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EDITORIAL NOTE

Dear Readers,

It is a great pleasure to introduce the latest edition of The International Public Policy Review. The peer-reviewed journal applies theories and concepts from the social sciences to pressing political, economic and social issues and takes a critical look at the ongoing process of public policy creation. As such, the journal aims to be stimulating, topical and engaging.

Whilst other journals serve a specific aspect of policy, the work showcased here cuts across the disciplines and captures the wide range of expertise housed within UCL’s School of Public Policy. Specifically, the articles cover topics such as the environment, political discourse, human rights, regulation and development. Although most of the articles provide a narrow framing of the issue they seek to address, the composite nature of the journal invites the reader to bridge these disciplinary silos and encourages them to explore areas that lie beyond their immediate sphere of specialisation. Whether at the domestic, regional or global level, policy issues are increasingly interconnected and demand an ever more extensive and varied remedial toolkit, in both a theoretical and practical sense.

With this in mind, our aim was to design a journal in which the articles were both accessible enough for the uninitiated and sophisticated enough to gratify the specialists. In making this vision a reality we are hugely indebted to our editorial team of peer reviewers for giving up their time and sharing their varied expertise. They come from a diverse mix of academic and working backgrounds, as well as countries spanning four continents. Their comprehensive feedback and insights have been indispensable in ensuring both analytic rigour and accuracy across topics and contexts. We would also like to extend an extra special thanks to Alex and Sarah for their continued support throughout the year, and to Ferdinand, whose capable hands and creative eye were fundamental to the production of this journal. Lastly, a sincere thank you to all of the authors who have contributed and worked with IPPR throughout the year.

For many of us, it has been difficult to find perspective amidst the mass of head-spinning news stories this past twelve months. Whilst the politics of the world shift and sway and confidence in our leaders oscillates, academic institutions have a heightened responsibility to step up. The journal attempts to aid in this pursuit by giving a voice to the postgraduate community at UCL and the broader University of London, its academics, as well as practitioners and policy-makers within the field. By extension, we hope that the journal is able to make a contribution (however modest) to the ongoing public policy debate and to the development of innovative ways of thinking about the challenges we face today, tomorrow and in the distant future.

Sincerely,

Joshua Warland and Marike Woollard
Head of Editorial & Deputy Head of Editorial
International Public Policy Review 2015/16

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DISCLAIMER
The views expressed in the journal are not a reflection of the view of the UCL School of Public Policy
Yes, political science is, as ever, essential to our understanding of these situations, our political representatives, our public, our neighbours and those in opposition to us. Yet, if studying this year has taught me anything, it’s that politics is determined by those who get involved. The value of political science is in its application. Politics is not just about politicians and international organisations, it’s about those that put their hand up, write handouts, knock on doors, shout, organise, negotiate and rally. Those that launch flotillas down the Thames or put posters up in the local post shop. Those that ask questions, dig for answers and spread their knowledge. These are the people that make or break elections, referendums and potential policies.

Most of the political science questions I have studied this year can be boiled down to a simple question: what is effective? Political science analyses and theorises about the effectiveness of policies, programs and political strategies. Its influence lies in how it is applied and its impact on global politics, what can happen when people take action (separatist movements in China, political mobilisation in Israel-Palestine) and gives suggestions for what we should do in other situations (EU vehicle emissions regulations, solar-photovoltaics in Mali and health policy in Vietnam). We also take a different perspective, with a photo essay of migrant workers in South Africa.

IPPR’s motto this year was to be engaging, educational and enjoyable. We channelled that motto through a wide spread of events including a workshop on how citizens can help the achievement of the Sustainable Development Goals, a participatory conference to develop policy ideas for corporate responsibility in labour and investment, a film screening about female photojournalists in Afghanistan and an event series, Policy in the Pub, that invited speakers to have a more casual discussion with students in an intimate setting. Our focus was student participation; encouraging discussion, questions and contributions. On this front, I hope we have had some impact.

None of these events, nor this journal would have been possible without the fantastic work and dedication of the leadership team; Josh, Marike, Allison, Beth and Jamie. Thank you all very much for your assistance and contribution to IPPR.

I hope you are engaged and educated by this year’s journal and enjoy reading it as much as we did putting it together.

Yours sincerely,

Alexandra Heaven
President
International Public Policy Review 2015/16

This year’s journal showcases how people are impacted and impact global politics, what can happen when people take action (separatist movements in China, political mobilisation in Israel-Palestine) and gives suggestions for what we should do in other situations (EU vehicle emissions regulations, solar-photovoltaics in Mali and health policy in Vietnam). We also take a different perspective, with a photo essay of migrant workers in South Africa.

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Have you ever had to apologise to your partner, or a friend, but at the time been entirely unaware what for? You know that some aspect of your recent behaviour has put you in the doghouse, and often the context of your indulgence or obnoxiousness makes even you suspicious of your own guilt - but you can't quite nail down your precise transgression. It's a tricky business, feeling your way through an apology for generally being X, whilst trying to imply it's for specifically doing Y.

To a great extent, people cannot be blamed for being who they are, even if it irks us. I cannot be held responsible for habits and feelings I possess which are beyond my decisive, short-term power to change, like snorting when I laugh or being terrified of dogs. Some such things, like picking my nose or forgetting to switch off the lights, are at least within my longer-term power to affect, and therefore are my responsibility - though a kind soul might afford me their patience whilst I condition my behaviour.

In this sense, personal relationships are learning processes, and we invariably learn on the job. Potholes are unavoidable. But as we iron out processes, and we invariably learn on the job. In this sense, personal relationships are learning processes, and we invariably learn on the job.

So with the imagery of politicians putting the screaming public to bed fresh in mind, why is this to some - maybe many - a nostalgic, if not desirable notion? Are we that fatigued by the modern pantomime of celebrity politics, adding: "just get the thing done and let them howl" (Kingwell, 2015). People put their screaming kids to bed in softer terms.

But all this other stuff is good! And there's way more of it, so let's keep going. What's more, I now understand why event X is bad, and I can use that knowledge in future to prevent X from recurring."

In an era of public life that was less... public, it is a scholastically well-trodden fact that apologies were like parties - necessary social functions, but invitation-only and the precise contents best kept private. The prevailing ethos, often epitomised with the phrase "never apologise, never explain" (an attitude to moral surrender which I feel has an almost Churchillian vibe) is attributed to many, but maybe best to feminist author, politician and activist Nellie McClung, who nailed the point to the floor by adding: "just get the thing done and let them howl" (Kingwell, 2015). People put their screaming kids to bed in softer terms.

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What does this apology "do" in light of the preceding discussion? What fault is acknowledged, and how does it seek to repair? Or is this more about building walls, than bridges? (Deutschmann, 2003) identifies four criteria by which we might judge an apology. The first, using a "formulic or routinized expression of apology" is obvious in the above quote to anyone who have ever been given backchat by a Tesco self-checkout, or Siri, when she's feeling sassy.

On the second, that the speaker admits a transgression has occurred, Letwin maybe scores half marks. He categorically admits that his words were "wrong", though it is maybe less clear whether he means he was morally wrong, factually wrong, or simply wrong to let them leave his head. The care taken to emphasise that they were "badly worded", "30 years ago" and only in "some parts" is, we might resign ourselves to admit, just the mitigating spin that characterises most modern political discourse.

The third, that the speaker identifies the offended party, is maybe more difficult to do in the sense that to so many of us these opinions fall well short of the standards expected of a government minister, but the community he chose to deride are surely deserving of at least a mention.

The final, and maybe the hardest and most cathartic component, is that the speaker "acknowledge[s] full responsibility and guilt for the transgression". At the height of generosity, this is maybe implied. A transgression is ambiguously acknowledged, and having admitted that "[he] wrote" that which was "wrong", the dots are not difficult to join. But the fact that he stops short of directly connecting the transgression to his own agency, is the hallmark of a carefully tailored 'non-apology'. As a final evasion, he "apologises unreservedly" for "any offence these comments have caused", rather than the transgression itself. The 'I'm sorry you're upset, not that I did it' apology, addresses the outcome, not the act, and does so in terms of regret, not guilt.

Public apologies, manufactured in this manner, miss the reconstructive point of saying sorry. Apologies are not meant to be get-out-of-jail-free cards, instead they're an opportunity to ask: "How did I get in this cell? And what are the bars made...
of?” Dov Seidman, entrepreneur and author who advises corporations on values and leadership, argues that in this sense, they exist not “to get us out of something” but “to get us into something” (Anon., 2014). That this logic is so frequently reversed, surely speaks to the fact that one of our vital empathetic devices is being routinely misused and cheapened.

It is helpful to think about this practice as “routine”, because it invites us think to the problem as a reciprocal interaction, in which we are too often guilty of simply going through the motions – relying on muscle memory when in fact we have a precious degree of control.

Letwin’s offending commentary was made during a Cabinet meeting with regard to the 1985 Broadwater Farm riots, instigated by the killing of a black woman by police during a search of her home. During the meeting, Letwin dismissed the then Employment Secretary’s proposals for the creation of “a new group of black middle-class entrepreneurs”, in the following terms: “The root of social malaise is not poor housing, or youth ‘alienation’; or the lack of a middle class. Lower-class, unemployed white people lived for years in appalling slums without a breakdown of public order on anything like the present scale ... Riots, criminality and social disintegration are caused solely by individual characters and attitudes. So what middle ground are we bargaining for?

So what middle ground are we bargaining for?

‘Confession is a dichotomous choice – maintain innocence and forego forgiveness, or admit your guilt and we’ll think about it. It’s not a fish market haggle’

‘The introspective search for this link, will sometimes produce an explanation of guilt unbeknownst even to offended – we don’t always fully understand why we’re upset, though we know that we are’

But an authentic apology, one that is lexically and semantically attached to the actual transgression, would actually be distilled thus: “I’m sorry that I served as a senior government minister, whilst harbouring racist beliefs, and expressed them openly in the Cabinet, with intent to influence government policy over a racially sensitive issue. Specifically, I’m sorry that I did so, whilst my beliefs were unbeknownst to the public, whom I represent.”

An apology as frank as this one is of course, unlikely to be forthcoming. But I fail to see why we should settle for less when nothing concrete is actually gained. Confession is a dichotomous choice – maintain innocence and forego forgiveness, or admit your guilt and we’ll think about it. It’s not a fish market haggle.

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So what middle ground are we bargaining for?

It’s far from obvious how we might explicitly raise this bar, let alone what it would realistically achieve. But as a starting point, it may be instructive to return to the generalised apology, supposed earlier, which consists in two parts, the understanding of fault, and the promise of improvement: “Look, event X is bad, it’s my fault, and it wouldn’t have happened if we weren’t associated. So we could avoid it by parting ways. But all this other stuff is good! And there’s way more of it, so let’s keep going.”

