurdish military has also been accused of treating the Arabs in its territories poorly.<sup>19,20</sup> Any support of these militias must be undertaken with the awareness that abuse of power by either group would reignite hostilities and entrench the sectarian divides already present in Iraq. Therefore, any providing support to militias in Iraq must be embarked on with caution by both Iran and the United States. If the IS is defeated, one of the major issues that would emerge is the role of these militias in the future of

Iraq. Existing outside of the state control is an unsustainable option, as it could destabilize the country further. US-Iran cooperation with the Iraqi government could find a way to absorb the militias into the government, while still allowing the Iraqi Shi'a and Kurdish populations to feel safe and adequately protected. This incorporation, if done properly and with involvement from Sunni tribes, could ease sectarian tensions and provide a long-term security solution.

Post-2003 Iraq has strengthened its economic ties with Iran in addition to its military dependency. Iran-Iraq trade has been one of the most stable relationships in the region, with a volume of \$12 billion in 2013 alone, and only half of that figure is due to oil trade.<sup>21</sup> Iraq is one of the main markets for Iranian exports, which has become even more crucial for the Islamic Republic since the increase in Western sanctions.<sup>22</sup> The Iranian auto company "Iran Khodro" also produces cars in Iraq, and has worked in collaboration with Iraqi companies on manufacturing and building factories.<sup>23</sup> Iraq has emerged post-2003 as one of Iran's top five trade partners, further strengthened by Iranian foreign direct investment in infrastructure and sectors related to pilgrimages to Shi'i holy cities.<sup>24</sup> In Iraqi Kurdistan, Iran has used its trade relationships to influence the region, and remains one of its strongest trading partners.<sup>25</sup> Although corruption in Iraq remains widespread,<sup>26</sup> Iranian investment has helped guide the country into a stronger economic position. If the sanctions against Iran are lifted, it will only allow the Iranian economy to recover, particularly in opening up international markets to its oil exports. This change would allow Iran to reemerge as an economic powerhouse in the region, which would lead to it strengthening the deep ties that already exist with its neighbor. The United States has already punished some Iraqi institutions for aiding Iran in avoiding the sanctions.<sup>27</sup> An Iran suffering from fewer sanctions could engage with the international financial system directly, thus allowing Iraq to benefit from trade and exchange without fear of retribution. A drawback to a more financially viable Iran for Iraq is the possibility of Iranian oil reentering the market. However, the amount of trade between the countries overpowers the threat of competition as a driving force in Iraq-Iran relations. At present, Iran is one of the few countries willing to invest in Iraq economically, particularly outside of the oil industry. If the United States develops its economic interests alongside the Islamic Republic, both countries can ensure that Iraq has the financial ability to function and prosper in the coming decades. Without a viable economy, Iraq runs the risk of not being able to provide enough jobs and opportunities to its population. This issue would eventually lead to instability and allow non-state organizations to fill the voids of the state, as Hamas, Hezbollah, and the Muslim Brotherhood have done in Gaza, South Lebanon, and Egypt, respectively. Since Iraq has numerous ethnic and religious groups, non-state actors providing economic and social services would lead to fragmentation and a fundamental weakening of the central government. If P5+1 allows the US and Iran to work together on Iraq, economic support should be at the forefront of their efforts.

In conclusion, the success of the P5+1 negotiations would allow Iran and Iraq to reshape the regional status quo in ways that could be beneficial for both parties on multiple fronts. If a deal can be reached, the possibility of US-Iran collaboration on the issue of Iraqi security, particularly against the threat of the Islamic State, could provide a stable state that benefits all three countries. As it stands, Iranian funding of Shi'i and Kurdish militias provides the best offense against further IS incursions, which would only be strengthened by any US cooperation and support. The US aiding with airstrikes in Tikrit offered an important first step. The Islamic State cannot be removed by domestic Iraqi