On this first part, when asked to give an example of a great apology by a high-profile figure, Seidman suggested Netflix’s CEO in 2011: “I think Reed Hastings really got it right, you know, when Netflix raised prices. Eight hundred thousand-or-so subscribers were irate and they collectively bolted and left Netflix in 48 hours. And I think the first thing Reed did is he went on an inward journey. And he then has since said that we discovered that we became more arrogant. And it was about a reclaiming a humility ... This is the CEO in public. The apology started with a complete vulnerable revelation: that price increase was because we could and not because we should. And they’ve since been winning Emmys. And I really think that they’ve been more authentic and more open, more in a two-way dialogue with their subscribers since that existential crisis” (Anon., 2014)

Good apologies admit fault. Great ones, as above, explain fault. Culpability can often be established by simply confirming a correlation between the action (price hike) and the outcome (short-changed customers). But as good social scientists will tell, claims – apologetic or academic – get much weightier if you can provide causation, an explanatory link between the two (“we became arrogant”; could, not should). The introspective search for this link, will sometimes produce an explanation of guilt unbeknownst even to offended – we don’t always fully understand why we’re upset, though we know that we are. And if the accused, can demonstrate understanding, they have a robust foundation for the second part – promising to improve: “What’s more, I now understand why event X is bad, and I can use that knowledge in future to prevent X from recurring.”

Recognising Letwin’s non-apology, Labour’s Kerry McCarthy suggested: “What I’d like to see him do is to sit down with people - say people like [Trevor Phillips, Chair of the Equality and Human Rights Commission] - and actually explain openly what his thinking was and if his thinking has changed he needs to make that very clear ... If it hasn’t changed, then clearly I don’t think he should be in charge of government policy” (Daily Mirror, 2015)

A slender prospect in the present case to be sure, ministers are often averse to sitting down with anyone, including each other. But appropriate standards of practice are not flipped on like switches, they are gradually bent into shape, and the seedlings of this process are perhaps almost visible.
That the very notion of an “non-apology” – a charge levelled at Letwin in this case by the New Statesman, Guardian, and McCarthy – has entered our public discourse surely speaks to a collective attempt to weed out the worst offenders. Self-styled apology ombudsman, SorryWatch, is a refreshing novel project that exists to “regrettably point out the signs of defective, weaselly, and poisoned apologies” in public life, and in the spirit of apologetic reciprocity, honour the good ones too (SorryWatch, 2016).

At the beginning of this article, I argued that people can legitimately apologise for things which they’ve done, but not for things that they are. Thoughtless appeals to the theatre of apology may rightly put a spotlight on the accused, but the tragically unrecognised trade-off is that it predicates the ensuing debate around a supposed error of judgement, rather than an error of character. Oliver Letwin did not forget to put the bins out. His fault was of not of memory, rashness, or effort, all things that he could reasonably promise to improve upon next time. In fact, his fault was not a fault at all, in sense of a temporarily discrete action, but a personal flaw – something of which we are all guilty, but in this case calls the legitimacy of his position into question.

And in allowing the accused to frame the issue otherwise, we offer them a discursive escape rope in exchange for a forgettable pocket change of political points, and forfeit the opportunity to demand a higher quality of public officialdom.

**SOURCES**


Negotiating Roles

A place for courts in the question of economic, social and cultural rights realisation

ANIKA FUNK

While economic, social and cultural (ESC) rights as identified in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) are often understood as falling within the decision-making domain of the executive and legislative branches to progressively realise, I will argue in this article that judicial enforcement is compatible with this approach and can in fact play a key complementary role in achieving such realisation. Courts can successfully draw attention to when a government’s current path to progressive realisation ought to be rethought by expanding its breadth of knowledge regarding public opinion on a perceived misallocation of resources towards realising an ESC right. Progressive realisation throughout this article refers to the view that as ESC rights are seen to require positive obligations on the part of states and a consequent, often large, expenditure of limited resources, they are to be viewed as a programmatic goal for governments to achieve instead of as an immediate obligation to fulfill (ICESCR, 1990).

In examining the complementary necessity of courts, Section I will note the importance of the government as the ultimate decision-making body in the allocation of limited resources, while outlining its limitations in determining when these allocation decisions need to be rethought. Section II will turn to the potential rebuttal that administrative remedies or NGO action without a judicial enforcement system. Finally, the appropriate role of courts as a complementary body in the progressive realisation of ESC rights will be discussed, focusing on their ability to facilitate communication of changes in the population’s allocation preferences over time. Despite the alleged indivisibility and interdependency between economic, social and cultural (ESC) rights and civil and political rights, ESC rights continue to be treated largely as targets to be progressively realised through programmatic frameworks within the domain of the legislative and executive branches (Alston and Goodman, 2013, p. 277 and 331). This is a result of the contested issue of resource availability and allocation they raise, as they typically require a greater allocation of resources than civil and political rights (Alston and Goodman, 2013, p. 316). The government is thus often looked to as the only body with the competent oversight and control to make decisions on how to allocate such limited resources through its fiscal policy (Alston and Goodman, 2013, p. 326). However, although a government may have the greatest capability to oversee the amount of available resources a country has at a given time, its allocation decisions can end up far removed from the actual ESC needs of a population. Sumner’s 2007 report on global poverty demonstrated the prevalence of this disconnect, showing that 75% of the world’s poor lived in middle-income, not low-income countries (Alston and Goodman, 2013, p. 319). This reflects the troubling issue that actual resource availability is not always the largest issue faced by a government, but instead it is the inability to rethink current resource allocation policies. This is often a result of a lack of what Weiner calls ‘fundamental rethinking’ within the legislative or executive branches, required to change policies, and this is particularly true of policies surrounding allocation decisions for ESC rights (Weiner, 2013, p. 318-9). Due to this prevalent deadlock, a catalyst is often required for changes in current policy regarding resource allocation towards ESC rights.

The shortcoming of governments to rethink current resource allocation decisions on their own has successfully been overcome in a number of cases as a result of decisions by the judicial branch triggering first, public response and second, political activism. This effect is best illustrated in cases from Colombia, South Africa and Indonesia involving the right to health. In each of these countries, constitutions explicitly outlining the protection of ESC rights, including the right to health, are already in place to achieve progressive realisation, however, a fundamental rethinking of resource allocation to work towards this has been necessary (Young and Lemaitre, 2013, p. 184 and 198; Susanti, 2008, p. 233). The first way it is possible to determine a significant reallocation need is through public response to a court’s decision on a particular ESC right. A striking instance of this took place following the T-760 judgment by the Constitutional Court of Colombia regarding the right to health care. Following years of widespread court action surrounding this right (tutela action) and a failure of any systemic government movement to address it, the Constitutional Court issued the T-760 decision in 2008 stating that the Colombian government needed to reform its health care policy (Yamin and Parra-Vera, 2010, p. 436; Young and Lemaitre, 2013, p. 185 and 192). It is important to note here that the Constitutional Court did not suggest it had superior knowledge to decide how this reform was to be carried out, but instead sought public dialogue surrounding the right to health to aid the government in its own determination on reformation (Yamin and Parra-Vera, 2010, p. 448). However, while this initial judgment did not spark mass public dialogue as intended, the government’s response in issuing decrees that served to limit this right instead of reform it as the Court had suggested did spark mass protests in Colombia (Yamin and Parra-Vera, p. 452-3). This reaction sent a clear message to the government: not only were a few individuals who brought tutela action forward dissatisfied, but the larger public was not pleased with the government’s current resource allocation towards health care and the current path to progressive realisation had taken an unacceptable detour.

'This reaction sent a clear message to the government: not only were a few individuals who brought tutela action forward dissatisfied, but the larger public was not pleased with the government’s current resource allocation towards health care and the current path to progressive realisation had taken an unacceptable detour'

The second, political activism, is a catalyst to rethink current policy in addressing the need to reallocate limited resources according to public demands triggered by the Court’s actions. Law 1438 came into effect, focusing on areas that were of concern including free healthcare for children and unification of contributory and subsidised plans previously separated (Young and Lemaitre, 2013, p. 195). Colombia, with its expansive view of interpreting ESC rights, has not been alone in witnessing this impact of the courts, as the famous Treatment Action Campaign v. Minister of Health case in the more
restrictive interpretations of the Constitutional Court of South Africa reveals. The Treatment Action Campaign (TAC) case sparked public mobilisation including marches and protests across South Africa to show the government the unsatisfactory nature of the current allocation of the drug Nevirapine to reduce the risk of mother-to-child HIV transmission (Young and Lemaitre, 2013, p. 204). As noted in the case, determinations of reasonableness by the Constitutional Court may have budgetary implications, but the Court’s judgment was not directed at rearranging budgets, thus leaving this control for decision-making in the hands of the government (TAC v. Minister of Health, 2002, para. 38). Therefore while this case did provide explicit orders for the South African government to reallocate its resources, the Court noted that the orders did allow the government to adapt its policy in its own respect consistent with the Constitution if it was equally appropriate (TAC v. Minister of Health, 2002, para. 135). The importance of the Court here was not necessarily in telling the South African government exactly how to modify its resource allocation, but that its current allocation was not suitable. The court’s orders can be seen as providing potential reallocation strategies and could be at a minimum used by the government in its ultimate decision on programmatic frameworks for ESC rights. In the cases of both Colombia and South Africa, while the courts did put forward reallocation orders, it was ultimately in the hands of the government to balance these suggestions based on public desire and expert opinion, with their own knowledge gathering and budgetary constraints.

The second means courts possess to provide the government with information on the need for reallocation decisions comes in the form of the political action their decisions trigger. This has been demonstrated in the case of Indonesian courts, as despite their limited number of ESC rights cases and the alleged corruption of the country’s judiciary, several of the few cases brought forward have still provided a necessary service to the government’s progressive realisation of ESC rights (Susanti, 2008, p. 224). Notably, the case 53 Indonesian citizens acting for all Indonesian citizens v. the Republic of Indonesia Government addressed the lack of healthcare assistance to Indonesian migrants in Nunukan who were deported from Malaysia (Gauri and Brinks, 2008, p. 32). In contrast to the Colombian T-760 and TAC v. South Africa decisions above, the court refused to step beyond its own judiciary powers by not forcing enactment of legislation to protect migrant workers although it did demand a significant outlay of funds dedicated to health issues in the area (Gauri and Brinks, 2008, p. 32). Instead the high-profile nature of the case served to contribute to policy advocacy by NGOs and revealed strong public opinion on this issue, which led to the enactment of Law No. 39 two years after the case regarding Protection of Migrant Workers (Susanti, 2008, p. 250-252). Thus the court ruling proved necessary to trigger political action by the public and NGOs that informed the government of its current resource allocation issue: in this case towards rights specific to migrants, not necessarily healthcare in general. This case provides an important example of how courts can assist governments to realize which rights should be prioritised at a given time based on limited resources, as in this case where the overall right to health was not made the priority based on the focus of political action.

While many justiciability skeptics may nod their heads in approval at the incompetency I afford the government for determining exact resource allocation amounts, they may likely question the necessity of a costly and timely judicial process if its value is merely to trigger knowledge of the need for reallocation. At the heart of this lies the question whether awareness of public sentiment could not come about from either administrative processes or political activism without judicial involvement. General Comment No. 9 of the Committee on Economic, Social and Cultural Rights (CESCR) suggests one such alternative to courts in the form of administrative remedies, provided these are accessible, affordable, timely and effective (CESCR, 1998, para. 9). If these administrative methods give individuals opportunities to seek redress and the government opportunities to respond, would they not provide the same public reaction if an inadequate government response was given? Alternatively, would NGO involvement not arise from an issue of perceived misallocation of resources towards ESC rights, regardless of judicial ruling on the matter?

While the aforementioned alternatives to a court system may appear promising, initiation of public response and political activism often requires there to be a significant perceived injustice at stake regarding resource misallocation to support ESC rights. Administrative remedies can often seem more advantageous to individuals seeking redress than judicial remedies, as is the case in Indonesia where the use of administrative institutions called musyawarah are far more prevalent than court cases (Susanti, 2008, p. 225). However, administrative remedies typically provide relief on the basis of individual cases and do not point to patterns of injustices present throughout these cases. In Indonesia, the common pattern is for administrative remedies to provide an individual with his or her compensation and the individual then carries on without raising any public reaction, even if others experience this same injustice due to misallocation (Susanti, 2008, p. 223). In contrast, cases taken through the court system, while they are notably fewer, tend to spark greater public awareness and political activism that informs or pressures the government to rethink its policy decisions (Susanti, 2008, p. 253). Similar is the case of the accumulated right to health tutela action in Colombia amounting in decision T-760 and the public outcry at the government’s response not to reallocate resources (Young and Lemaitre, 2013; Yamin and Parra-Vera, 2010). Without the significant perceived injustice of the government not responding to the Court’s decision, public awareness and activism may not have forced the government to adjust its policy with respect to health care resource allocation. Both Indonesia and Colombia exemplify Gauri and Brinks argument that, without follow up, individual decisions often remain isolated occurrences with limited impact, either direct or indirect (Gauri and Brinks, 2008, p. 20). While this may provide justification for not turning to administrative remedies that focus on individual redress instead of overall questions of the need for policy changes, the previously mentioned skeptic’s counter-solution of NGOs filling an awareness-raising role remains. However, as Kenneth Roth suggests in his work on the role of organizations like Human Rights Watch in helping realize ESC rights, their role in this realm is most effective in situations of significant injustice where shaming and public pressure are involved...
remedies or NGO action, courts often have compared to sole reliance on administrative case that aided in the awareness process. Thus high-profile injustice brought to light by the court place prior to the court decision, it was still the involvement of many of these organizations raise a public outcry, yet when it was brought to

Lemaitre, 2013, p. 204). While skeptics may argue action) and citizens (public reaction) (Young and activist for ESC rights, all of which I argue a judicial decision on ESC rights violations can provide (Roth, 2004, p. 67). A ruling by a court can place blame on a government (violation) and provide recommendations for the government to take to resolve this misallocation (remedy). Without the court to expose such large-scale injustices where the government is not fulfilling its role to reallocate resources, these NGOs may not enter the ESC rights realm as they see it as a matter of distributive justice and will have limited impact on helping the government realize when resource reallocation is necessary. This was evident in TAC v. Minister of Health, in which TAC’s actions alone without its court activism regarding perceived injustices in allocating resources to promote ESC rights.

Courts in any form play a key complementary role in that unlike constitutions they are not static, allowing for the public to not only share their opinions on current resource allocations for realizing ESC rights, but also provide a means for them to change their opinions over time and thus force the government to react to changing circumstances (Hunt, 1996, p. 25-26). Through offering either expansive (as in Colombia) or restrictive (as in South Africa) interpretations of ESC rights, courts can successfully bring changing public views to the surface and provide a vital accountability check for governments on progressively realizing ESC rights, while allowing the government to continue to have final decision-making authority on implementation measures. The above cases in Colombia, South Africa and Indonesia point to the idea that judicial decision-making on ESC rights issues, no matter its form, can provide a valuable source of knowledge for the government to make its final decisions on the reallocation of limited resources. 

If we take the view of ESC rights as those to be progressively realized due to often limited resources, the legislative and executive branches remain the appropriate powers to decide on the allocation of these resources given their comprehensive oversight into fiscal policy. However, as seen in the cases of Colombia, Indonesia and South Africa, courts act as an irreplaceable complementary force as they trigger public response and activism when the reallocation of resources to fulfill ESC rights may be necessary. These public sentiments, if not brought to the fore by courts, may go unnoticed by the government as administrative remedies do not often point to overall injustices in allocation and NGOs may be hesitant to involve themselves in ESC rights issues. Courts thus provide a unique service to the progressive realisation of ESC rights, as they are fluid and responsive to changing public sentiments. Instead of discounting the issues of budgetary constraints and limited resources faced by the government, the court can recognise these constraints but point to areas of ESC rights where resource reallocation should be at least considered by the government. If ESC rights are to be progressively realised by governments tied up by resource constraints and subject to changing public opinion, it appears courts may increasingly play a support role in helping the legislative and executive branches have a closer view to allocation needs.

As seen in the cases of Colombia, Indonesia and South Africa, courts act as an irreplaceable complementary force as they trigger public awareness and activism when the reallocation of resources to fulfill ESC rights may be necessary.

Sources


Conflicting Rights Claims and Limitations

A Defence of Proportionality Analysis

KATHRYN REID

When faced with human rights claims that conflict with either competing rights claims or what are considered legitimate grounds for limiting individuals’ human rights, the European Court of Human Rights employs a procedure known as ‘proportionality analysis.’ This means that on a case-by-case basis it considers measures that interfere with individual rights according to whether or not they are lawful, pursue a legitimate aim as defined by the provisions of the European Convention, are rationally connected to the aim they claim to pursue and represent the least restrictive means of achieving this aim. If these requirements are met, the Court engages in a ‘balancing’ of the interests involved, and reaches a verdict by assessing whether the interference with the individual right was proportionate to the anticipated benefits of the aim pursued. Critics of this process have claimed that it is excessively vulnerable to judicial discretion, and argued in favour of a more fixed policy for adjudicating such cases. Martti Koskenniemi, for example, contends that “rights conflicts cannot be resolved by reference to “rights”—only by reference to some policy that enables the determination of the relative power of the conflicting rights” (2010, p. 51).

In this essay, I will propose a defence of proportionality analysis against such critiques, and argue that it represents the best possible means of avoiding arbitrary or unnecessary deprivations of rights when rights conflicts occur. My argument focuses on proportionality review as an alternative to any fixed policy for dealing with rights conflicts, rather than on its wider implications for human rights activism. Using the term ‘arbitrary’ with reference to the decision to rights conflicts, I refer broadly to decisions too heavily reliant on individual opinions, or which fail to uphold individual rights without adequate reasoning or justification. For the purposes of clarity, my understanding of ‘proportionality review’ or ‘balancing’ is that presented by Alec Sweet and Jud Mathews in their assessment and defence of ‘proportionality balancing’ (2008, pp. 75-76). I use the terms ‘proportionality review,’ ‘balancing’ and ‘proportionality analysis’ interchangeably.

In what follows, I will first elaborate concerns expressed by writers like Koskenniemi about the alleged ‘emptiness’ of balancing, and proceed to argue that proportionality analysis succeeds in avoiding the fundamental weaknesses that any objective policy of the kind alluded to in the given statement would inevitably possess when faced with conflicts of rights. I will present an analysis of the proportionality review procedure, and of pertinent cases of the European Court of Human Rights (henceforth: the Court) in which it has been applied, and in doing so seek to demonstrate its crucial strengths as an approach to resolving rights conflicts. I then consider the objection to the potentially over-significant role allocated to the opinions of judges, and argue that sufficient checks exist on judicial autonomy to neutralise this risk. I conclude that, by producing nuanced judgments that take into account the extent and impact of interferences with rights, proportionality analysis offers the best possible defence against arbitrary judicial outcomes of rights conflicts which might lead to the unnecessary deprivation of rights.

The charge that the process of proportionality review is ‘empty’ is based fundamentally on a concern that it is not governed by any meaningful policy, and as such is vulnerable to subjective and arbitrary outcomes. Koskenniemi expresses concerns about the exaggerated role of the decision maker in proportionality review, and the feasibility of solving rights conflicts without the application of ‘some policy’ beyond an examination of the rights themselves (2010, pp. 50-51). He contends that proportionality review both lacks the means of producing objectively justifiable conclusions and risks stripping rights of their special protection, alleging that balancing allows considerations such as public interest and economic efficiency to regain significance as counterweights to rights, when rights were formerly conceived as limits on those very considerations (2010, p. 49). This reference to the conception of rights as paramount interests, often referred to as ‘rights as trumps,’ is one I will not consider in any detail for two reasons. First, in the context of an argument about the proper method of approaching conflicts between legitimate human rights claims, I consider this approach to fail prima facie given that it offers no solutions to situations with rights claims on both sides, and second I maintain that the ‘general interest’ considerations accepted in proportionality review, namely national security, public health etc, are legitimate because they are necessary conditions for the protection of other key human rights interests for the population as a whole.

Advocates of such a policy have suggested a categorisation of rights approach (Cassese, 2012, p. 139), or a hierarchy of rights, as implied by Koskenniemi in his referral to an ‘establishment of priorities’ with regard to rights (2010, p. 54). These critics essentially argue in favour of a clear system, establishing an objective value of rights relative to one another, for the purposes of adjudicating rights conflicts. I will argue that the rights hierarchy approach or any such objective policy would necessarily produce arbitrary outcomes, since it could never be tailored sufficiently to deal with all possible circumstantial variables and produce a just result in all cases. I shall then present my defence of proportionality review and its key strengths in dealing with complex conflicts of rights, focusing primarily on its potential for assessing the extent of interferences with rights, and of the impact of interference in each case, which involves a nuanced value judgment of which an objective policy could never feasibly be capable.