campaigns alone. Both the United States and Iran have the most invested in defeating the IS, outside of local actors in Iraq and Syria. A successful campaign against the group requires both American and Iranian support to succeed. Agreements on the nuclear issue would allow Iran and the US to pursue limited opportunities to openly advance shared interests in Iraq. Discussion of Iran and the US's shared interests in the region has not been considered since the Islamic Revolution. The P5+1 talks provide a landmark opportunity to give the Obama administration and the American public to reconsider its relationship with the Islamic Republic, particularly as it relates to pressing regional concerns. The lifting of economic sanctions against Iran would encourage Iraq to continue to build its economic ties with its neighbor via both Erbil and Baghdad. A stronger Iranian economy would lead to more trade and investment with Iraq, something the country needs after the economic setbacks it has experienced post-2003. A possible nuclear deal would overall be a positive for Iraq, accelerating the country's slow process of reconstruction and allowing it to build a relationship with Iran that would have been impossible under Saddam Hussein's rule. Meanwhile, Iran can stabilize the Persian Gulf region while achieving both its security and economic goals. Iran's success in these endeavors would also allow the United States to benefit from a more stable Middle East with less direct involvement. This paper is not arguing that the United States and Iran are on the verge of a great reconciliation, or that the US will abandon its relationship with Saudi Arabia in favor of Iran. Rather, the goal of this overview of the possibilities of a post-P5+1 Iraq is to demonstrate that the United States and Iran's interests in the region are not always naturally in direct opposition. Iraq is the most dramatic and pressing case in which both countries can work together to serve both the local population and their long-term strategic goals in the region. A US foreign policy that treats Iran in a pragmatic fashion could be more beneficial for the US and the region overall.

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*A Perspective from Death Row: The Case of Exonerated Inmate, Glenn Ford*

<sup>1</sup> Note: The two federal lawsuits seek justice for the many alleged violations of Mr. Ford's civil rights. Currently, Mr. Ford has three active lawsuits: 1. a federal lawsuit related to his wrongful conviction and imprisonment; 2. a federal lawsuit related to the alleged inadequate medical care he received in prison; and 3. a state petition for compensation under Louisiana's wrongful conviction statute. William Most, Mummi Ibrahim, and Loevy & Loevy are attorneys on the first two lawsuits. Kristin Wenstrom at the Innocence Project New Orleans is representing Mr. Ford on the third lawsuit.

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*The Slow Demise of the Death Penalty in the Commonwealth Caribbean*

<sup>1</sup> An earlier version of this article was presented at a conference hosted by the United Nations High Commissioner for Human Rights in New York on 3rd July 2012.

<sup>2</sup> The Commonwealth Caribbean comprises mainly former colonies of the United Kingdom and stretches along the island chain from the Bahamas in the north to Trinidad and Tobago in the south and includes Belize and Guyana on the Central and South American continent. The following countries are included: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago. These countries share a common law, legal tradition and until recently all had the Judicial Committee of the Privy Council as their highest court of appeal, with the exception of Guyana, which abolished appeals to the Privy Council in 1970. More recently, Barbados and Belize have joined Guyana in abolishing appeals to the Privy Council and these three countries have established the Caribbean Court of Justice as their final appellate court.

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<sup>9</sup> Guerra v Baptiste [1996] A.C. 397.

<sup>10</sup> Reyes v R [2002] 2 A.C. 235; R v Hughes [2002] 2 A.C. 259; Fox v R [2002] 2 A.C. 284; Watson v R [2005] 1 A.C. 472.

<sup>11</sup> In *Matthew v State of Trinidad and Tobago* [2005] 1 AC 433, the Privy Council held that the mandatory death penalty was inconsistent with the right not to be subjected to a cruel and unusual punishment but could not be invalidated because the mandatory death penalty was a law which existed when the Constitution came into force and was saved from invalidation by a clause in the Constitution to that effect. On the other hand, in *Nimrod Miguel v State of Trinidad and Tobago* [2011] UKPC 14, the Privy Council held that the mandatory penalty, imposed on a person convicted under the felony-murder rule (which applies when a killing occurs in the course of the commission of another crime), was not saved from invalidation because the felony-murder rule was re-imposed after the constitution came into force and was accordingly not an existing law.

<sup>12</sup> See *Pipersburgh & Anor v The Queen* [2008] UKPC 11; *Trimmingham v R* [2009] UKPC 25; *Earlin White v The Queen* [2010] UKPC 22; *Maxo Tido v The Queen* [2011] UKPC 16; *Ernest Lockhart v The Queen* [2011] UKPC 33.

<sup>13</sup> PETER DOUGAL v R (CRIMINAL APPEAL NO 135/2007, Court of Appeal of Jamaica, 1 April 2011).

<sup>14</sup> *Cannonier v DPP* (HCRAP 2008/002, Eastern Caribbean Court of Appeal, 21 March 2012).

<sup>15</sup> *Trimmingham v R* [2009] UKPC 25.

<sup>16</sup> *Ibid.*, paragraph 23.

<sup>17</sup> Professor Roger Hood and Dr. Florence Seemungal – Public Opinion on the Mandatory Death Penalty in Trinidad; A Report to the Death Penalty Project and the Rights Advocacy Project of the University of the West Indies Faculty of Law.

<sup>18</sup> *Ibid.*

<sup>19</sup> See Natalia Schiffrin – Jamaica Withdraws the Rights of Individual Petition under the International Covenant on Civil and Political Rights (1998) 29 A.J.I.L. 563.

<sup>20</sup> See *Kennedy v Trinidad and Tobago* Communication No. 845/1999, U.N. GAOR, Hum. Rts. Comm., 55th Sess., Supp. No. 40 Vol. 2, at 266, U.N. Doc. A/55/50 (1999).

<sup>21</sup> See Laurence R. Helfer – Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes (2002) 102 Colum. L. Rev. 1832.

<sup>22</sup> Natasha Parassram Concepcion, “The Legal Implications of Trinidad and Tobago’s Withdrawal From the American Convention on Human Rights”, (2001) 16 Am. U. Int’l Rev. 847.

### *Outsourcing Jihadists and Putin’s Foreign Policy*

<sup>1</sup> Bill Roggio, “Chechen commander leads Mujhreen Brigade in Syria,” Longwarjournal.org, February 20, 2013; “V Sirii voiuut do tysiachi chechenskikh boevikov,” Novyi Region, September 21, 2013.

<sup>2</sup> “Dagestantsa, ezdivshigo v Siriiu’ na mogilu k synu’ zaderzhali za uchastie v voine protiv Asada,” NEWSru.com, July 26, 2013.

<sup>3</sup> “Veroiatnyi naemnik iz Dagestana ob’ i asnil poezdku v Siriiu popytkoi naiti syna,” Vzgliad, July 26, 2013.

<sup>4</sup> “Zakaev opiat’ lzhet. S kakoi tsel’iu? ‘Spetsukha’ ot FSB v ispolnenii ‘Komersanta,’” Kavkaz Center, July 26, 2013.

<sup>5</sup> Bulat Bashirov and Natal’ia Pavlova “Ufmskim boevikam nashli partiiu. V Bashkirii, kak okazalos’, oruduet ‘Islamskaia partiia Turkestana,’” Kommersant, May 22, 2013.

<sup>6</sup> “V Sirii poiavilas’ ‘rossiiskaia’ derevnia. Islamisty s Sevenogo Kavkaza zakhvatili chast’ chuzhoi strany, ‘Mk,’” Central Asia.ru, October 2, 2013.

<sup>7</sup> “FSB: boeviki, inostrannye spetssluzhby i NKD[??]-potentsial’naia ugroza,” May 30, 2013.

<sup>8</sup> “Glava FSB: v Sirii okolo 200 rossiiskikh boevikov voiuut pod flagom ‘Al’-Kaidy,” NEWSru.com, June 6, 2013.

<sup>9</sup> “Ministr inostrannykh del Ichkerii: V Sirii voiuut bolee 100 chechentsev, zaverbovannykh vakhkhabitami,” NEWSru.co, July 26, 2013.

<sup>10</sup> “Zakaev opiat lzhet.”

<sup>11</sup> “Pod Moskvoi ubili podozrevaemykh v podgotovke terakta,” bbc.co.uk, May 13, 2013.

<sup>12</sup> “Russians study Islamic video threatening Olympics,” <http://www.wusag.com/story>, January 20, 2014.

<sup>13</sup> “Salman Bulgarskii: Moe mnenie o prisooedinenii Dzhabkhat an-Nusra k Al’-Kaide,” Kavkaz Center, April 23, 2013.