First, for the purposes of illuminating the relative strengths of the proportionality review procedure, I present my concerns about a hierarchy of rights, or a similarly rigid policy designed to make more clear and objective judgments on conflicting rights interests. My first objection is to the impracticality of defining the content of such a policy: writers such as Theodor Meron have expressed reservations about the value of a hierarchy of rights given the lack of consensus on what might constitute the most fundamental rights, or even on criteria for determining a category of rights deserving of superior protection (1986, p. 22). As such, the claim that some universal policy or system could provide an answer to rights conflicts is flawed on the basis that any suitable method of establishing such a system could not feasibly be agreed upon, and would thus inevitably involve subjective decisions by those charged with determining
policy. My second concern is with the inflexibility of a hierarchy or categorisation of rights. There is an immediate practical issue with such rigidity when dealing with conflicting rights interests: how is such a policy to adjudicate rights that hold the status on a hierarchy? For example, in the case of Osman v. UK (1998) the right to life under Article 2 and right to respect for private and family life under Article 8 of the European Convention on Human Rights (henceforth: the Convention) came into conflict with the right to liberty and security under Article 5, since in order to protect the Osman family from the threat allegedly posed by Paget-Lewis, the State would have had to detain him, or at least impose serious restrictions on his personal liberty, without conviction of any crime. One might reasonably imagine that a rights hierarchy would place both the right to life and the right to liberty and security among the most fundamental, protection-worthy rights; how then would it respond to such cases? It is not sufficient to ‘rank’ rights by their perceived importance, or to adopt any fixed policy that would be strictly applied based on limited empirical information such as the particular rights involved, or the number of applicants alleging violations, etc. It is necessary to engage in a more sensitive analysis of the interests at stake, the extent to which they have been interfered with, and the reasonableness, in light of accepted legitimate aims, of the measure that caused the interference.

Having examined the weaknesses of fixed policy in adjudicating rights conflicts, I will now offer an analysis of the proportionality review procedure, and continue my defence of this approach as neither ‘empty’ nor prone to arbitrary judicial decisions. The process, as set out by Sweet and Mathews (2008, pp. 75-76), put succinctly, requires that limitations on rights be lawful, justified by rational connection to one of a limited list of accepted legitimate aims, must represent the least restrictive means of achieving that aim and, providing that all of these tests are passed, that judges apply the principle of proportionality in weighing the extent of interference with the right(s) in question and the value of the measure that caused the interference.

The proportionality stage is subject to the most criticism; having identified legitimate claims on both sides of the conflict, determining the proportionality of the measure in relation to the right it restricts can seem a subjective and unpredictable exercise. However, I contend that this concern is unfounded. First, because of the strictness of the prior stages that scrutinise the necessity of a measure, ensuring that it has a rational connection to achieving its aim and creates only the minimum interference necessary to achieve that aim. In order to reach the proportionality stage, a measure must be shown to be both directed at and capable of achieving the legitimate aim in question; in Smith and Grady v UK (1999, § 99) the Court noted the lack of evidence that the policy in question was rationally connected to meeting the stated legitimate aim. Furthermore, the measure must represent the least restrictive means of achieving the aim: the Court will only accept a limitation as legitimate if it is convinced that no other measure could have achieved the same goal whilst interfering to a lesser extent with the right in question (see Öllinger, 2006, § 47-50). Thus, a measure will not even reach the final proportionality test unless its aim, relevance to that aim and extent of interference with rights is deemed absolutely legitimate and necessary.

Second, I argue that the demands of proportionality, which include careful consideration of the impact of interferences with rights on individual rightholders, are sufficiently rigorous to produce outcomes well-justified with regard to individual rights. I will refer to Eweida and Others (2013) to illustrate this point, focusing on the cases of the first two applicants, Ms Eweida and Ms Chaplin. I choose these cases because they demonstrate proportionality review in practice, and represent two cases where the same right was interfered with, namely not being permitted to wear a cross as a manifestation of their Christian faith at work, and judgments were made based on the ‘balance struck’ between the rights implicated on both sides (§ 91). In Ms Eweida’s case, the Court referred to the fact that she was offered and refused alternative employment at the same rate of pay, which was considered to “mitigate the extent of the interference suffered” (§ 93-94), and also took account of the fact that British Airways (BA) had since amended its policy to permit religious jewellery, suggesting that the original policy was not crucial to the company’s interest. It also considered that the cross was discreet and would not have a significant effect on her overall appearance, and noted the lack of evidence that such religious accessories would have any effect on BA’s brand image. This assessment of the extent to which interests were interfered with led to the conclusion that the impact on Ms Eweida’s ‘fundamental’ interest in manifesting her religious belief weighed more heavily than the potential impact that her wearing her cross might have had on BA’s image.

My argument is most amply illustrated by the fact that the second applicant, Ms Chaplin, despite complaining of precisely the same interference with her rights, received a different judgment: the interests of health and safety of elderly patients on the geriatric ward where she worked were considered to outweigh her right to manifest her faith by wearing the cross. Again, the precise facts of the case were considered, including that Ms Chaplin was offered the possibility of wearing a brooch instead of a necklace, which would allow her to manifest her faith without breaching health and safety regulations (§ 98). As such, the Court considered that her right was interfered with to a lesser extent because she was offered viable alternatives that would have permitted her to remain in her chosen position. Also, whilst in Ms Eweida’s case the Court found no evidence that the wearing of the cross would interfere with BA’s interest (and indeed the subsequent change of policy claimed that it would not), in Ms Chaplin’s case there was good reason to believe, on the Department of Health’s authority, that the wearing of necklaces posed a risk of injury to patients.

It was only through this consideration of the specific circumstances of each case that the Court could reach just, reasonable but different judgments on each: the conclusions of these two cases demonstrate a kind of nuanced value judgment which, I contend, could not be replicated by any fixed policy. However, I accept that some critics remain unconvinced of the value of balancing. Advocates of a rights hierarchy might claim an apparent ranking of the interests concerned in the cases of...
the first two applicants of Eweida. But to conclude from this case that manifesting one’s religion always weighs heavier than private company interest but is outweighed by health and safety interests would be an oversimplification of the matter. Had several BA employees protested against an interference with their right to manifest their religion by wearing a burqa, the court might reasonably have considered that to be a greater interference with BA’s interest, as it would change the individuals’ entire appearance rather than affecting it only minimally (Eweida, § 94). Equally, had the hospital where Ms Chaplin worked imposed a measure prohibiting all religious manifestations, including necklaces under uniform, brooches, turbans, hijabs, etc, also on the basis of patients’ health and safety, the court might have questioned such a policy as disproportionate and unreasonable, even considering the wide margin of appreciation afforded to domestic authorities in deciding such matters (Eweida, § 99). I maintain that the great value of proportionality analysis lies in its ability to take into account a wide variety of relevant circumstances with genuine impact on the rights interferences involved, and to make a value judgment about the relative extent of interference on both sides in light of these circumstances. Even a detailed hierarchy of rights could not produce such nuanced or reasonable judgments, and it is deeply impractical if not impossible to imagine any fixed policy that could account for every possible variable in every imaginable case.

Another problem commonly postulated is that of subjectivity and judicial activism; one of the primary concerns about balancing is that it turns judges, who lack democratic legitimacy, into lawmakers, allowing them too much individual influence over the outcome of cases (Tsakyrakis, 2009, p. 472). It is not an unreasonable contention that, once the proportionality stage is reached, the final judgment is essentially left to the discretion of the individual judge(s), which may allow their personal values to play a part in the decision.

My response to this concern incorporates both the perceived excessive concentration of power in judges’ hands, and the potentially subjective nature of their proportionality judgments. First, as I have demonstrated, the ability of the proportionality test to incorporate value judgments on interferences with rights, which require a degree of subjective consideration, is one of its assets. However, assuming that this still leads to some cases in which the balance is close, and could be decided either way depending on the values of the judges concerned, there are two defences in place in the system. The first of these is the doctrine of the margin of appreciation, used extensively by the Court (see Protocol No. 15 to the Convention). This doctrine exists precisely to serve as a check on proportionality where the balance is close: the Court freely accepts that in such cases a broad margin of appreciation is appropriate, and rather than risk making an arbitrary judgment one way or the other, it defers to the authority of the State’s domestic courts to decide their own affairs (see Leyla Şahin, 2005, § 116-122). Thus, the danger of decisions being based too heavily on the individual opinions of Court judges is avoided. The second defence in place against disproportionate power being placed in the hands of judges is the fact that cases decided by proportionality review create principles for analysis, but do not create directly applicable, hard-line precedents.

As I illustrated in my analysis of Eweida, the decision on a conflict of two particular rights in one case does not enforce that same decision in similar future cases; the judgment always depends on the specific circumstances, and the relative extent of the interferences with the interests in question in each case. Judges decide individual cases, but they do not create law by setting fixed precedents on how rights conflicts should be decided: as such, the role of judges as ‘lawmakers’ is strictly limited.

In conclusion, I have demonstrated that proportionality review, by virtue of its nature as a procedure of analysis rather than a fixed policy weakened by biased design or inflexible application, is not an empty concept but rather a powerful tool for producing just outcomes in cases of conflicting rights interests. I have argued that any ‘policy’ of the kind suggested by the statement would inevitably be a blunt instrument in dealing with the complexities of rights conflicts, and that the flexibility of proportionality review and its sensitivity to individual circumstances are its greatest assets. The delicate matter of adjudicating conflicts of rights necessitates case-by-case value judgments: the precise impact on individuals of a particular interference is impossible to measure by any objective scale, and it would be impossible to design a policy that could process all of the relevant variables in a given case with the same success. As such, proportionality review represents the best means of resolving rights conflicts in a manner that facilitates nuanced and fair outcomes in each individual case.

**SOURCES**


Eweida and Others v the United Kingdom, nos. 48420/10, 59842/10, 51671/10 and 36516/10, ECHR 2013.


Leyla Şahin v Turkey [GC], nos. 44774/98, ECHR 2005-XI.


Olkinger v Austria, no. 7800/01, ECHR 2006-IX.

Osman v the United Kingdom, no. 23452/94, ECHR 1998-VII.


Targeted Killings by Drones

The Clear Advantage of a Coordinated Interpretation of International Humanitarian Law and International Human Rights Law

Since the adoption of the first Geneva Convention in 1864, the nature of warfare has changed immensely, including the methods of warfare that are being used nowadays (ICRC, 2014, p. 3). Changes in the nature of armed conflict consist of inter alia the rise of the use of drones, the globalisation of the battle space and the increase in armed conflict against non-state actors. The focus of this article is on the use of drones in armed conflict for targeted killings. Drones, also known as ‘unmanned aerial vehicles’ (UAV), are here understood as armed drones. A drone strike has to fall within the context of an armed conflict in order for humanitarian law to apply. Therefore, when discussing drone strikes in this article, it will always be within this context. A targeted killing is understood to be an intentional, premeditated and deliberate use of lethal force by States or an organised armed group in armed conflict against a specific individual who is outside their custody. A targeted killing can be executed in times of peace or during armed conflict (Alston, 2010, p. 3), but in this article, is understood not to be aimed at a civilian.

In comparison to previous warfare, the technology behind drones offers minimal loss of life under cost-effective circumstances for the side that executes them (Dieri, 2012, p. 4). As the number of States and actors using drones in armed conflicts increases, international consensus on the use of drones under international law would be welcomed (Heyns et al., 2015, p. 10). The report of the Special Rapporteur for the Human Rights Council stated that international norms on the use of force should not be abandoned to suit the use of drones (Heyns, 2014, pp. 139-140). In this article I argue that when drones are used for targeted killings in armed conflict, international norms need not be abandoned, but a move towards a coordinated interpretation of humanitarian and human rights law is needed in order to protect the right to life, as protected internationally under Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR).

This article starts with an overview of the three main laws governing armed conflict and discusses how the right to life is protected under international humanitarian law (hereinafter IHL) and international human rights law (hereinafter IHRL). By invoking the Public Committee against Torture in Israel v. Government of Israel, Israeli Supreme Court (2006) case (hereinafter Pcati v. Israel) I argue that a coordinated interpretation of IHL and IHRL is necessary in order to protect the right to life. A coordinated interpretation can be defined as an interpretation of each law in light of the other in coming to a coherent rule (Droege, 2007, p. 337). I discuss a disadvantage of the coordinated interpretation which is that it allows for a growing role of courts in armed conflict. This is problematic as IHL is traditionally developed through treaty negotiations by States. Furthermore, it could affect the legal certainty of the applicable legal regime in armed conflict, which could weaken IHRL in peacetime. However, I argue that States can negotiate new treaties that adequately protect the right to life and that without judicial pressure States have little incentive to offer justice to those on the receiving end of the drone strikes. Finally, I conclude that the disadvantages of a coordinated interpretation do not outweigh the benefits, and due to the increasing use of drones for targeted killings, IHRL is crucial in protecting the right to life.

There are three main laws concerning the use of drones in armed conflict: jus ad bellum, IHL and IHRL. The jus ad bellum refers to the condition under which armed force or war is legitimate. It is prohibited under Article 2 (4) of the United Nations (UN) Charter to threaten or use inter-State force unless a State gives consent to the use of force on its territory by another State (Rodley & Cali, 2010, p. 215). Without consent, inter-state force is only possible when action is taken lawfully in self-defence (Article 51 of the UN Charter) or by an authorisation of action under Chapter VII by the Security Council (ICRC, 2014, pp. 8-9). In order to legitimately execute targeted killings by drones all legal requirements under all three legal regimes must be met (Heyns et al, 2015, p. 11).

Where jus ad bellum serves to protect State sovereignty, both IHL and IHRL focus on individual protection (Heyns et al., 2015, p. 36). IHL, also referred to as jus in bello, regulates armed force once a conflict has commenced (Griffin & Cali, 2010, p. 235). States started with negotiating treaties to regulate the law in wartime about a century before IHRL was codified (ICRC, 2014, p. 36). War is considered an exception with a limited duration and scope whereas peacetime is the norm that is guided by IHRL (Heyns et al., 2015, p. 10). In principle, IHRL applies in both peace and war time (Legal Consequences of the Construction of a Wall in the Occupied Territory, ICJ, 2004, para. 106). But IHL, given that it is considered the law that governs the specific matter (lex specialis derogate legi generali) (Droege, 2007, p. 338), which in this case is the displacement of IHRL by IHL. IHRL was not traditionally applied outside the territory and jurisdiction of the State, but more recently it has been (Droege, 2007, p. 325).
However, its extent needs to be determined. For the sake of argument, I consider IHRL to be applicable extraterritorially.

With regard to the right to life, IHL takes an approach of classifying and grouping persons as opposed to the more individual-sensitive approach adopted under IHRL. The principle of distinction in IHL states that combatants, civilians, military objectives and civilian objects must be distinguished at all times and attacks can only be directed against combatants and military objectives (Griffin & Calli, 2010, p. 246).

A combatant (Article 4 of the Third Geneva Convention) can always be targeted unless they surrendered, are rendered hors de combat (out of action) or in detention (Article 3 of the Third Geneva Convention). A civilian can never be targeted (Article 51 (2) of the Additional Protocol (AP) I to the Geneva Convention) unless and for such time as they are directly participating in hostilities (DPH) (Article 51 (3) of the AP I to the Geneva Conventions). There is no universal definition on what DPH exactly means but both the Israeli Supreme Court (Pcati v. Israel, 2006, para. 40) and the International Committee of the Red Cross (ICRC, 2014, p. 49) offer an interpretation of DPH under IHL. In sum, every person must receive dignified and humane treatment and IHL sets extensive rules on how particular groups need to be protected (Griffin & Calli, 2010, p. 243). It categorises people into certain groups and that determines whether they are a legitimate target during the conduct of hostilities. The principle of proportionality then requires a weighing of each attack advanced by the military against civilian casualties and damage to civilian property (Griffin & Cali, 2010, p. 247).

Under IHRL, there is a different standard regarding who can be killed which looks at particular individuals and threats. Here there needs to be an imminent threat of danger or serious violence (Droege, 2007, p. 344) and the force used to prevent this danger needs to pass the least restrictive means (LRM) test in order to be justified. This means that intentional killing is lawful if it is unavoidable, but planning an operation with the purpose of killing violates IHRL (Droege, 2007, p. 345).

A LRM-test requires that a targeted killing is the last resort, other means are ineffective and the force needs to be strictly proportionate to the legitimate aim to be achieved (ICRC, 2014, p. 37). This includes designing an operation minimizing the risk of violating the right to life (McCann v. United Kingdom, 1995, paras. 203-214). Thus, less protection is offered under IHL for the right to life compared to IHRL. Human rights are protected by IHL, but not as comprehensively. This is usually defended on the grounds that war is considered temporary and therefore not the default regime for the protection of life. However, the rise of drones leads to a new form of war: the never ending one (Heyns et al., 2015, p. 10). With minimal loss of life and low costs for the State employing the drone attack, an incentive to end these conflicts is far away as there will likely always be a possible threat to eliminate.

The rise of drones leads to a new form of war: the never ending one (Heyns et al., 2015, p. 10). With minimal loss of life and low costs for the State employing the drone attack, an incentive to end these conflicts is far away as there will likely always be a possible threat to eliminate. Thus, there is the risk of having IHL as the default regime instead of on their individual threat. In order to protect the right to life adequately we must look beyond the classification of an individual in targeted killings. Pcati v. Israel, a case that can be seen as a move towards a coordinated interpretation of IHL and IHRL, can offer much by way of guidance here. It concerns a continuous state of armed conflict in Palestine (Judea, Samaria, Gaza Strip) to which IHL applies (Pcati v. Israel, para. 21). The Court moves towards a classical humanitarian analysis by focusing on classification with regard to targeted killings. However, as the Court defines terrorists as legitimate targets (Pcati v. Israel, paras. 31-35) they bring in IHRL by imposing four restrictions on targeted killings (Pcati v. Israel, para. 40). Particularly interesting for the purposes of this article is the second restriction, in which the Court refers to a principle of proportionality in domestic law. This principle determines that, among all military means, one must choose the means whose harm is smallest (Pcati v. Israel, para. 40). Moreover, the Court expresses a preference, to the extent possible, for procedures of law instead of force by referring to McCann v. United Kingdom (ECHR, 1995, para. 201). Pcati v. Israel therefore illustrates the use of a LRM-test on top of a humanitarian framework and is consequently an example of a coordinated interpretation that can be applied to targeted killings by drones.

When one views IHRL as the appropriate legal framework for situations where State authorities have enough control over a situation to carry out law enforcement operations and IHL as the applicable framework to the conduct of hostilities as State authorities and their armed forces have no definite control in ongoing military operations (Droege, 2007, p. 347), it would be difficult to apply Pcati v. Israel to the use of drones for targeted killings. In Pcati v. Israel the principle of proportionality is especially relevant given the circumstances of a belligerent occupation. The Israeli army controls the area in which military operations take place and where arrest, investigation and trial are realistic possibilities (Pcati v. Israel, 2006, para. 40; Article 5 of The Fourth Geneva Convention).

Most States using drones for targeted killings do not occupy the territory where they execute drone attacks, while arrests, investigation and trial are even less realistic possibilities. However, Pcati v. Israel is comparable to targeted killings by drone strikes. First, the length of the belligerent occupation in Pcati v. Israel can be compared to endless wars as a result of drone strikes. Similar to a lengthy belligerent occupation, peace and IHRL would become an exception for those on the receiving end of drone attacks. Due to lower protections in IHL their lives would only be adequately protected by exception. Second, the technology behind drones allows for the use of surveillance and observation purposes, which offers a level of control that is not similar but comparable to the level of control in a belligerent occupation. Therefore, to have a coordinated interpretation of IHL and IHRL in the case of drones would offer a similar advantage for the protection of human life as it does in a belligerent occupation. Drones are often used to eliminate a threat to human life. A coordinated interpretation ensures that this threat is treated with the highest proportional protection of the right to life by seeking less harmful means available. Targeted killings would not be prohibited but a higher threshold for taking human life would be set than IHL alone can offer. However, according to Heyns et al. (2015, p. 46) a vital component of international security is the rule of law. States negotiated treaties to secure international peace.
and security by agreeing to common standards of conduct in armed conflict (Voyiakis, 2010, p. 105) and the use of drones should follow the legal regime instead of adapting the legal regime for the use of drones (Heyns et al., 2015, p. 46). By demanding a coordinated interpretation of IHL and IHRL, the courts will have an increasingly important role in determining warfare. This could lead to a weakening of both IHL and IHRL (Droege, 2007, p. 350-351). IHL was developed through treaties, but judicial review implies that legal certainty is at stake, making it unclear for States to which elements of law they will be held accountable. This would contradict an important reason why States negotiate rules on their conduct in the first instance: to maintain order (Rodley & Cali, 2010, p. 214). As a result of legal uncertainty, the standards of IHRL that are firmly set in peacetime might be violated in wartime, leading to a loss in universal standards which could damage IHRL in peacetime as well.