<sup>14</sup> Vladimir Mukhin “Siriiskii platsdarm severokavkazskikh boevikov,” www.ng.ru. September 9, 2013.

<sup>15</sup> “Kavkazskie modzhakhedy v Sirii ishchut dostup k khimicheskomu oruzhiu dlia megateraktov v Moskve: Ridus, June 5, 2013.

<sup>16</sup> Uchenye-iadershchiki namekaiut modzhakhedinam IK, chto vo vremia olimpiady ne obiazatel’no atakovat imenno Sochi,” Kavkaz Center.com January 29, 2014.

<sup>17</sup> Zaderzhannym za podgotovku terakta na kirovskom poligone khimoruzhiiia prediavleny obvineniia,” Rosbalt, October 15, 2013; “Vakhkhability v Kirove pytalis’ ubit’ sotzi ludei iadovitym varyvom,” NTV.ru, October 15, 2013.

<sup>18</sup> “Terrorizm ne proidet?,” KZN Kazan, November 25, 2013.

<sup>19</sup> V Tatarstane khimicheskii zavod podvergsia raketnoi atake? Prokazan.ru, December 2, 2013.

<sup>20</sup> Ekaterina Malinina, “V Astrakhani zaderzhali sem’ teroristov,” Volgograd.kp.ru, May 6, 2013.

<sup>21</sup> “Na sammite ODKB v Bishkeke prezidenty dogovarilis’ prolozhit’ novuiu transportnuiu magistral’ po Srednei Azii i obsudili problemy Afganistana,” Izvestia.ru, May 29, 2013.

#### *Weakening Realism: Balancing Competition With Trade*

<sup>1</sup> Another version of Stag Hunt assumes that both players are indifferent between competing when the other competes and competing when the other cooperates. However, such version would seem an inadequate representation of international relations, since, in the context of the latter, the cost incurred from another state’s competition must add to the cost incurred from unilateral military investments.

<sup>2</sup> Logically, a player who favors trade but is not greedy, when faced with an avoidant counterpart, should prefer avoidance to any other interaction. In addition, we can assume for the sake of simplicity that such a player would be indifferent between the payoffs of all alternative types of such interactions—meaning that the cost of converting or using resources for trade (investing in a certain type of expertise or infrastructure, for example) would, on average, be equal to the cost of converting or using resources for military capabilities.

<sup>3</sup> A state competing when another competes will incur not only the loss of resources from the cost of using military capabilities but also the loss of resources from the damage due to the other’s attack.

<sup>4</sup> The alternative would be to assume that the security that states care about comes down to the preservation of other state features—for example, the preservation of territory—even in the rare but not inconceivable case when threats to such features might actually improve the material welfare of state populations. However, such an assumption would make our concept of security much less distinguishable from what we would traditionally describe as an “ideological” interest.

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<sup>2</sup> *Encyclopedia of US National Security*, (Sage Publications 2008). P. 446

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<sup>5</sup> "Roads to Somewhere," *Economist*, Vol. 379, Issue 8483, June 24, 2006

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<sup>1</sup> Gause, F. Gregory. *The International Relations of the Persian Gulf*. New York City: Cambridge University Press, 2010.

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<sup>3</sup> Usage of the words Shi'i and Shi'a in this paper follow their correct function in Arabic. Shi'i is the adjective and Shi'a is the collective group.

<sup>4</sup> Sadr and his Jaysh al-Mahdi caused major problems for the US occupying force in the mid-2000s, often engaging with US forces. Sadr and his party (and corresponding militia) eventually fell out of favor with Iraqi Shi'as, and he went into self-exile in Iran. The Islamic Republic's support of Sadr has often been presented as evidence of Iran's desire to destabilize Iraqi society and damage the US's position in the region. For more see Patrick Cockburn's 2008 book *Muqtada*.

<sup>5</sup> Dodge, *From War to Authoritarianism*, 186

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<sup>13</sup> VICE NEWS, “The Battle for Iraq”

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<sup>17</sup> International, Amnesty. “Absolute Impunity: Militia Rule in Iraq.” NGO, 2014.

<sup>18</sup> VICE NEWS, “The Battle for Iraq”

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