These are serious consequences but it is important to remember that the law is always subject to interpretation and does not exist in a vacuum (Rodley & Cali, 2010, p. 229). A close relationship between international law and international politics has always existed. States use international law for their own assessments of particular situations and interact with international law selectively, as they see fit (Rodley & Cali, 2010, p. 230). Although judicial review might increase legal uncertainty for States, it also offers an incentive to negotiate or amend treaties to adequately protect the right to life in drone attacks. Without judicial pressure, it is unlikely that States would opt for this possibility, as meeting higher levels of protection for the right to life is not in their interests. Even though treaty-making is difficult due to politically sensitive issues, technical processes and the number of parties involved in treaty-making (Voyiakis, 2010, p. 105), armed conflicts have had an impact on the development of IHL before (ICRC, 2014, p. 16; Droege, 2007, p. 313). Methods of warfare in the First World War (1914-1918) such as poison gas, aerial bombardments and prisoners of war led to new treaties in both 1925 and 1929 (ICRC, 2014, p. 16).

Further, motivations for States wishing to sign up to treaties governing their armed forces can be split into two main considerations: States acting out of humanitarian compassion and States acting out of self-interest (Griffin & Cali, 2010, p. 249). A coordinated interpretation of IHL and IHRL could easily find support from the first motivation. But even when we consider the motivating force of self-interest, with the increase in States using drones for targeted killings, non-state actors will also likely start or increase their use of drones. Only applying IHL as a legal framework is not sufficient for securing the right to life within the States currently using drones themselves. If human rights are inherent to human beings, they cannot depend on a situation (Droege, 2007, p. 324). Using drones for targeted killings means aiming for destruction, not justice. In this article, I showed thatPid: v. Israel is applicable to targeted killings by drone attacks and a coordinated interpretation of IHL and IHRL is needed to adequately protect the right to life. The disadvantages of increasing the judicial review of warfare is important but can be overcome. When using drones to execute targeted killings States need to rise above terrorist acts and safeguard human life adequately by allowing a coordinated interpretation of IHL and IHRL. In failing to do so, States should ask themselves: who are the terrorists now?


Charter of the United Nations and Statute of the International Court of Justice, 1945


Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention), 12 August 1949, 75 UNTS 1

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 12 August 1949, 75 UNTS 85

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287

Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135


Legal Consequences of the Construction of a Wall in the Occupied Territory. Advisory Opinion, ICJ, 2004

Legality of the Threat or Use of Nuclear Weapons. Advisory Opinion, ICJ, 1996

McCann and Others v. United Kingdom, ECtHR, Application No.38384/91, 1995

Public Committee Against Torture in Israel v. Israel, Supreme Court of Israel, HCJ 769/02, 2006

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 3

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol III), 8 June 1977, 1125 UNTS 809


Has the tension between sovereignty and human rights been successfully resolved in the Responsibility to Protect (R2P)?

INTRODUCTION

The 1990s witnessed some of the most horrific crimes since the conclusion of the Second World War. In Rwanda 800,000 people were slaughtered and, despite ‘ample forewarning’ of an impending genocide, the international community remained a bystander. Notwithstanding previous international inaction, atrocities in Kosovo triggered a NATO intervention, aimed at protecting the ethnically Albanian population. NATO’s intervention, although justifiable, was illegal as it lacked the UNSC authorisation. To that end, concerns were raised over the abuse of humanitarian arguments to justify interventions that serve ulterior motives. The policy dilemma of those contradicting approaches meant that, on the one hand, that respecting sovereignty at all times is complicit in humanitarian tragedies while, on the other hand, the use of force without UN authorisation violates international law and threatens international order. In an attempt to resolve the tension between sovereignty and the need to respond to “gross and systematic violations on human rights that affect every precept of our common humanity”, Responsibility to Protect (R2P) emerged (A/54/2000).

After more than a decade, R2P has not resolved the tension between sovereignty and human rights because it is not legally binding and rests on political willingness. R2P does not impose a legal duty but instead proclaims a voluntary engagement. In this context, a narrow interpretation of international law prohibits the use of force because a) R2P is not customary international law; and b) it does not possess a designated Article in the Charter which constitutes it as an exception to Article 2(4). However, in Chapter VII there is textual evidence to act against atrocities but depends on the Security Council’s discretion to classify them as a threat to peace. This essay will argue that, although the current institutional framework is subject to the permanent members’ political agendas and risks inaction, R2P should not be used as a justification for military action outside of the UN. Any change would enhance fears of modern imperialism, threaten international peace and security, and fatally damage R2P. Instead we should draw on the lessons of the past and allow time for R2P to evolve as a norm.
RESPONSIBILITY TO PROTECT

In his 2000 millennium goals, the former UN Secretary General, Kofi Annan, challenged the international community to reconcile the tension between state sovereignty and human rights. In response to his challenge the International Commission of Intervention and State Sovereignty (CISS) put forward the concept of Responsibility to Protect (R2P) in 2001. In 2004, the High-Level Panel on Threats, Challenges and Change published a supportive report endorsing R2P as an emerging norm. More importantly though, in 2005 at the World Summit Outcome, state leaders unanimously agreed on their responsibility to protect their populations as well as ‘strangers’ from genocide, war crimes, ethnic cleansing and crimes against humanity.

Evidently according to R2P, state sovereignty comes with some responsibilities apart from rights (Deng, 1995; Feisteen, 2007, p. 20). Unlike the treaty of Westphalia, which affirmed states’ right to territorial integrity and non-intervention in the affairs of another state, R2P suggests that inability to meet those responsibilities prevents sovereign states from the “domaine réservé that excludes interference from outside” (Payandeh, 2010, p. 470). For sceptics though, sovereignty as a responsibility ‘raises the spectre of a return to colonial habits and practices on the part of the major Western powers’ (Ayoob, 2002, p. 85). However, R2P’s language focuses on peaceful means and constrains the use of military force to a last resort. This rhetoric helped to soften fears that humanitarian justifications would be abused by powerful states. To that end, R2P overcame the ‘clear barrier to consensus.’

THE LEGAL STATUS OF R2P

Undeniably, R2P has achieved a conceptual shift to the extent that even traditionally suspicious countries, like China, acknowledge that innocent people should be protected, with “the UN [being] the only legitimate actor” (Garwood-Goovers, 2014, p. 14). This normative shift does not, though, stem from a legal change in international law. R2P may have “quickly pervaded political discourse” (Hehir, 2010, p. 219) and ‘dented slightly’ the concept of non-intervention (Thakur, 2006, p. 254), but it is not a legal obligation nor part of customary international law.

Some authors have argued that R2P contributed to the evolution of a ‘legal obligation’ on the UNSC to intervene on humanitarian grounds (Peters, 2009, p. 540), and a ‘clearly acknowledged duty’ to protect foreign populations (Bannon, 2006, p. 1182). Yet, those claims are baseless since the World Summit Outcome merely proclaimed that states are prepared; to take action in the face of atrocities. Furthermore, the tentative language confesses “a voluntary, rather than a mandatory engagement” (Stahn, 2007, p. 109). Taking further into consideration that the draft wording for this section recognised the ‘shared responsibility to take collective action’ but was rejected, we can conclude that states purposively decided to avoid assuming an obligation. Moreover, bearing a responsibility does not create a legal duty. If R2P was an obligation there would be corresponding legal sanctions for non-compliance, but there are none.

On the other hand, to constitute international customary law, in accordance to Article 38(1), there should be evidence of ‘practice accepted as law.’ In establishing a norm there should be “consistent conduct of states acting out of the belief that the law required them to act that way” (UN Charter, 1947, Article 38). Moreover, these acts must occur out of a sense of obligation (opinion juris) exhibiting a consensus among states. Inconsistencies in the application of R2P betray, contrary to Bellamy’s claims (2010), that states have not achieved state practice nor have they internalised R2P as a norm. More specifically, as Thakur (2006) points out, the number of cases where outsiders could have intervened but did not exceeds the number of cases where intervention actually occurred. Furthermore, the fact that Russia and China abstained in Resolution 1973 (S/RES/1973) gives more ground to the argument that R2P is not yet a norm. Therefore, it is safe to argue that it has not created a shift in the international legal order and states still regard sovereignty and the norm of non-intervention as paramount. As we will later argue this is inherently linked to the fact that the UNSC is not a legal but a political body (Voeten, 2005, p. 552). However, R2P has managed to reaffirm principles embedded in the existing international humanitarian law. Genocide, crimes against humanity and war crimes already constitute a violation of international customary law and derogation is not permitted due to the fact that these crimes are jus cogens norms. Moreover, the UN Charter has Article 1(2), (13) and 55 regarding the protection of human rights. According to Kofi Annan, these articles demonstrate that the Charter did not perceive sovereignty as “a license for governments to trample on human rights and human dignity” (cited Luck, 2006, p. 82).

To summarise, R2P is not legally binding but is merely a voluntary engagement. Therefore, the tension between state sovereignty and human rights has not been reconciled, with interventions against mass human rights atrocities remaining at the discretion of SC authorisation.

THE PROHIBITION OF FORCE AND HUMAN RIGHTS

Having established that R2P does not impose any new legal obligation on states, we will now examine whether textual evidence exists to justify forceful interference as a last resort in a sovereign state’s affairs due to human rights abuses.

Paragraph 139 of the World Summit Outcome explicitly states that when peaceful measures are unable to respond to humanitarian tragedies, the international community would take collective action ‘in a timely and decisive manner, through the SC, in accordance with the Charter, including Chapter VII, on a case-by-case basis’ (World Summit Outcome, 2005). Evidently this paragraph does not discourage states from employing force against another state. Since the Treaty of Westphalia, however, non-intervention has been regarded as an inviolable norm. For the pluralist international-society theory, a humanitarian intervention, as encouraged by R2P, is “a violation of the cardinal rules of sovereignty and non-intervention” (Wheeler, 2002, p. 11), and goes against Article 2(4) which states that:

“All Members, shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” (UN Charter, 1945: Article 2(4))

According to a narrow interpretation, the only exceptions to Article 2(4) are found under Article 51, which advocates self-defence in response to

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an armed attack, and Chapter VII that authorizes the SC to take forceful action ‘to maintain or restore international peace and security’. Since R2P has not attained a similar Article, a narrow interpretation of the UN Charter does not allow states to fulfil their responsibility. In that sense, lacking a legal change, R2P has not resolved the tension between sovereignty and human rights. Sovereignty remains the paramount unit and non-intervention a still relevant norm.

However, one might object on the grounds that R2P does not go against (a) the territorial integrity of a state, as it does not aim at annexing territory nor (b) its political independence, since it does not necessarily aim at overthrowing the government under consideration. On the contrary, they argue R2P is consistent with the purposes of the UN concerning equal rights and promoting respect for human rights. Yet, those claims should be rejected because, as the Corfu Channel Case demonstrates, such an approach ‘demands an Orwellian contraction’ of the terms (Schachter, 1984, p. 649). For instance, although the UK argued that its collection of evidence in Albanian waters ‘threatened neither the territorial independence nor the political independence of Albania’, the Court ruled that the fact-finding mission violated Albania’s sovereignty. In that sense, if the mere collection of evidence violated the state’s sovereignty, it follows that humanitarian intervention, which involves force, does too. In addition, as the case of Iraq and Libya have shown, due to the moral paradox, fighting a leader for their atrocities without overthrowing them is inevitable. If interventions are to have any chance of accomplishing their stated goal, they must include regime change (Rieff, 2008). But regime change opposes Article 2(4) principle of political independence and creates power vacuums, which further hinder peace.

However, despite the aforementioned discussion, there is a legal alternative if one draws on Article 39, which states that in the face of any threat to peace or breach of peace, determined [emphasis added] by the SC, it should decide what measures shall be taken in accordance to Article 41 and 42. R2P has been invoked on this ground on several occasions, like for example in Libya. In that sense, there is legal authority to intervene in the face of atrocities by classifying them as a threat to peace. Yet, due to lack of legal provisions to guide UN’s assessment of a crisis, members can decide depending on their discretion. To that end, R2P has not made any revolutionary change. Like in the past, the SC can determine whether or not human suffering (see Somalia 1992/ UNSC Resolution 794 vs Syria) or ethnic cleansing (Kosovo 1998/ UNSC Resolution 1199 vs Yemen) amount to a threat to international peace and security. SC’s conclusions are not based on a legal framework, but are instead influenced by their political willingness to protect human rights rather than affirm sovereignty. Thus, both narrow and broad interpretations of international law have failed to resolve the tension between sovereignty and human rights.

Acknowledging that R2P depends on political willingness, begging the question as to what is the role of the international institution in the context of R2P.

**THE SECURITY COUNCIL AND THE USE OF FORCE IN R2P**

Despite valuable moral arguments for states to ‘save strangers’ in the current institutional framework, R2P does not guarantee a departure from apathy. Apart from the ‘open textured’ concept of what constitutes a threat to peace, interventions in the name of R2P are also subject to political unwillingness to commit forces to implement the council’s mandate and permanent members’ veto power (Bellamy, 2010, p. 154). The following evaluation of the case of Libya and Syria will epitomise this reality.

The SC is tasked to make assessments about the nature of mass atrocities, employing the Special Rapporteurs and establishing Inquiries (Welsh, 2004, p. 294). Given that crimes are taking place that amount to a threat to international peace and security, the Council retains the authority to authorise military action under Chapter VII. Yet even if atrocities indeed occur, due to geopolitical interests, intervention may be problematic. Although, the ICISS Report and High Level Panel Report suggested that the P5 should refrain from using their veto in the face of atrocities, that element was not included at the World Summit Outcome (Hehir, 2010, p. 222). As a result, there is always the risk of ‘policy paralysis’ or of veto misuse to safeguard ulterior political purposes (Massingham, 2009, p. 818). Consequently, international institution’s role and structure may hinder R2P.

In Darfur, despite the death of 200,000 people and the displacement of another 2 million, the international community was slow to respond due to geopolitical concerns. China’s investments in Sudanese oil, the USA’s counter-terrorism assistance from Sudan, and Russia’s lucrative arms contracts, indeed, hindered collective action (Akhavan, 2009, p. 648). Similar is the situation with regards to Syria. Russia and China have vetoed UNSC Resolution claiming that intervention would go “against the principle of a peaceful settlement of a crisis on the basis of a full Syrian national dialogue” or as China’s UN Ambassador Li Baodong explicitly said; it would “interfere in (Syria’s) internal affairs” (cited in BBC, 2011). On the other hand, it is said that lack of inaction is inherently associated with Russian arms interests and the strategic Tartus naval base. In contrast, it has been argued that Russia did not prevent an intervention in Libya because it did not see its geostrategic interests being threatened. Evidently, the tension between sovereignty and human rights still exists and collective inaction in Syria shows how Libya might have been merely an exception. To make matters worse, the execution of Resolution 1973 has brought to the forefront fears that R2P was used as a camouflage for ulcerous motives. Zimbabwe’s President, Mugabe, argued that the humanitarian intervention in Libya was about oil, while South African President Zuma suggested that the airstrikes were more to do with regime change than humanitarian assistance (Tisdall, 2011). However, R2P is not to be blamed for NATO’s potential abuse of Resolution 1973.

The SC’s legitimacy does not depend on its function as a guardian angel because there is no other authority to check it. As a result, it can be inconsistent and ineffective with some arguing that “its makeup and practises […] fall short of [the] levels of legitimacy needed to make crucial decisions about peace and security on behalf of the international community” (Welsh, 2004, p. 296). Despite its limitations and vulnerability to the permanent members’ veto power, it does
not mean that we should abolish it or transfer its authority to other institutions or regional organisations.

First of all, it would go against the World Summit Outcome that sees R2P operating solely within the existing framework of Chapter VII. It will also threaten international peace and security, as competing interest would provoke conflict. Finally, it would go against Article 103 stating that “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail” (UN Charter, 1945). Indeed, although the African Union holds the right to intervene in a Member State in response to grave circumstances, it has not invoked this to date; probably in anticipation of a negative reaction by the UN. To that end, acknowledging that R2P’s future relies on its endorsement by the international community, there should be patience to gather more international support. Although it risks inefficiency in places facing an urgent need, the steady development and focus on human rights since the end of the Second World War demonstrates how powerful this incremental process can be.

CONCLUSION

This article has argued that, although R2P has shifted the debate towards responsibilities instead of mere rights and the focus from states to populations, the inconsistency with which it has been applied indicates that states have not internalised R2P, nor have they reconciled the two principles. R2P might have pulled actors towards larger commitments but it does not constitute a legal duty. It remains, rather, a voluntary engagement to ‘save strangers’ international law and in particular the UN Charter’s role in promoting Kofi Annan’s brainchild, is subject to a broader interpretation that classifies human rights abuses as a threat to international peace. As we have shown, restating humanitarian action on Article 2(4), as it does not go against states’ territorial integrity and political independence, is a fatal challenge to international law. On the other hand, Chapter VII allows the SC to legally take collective action and legitimates response to “gross and systematic violations on human rights that affect every precept of our common humanity” (A/54/2000). Yet, the banner of legality retained by the UN is subject to political and geostategic interests and members’ willingness to contribute forces to implement the SC’s mandate (Bellamy, 2010, p. 154). As a result, the line between sovereignty, non-interference and human rights is blurred.

Finally, the Security Council, due to lack of checks, can be inconsistent and ineffective on actions, even to the extent of damaging R2P. Frequently the current institutional framework is criticised for doing too much (Libya) but mainly for hindering the notion, by doing too little (Syria). Consequently, we do not need a change in the legal regime, but rather reform within the SC. This does not mean though that we should abolish it, nor that we should pursue military action outside the UN. Any change would enhance fears of modern imperialism, threaten international peace and security, and fatally damage R2P. Instead we should draw on the lessons of the past and allow time for R2P to evolve as a norm. After all, as Luck notes the international community has come a long way since the end of World War II (Luck, 2010, p. 363).

United Nations, Charter of the United Nations. 24 October 1945, 1 UNTS XXI.
Photographs taken in Palestine
by Laure Fourquet

POLICY BRIEFS
Health implications of the Trans-Pacific Partnership

Drawing attention to the detrimental health implications of the Trans-Pacific Partnership Agreement for Vietnam

Addressed to: Government of the Socialist Republic of Vietnam

INTRODUCTION

The purpose of this policy brief is to draw the urgent attention of the Vietnamese government to the detrimental health implications of the recently signed Trans-Pacific Partnership Agreement (TPP). Without substantial amendments to the chapter on intellectual property rights and the proposed dispute mechanism, Vietnam is advised not to ratify the agreement, as by doing so it will be forfeiting its sovereignty to make public health decisions and reducing citizens much needed access to medicines. While recognising that Vietnam would make economic gains from increased access to markets, as outlined below the costs are too high and in its current form, the agreement protects multinational corporations over society.

BACKGROUND

Despite serious concerns about the costs of the TPP from community organisations, consumer groups and public health groups as well as some prominent economists, the agreement was signed by 12 Pacific-Rim countries in February. However, the agreement will not go ahead until it is ratified by at least six countries, making up 85% of the TPP countries total GDP, of which there is a two year window for them to do so (USTR, 2016).

The signing of the TPP follows an increasing trend in the numbers of Preferential Trade Agreements (PTAs). There are differing opinions for the reasons a country might enter a regional trade agreement rather than negotiating through the multilateral World Trade Organisation (WTO) system. Oatley describes these as: a desire to secure access to an important trading partner’s market; a signal to trading partners of commitment to economic reform; and in order to increase bargaining power in the WTO by pooling together with others (2012). For the United States, PTAs could be used to deny other countries access to its market if they will not concede to decisions that would favour the US in the WTO, thereby enhancing its power in the multilateral system (Oatley, 2012). It has been stressed that developing countries have had considerable choice in integrating into the regional and preferential trade system; however their flexibility is constrained by pressure to exceed their WTO obligations from developed countries, applied through competition for foreign investment (Shadlen, 2005). There is also a strong view that PTAs are undemocratic and serve the interests of large Multi-National Corporations (MNCs) over citizens, which appears to be the case with aspects of the TPP (Stiglitz, 2007).

A key concern of recent Bilateral Investment Treaties (BITs) and PTAs is the inclusion of ‘TRIPS-plus’ provisions, which go further than the WTO minimum standard for intellectual property rights. There has been much debate over intellectual property rights and access to affordable medicine since the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came into effect in 1995 (Kerry and Lee, 2007). It introduced mandatory patentability of molecules and a minimum of 20 years for patent protection (Coriat and Orsenigo, 2014). Lee, 2007). It introduced mandatory patentability of molecules and a minimum of 20 years for patent protection (Coriat and Orsenigo, 2014). It has been stressed that there is a strong view that PTAs are undemocratic and serve the interests of large Multi-National Corporations (MNCs) over citizens. TRIPS flexibilities for developing countries is undermined (Cimoli et al., 2014). As further than WTO intellectual property protection requirements, the progress made by developing countries is undermined (Cimoli et al., 2014). As another worrying element of BITs and PTAs, which go beyond WTO TRIPS flexibilities for developing countries is undermined (Cimoli et al., 2014). As will be made clear in the proposal below, TPP currently includes particularly harmful TRIPS-plus provisions which will result in: patent terms being increased; reduced access to important new biological drugs; and damage to the local pharmaceutical industry.

Another concerning element of BITs and the investment provisions of PTAs such as the TPP is the investor-state dispute settlement (ISDS) mechanism, which uses arbitration (often private commercial lawyers) rather than the state court system, to settle disputes. This allows investors to raise complaints about government decisions that affect their investments often with huge monetary rewards, to both the investor and the law firms involved. Poulson notes that while this has resulted in some countries pulling out living with HIV (Coriat and Orsenigo, 2014). In response, in 2001 at the Doha WTO conference, a declaration on TRIPS and public health was adopted, upholding that WTO members had a right to protect public health (Roffe and Spennemann, 2014). Importantly, out of this declaration came TRIPS flexibilities for developing countries. These included grants for compulsory licences when drugs are not adequately supplied by pharmaceutical companies or not deemed affordable; identification of evergreening (filing for new patent protection shortly before a patent expires for a trivial development); and acknowledgement of legitimate parallel imports due to different prices being set in different countries (Smith et al., 2009). However with the increasing numbers of BITs and PTAs, which go further than WTO intellectual property protection requirements, the progress made by developing countries is undermined (Cimoli et al., 2014). As will be made clear in the proposal below, TPP currently includes particularly harmful TRIPS-plus provisions which will result in: patent terms being increased; reduced access to important new biological drugs; and damage to the local pharmaceutical industry.

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of treaties following complaints raised against them, most have continued with their agreements (2015). Dismissing theories including credible commitment, coercion and emulation, Pouson explains the reasons for developing countries signing up to agreements with ISDS mechanisms as bounded rationality (2015). This can be explained by developing countries having a strong commitment to attract Foreign Direct Investment (FDI) and a desire to make agreements work, however this blinds policy makers to potential negative consequences and leads to misjudgement and mistakes in their decision making (Pouson, 2015).

It is clear how a preferential trade agreement such as the TPP can be viewed attractively by Vietnam, with reports that it will benefit most of the 12 countries, expanding its GDP by 10% by 2030 (World Bank, 2016). However certain aspects of the TPP could have dangerous consequences for the health of Vietnamese citizens, through protecting large pharmaceutical company’s profits over societal welfare. Vietnam, the poorest of the 12 countries, with GDP per capita (PPP) of $5,629, also has some of worst health statistics (World Bank, 2016). Out of pocket payments (OOP) make up 49% of the countries’ health expenditure, and in terms of access to medicines, it doesn’t fare any better, with only 33% of people living with HIV receiving antiretroviral therapy coverage (World Bank, 2016).

**POLICY PROPOSAL**

This policy proposal strongly recommends that Vietnam does not ratify the TPP unless significant changes are made to its text regarding intellectual property rights and investor state dispute settlement which, as is evident in the final text of the agreement, are to the detriment of the health of Vietnamese citizens (USTR, 2016).

'The TRIPS-plus provisions included in the final text of the TPP agreement in chapter 18 are particularly harmful for a number of reasons. These crucially include decreasing the standards for patentability, assigning patent extensions and creating data and market exclusivity (USTR, 2016). With regards to decreasing patent standards, the text states that patents must be made available for inventions that include new uses or new methods of a known product, or new processes of using a known product (USTR, 2016). This would prevent countries being able to limit patent evergreening, and medicines will be able to keep their protected high prices through blocking the availability of generic medicines (Baker, 2016). Patent extensions are also now included as compensation, on top of the standard 20 years, if there has been any delay in granting a patent (Baker, 2016).

The inclusion of data and market exclusivity reflects the growing importance of biological medicines in the market for pharmaceuticals. Biologic products have a much more complex structure than chemical drugs and are derived from living matter (Morrow and Felcone, 2004). It is argued that patent protection is less reliable for biologic products as competitors can more easily find ways of producing very similar drugs (Clift, 2008). To deal with this, data exclusivity is given to the pharmaceutical firm that developed the drug, meaning that the drug’s safety and efficacy data cannot be used by competing firms (Tucker, 2014). The period for data exclusivity in the final TPP text is 8 years, down from the 12 years which the US has been pushing for in negotiations. However this period is still contentious as due to the complexity and expense of developing biologics, there are currently relatively few competitors and including an exclusivity period unnecessarily restricts access to these important medicines (Jorge, 2013).

The TRIPS-plus measures in TPP will be particularly harmful to Vietnam’s pharmaceutical industry. This is due to the local industry relying on producing generic drugs, as it is not yet independent research and development (Linh et al., 2015). With the intellectual property provisions outlined above it will have severely restricted market access and will take a lot longer to make any developments into producing innovative drugs.

With a huge proportion of Vietnam’s citizens paying for health through out of pocket payments, price is a key determinant of access to medicines. The situation for Vietnam’s HIV positive population is particularly bleak in light of the TPP agreement. International donors currently fund 95% of treatment, however with Vietnam reaching lower middle income status, funding is set to drastically decrease, especially from the two largest donors, the Global Fund and US President’s Emergency Plan for AIDS Relief (PEPFAR) (Linh et al., 2015). While Vietnam should be preparing for this situation, the provisions in the TPP are set to make it much worse. Furthermore, the progress Vietnam has made towards increasing universal health coverage is likely to be undermined.

This policy proposal also strongly advises Vietnam to not ratify the TPP due to its ISDS mechanism, which should be replaced with a system of settling disputes that does not impinge on the sovereignty of nations that sign the TPP. Despite much critical attention, ISDS has been included in the final text of the agreement. The critical attention, following the high profile case of Philip Morris International arguing that Australia’s plain packaging law was denying fair and equitable treatment, has resulted in tobacco products being carved out from ISDS (Alcorn, 2016). However, while this may have been deemed a triumph, it is a very small win, leaving other public health measures open to potential arbitration.

Vietnam only needs to look to countries such as Canada to realise how costly this
mechanism is for public health measures. Canada has an ongoing case against it by US pharmaceutical firm Eli Lilly, where under the ISDS mechanism in NAFTA, Eli Lilly are suing Canada for the withdrawal of patents on drugs they deemed did not show substantial benefit, for a total of $500 million CAD (Government of Canada, 2016).

The inclusion of ISDS puts future beneficial policy changes with regard to public health at risk of huge arbitration costs. For a developing country such as Vietnam, this ultimately leads to regulatory chill, restricting the policy decisions that are likely to be made (Walls et al., 2015). With the increase in non-communicable diseases, it will be important for the government to be able to make decisions on how to control alcohol and unhealthy foods and to have the choice in using methods such as raising prices and restricting advertising and sales without the risk of catastrophic costs (Gleeson and Frier, 2013). The link between ISDS and the TRIPS-plus provisions is also important as they place the responsibility for enforcement of patents into the hands of the private patent owners, meaning any attempt to amend the text, this policy proposal strongly advises the Vietnamese government not to ratify the TPP due to the restrictions that would be imposed on policy space; worsening the nation’s health outcomes and increasing inequality.

**COSTS AND BENEFITS**

As reported by the World Bank, Vietnam is projected to be the country to benefit most from the TPP economically, with the Vietnamese Deputy Minister of Industry and Trade highlighting the considerable advantage its exports would have in accessing the markets of the US, Japan and Canada with zero tariffs (Asia News Monitor, 2015). However it is worth noting that much of this gain is through the textile and apparel industry, therefore with the possibility of the TPP expanding after ratification to include Vietnam’s key competitors in this industry, for example, Thailand, Philippines and Indonesia, the projected impact would likely be less significant. Additionally, while there is much talk of wealth and increased GDP, much doubt remains over the distribution of this wealth and the effects for income equality (Linh, 2015).

The argument put forward that TRIPS-plus provisions are necessary in TPP for pharmaceutical companies to recoup their research and development costs and to encourage innovation can be questioned. Pharmaceutical companies rightly point out that the costs of producing drugs are significant, especially with the rising importance of biological products. As Gabrowski et al. highlight, for biopharmaceutical innovation, it can take more than a decade to complete the research and development process, with each new drug approval costing more than a billion dollars of out of pocket costs and one in eight drugs not surviving clinical tests (2015). However to counter this argument, for biologics, due to the cost and time, the number of competitors is very small, so price reductions without the extra protections such as data exclusivity would be much more limited than for originator chemical drugs (Jorge, 2013). Additionally, it is seen as unlikely that a biosimilar drug would be able to substitute an originator one in the medium term, meaning that the makers of the originator would monopolise the market share even after patent expiration (Jorge, 2013). Due to a number of reasons including low demand elasticity and asymmetries in information, further bolstered by strong intellectual property protections, the prices of all drugs are disproportionate to the marginal costs (Coriat and Orsenigo, 2014). Therefore, the TRIPS-plus measures go much further than recouping costs.

It can also be questioned as to what extent patent protection actually fuels innovation. Other factors besides innovation must be taken into account when reviewing the success of the pharmaceutical sector. These include the huge public support for new drugs, the development of national healthcare systems, and the amount of publicly funded research, for example, the US government is estimated to spend more on health research than the industry does (Coriat and Orsenigo, 2014). Through analysing many studies on the relationship between patent protection and innovation, Coriat and Orsenigo conclude that it is not possible to make strong connections between the two (2014).

One of the main arguments for including ISDS provisions in TPP is to signal to investors that the rule of law will be upheld and to de-politicise disputes (USTR, 2016). It is also viewed as a more orderly form of dispute mechanism for investors, rather than having to deal with potentially biased or poorly functioning domestic systems (OECD, 2012). However the extent to which ISDS attracts FDI has been questioned. Poulson has queried previous research that suggested BITs attracted investment, as when looking at just the BITs that included investor-state arbitration, the results are not statistically significant. However, countries signing up to treaties want to believe that they will work and go ahead due to worries of the investment being diverted (Poulson, 2015).

Poulson also outlines some alternatives to ISDS that could be considered, such as a dispute settlement system similar to that of the WTO, where firms would need to convince their home government to file a claim (2015). Though any
In summary, this policy brief strongly advises the government of Vietnam not to ratify the TPP agreement with the current harmful intellectual property provisions and ISDS mechanism. With the intellectual property provisions as they stand, it will take longer and it will be harder for medicines to become generics, creating barriers for the local pharmaceutical sector and limiting access to new drugs to those who can afford them. Additionally, the new protections for biological products grant monopoly protection to the companies that are wealthy enough to develop them, delaying access to these important drugs to a huge number of people.

Furthermore, by accepting the ISDS mechanism, Vietnam is opening up the possibility for substantial claims against it if its policies are not in favour of investors. The volume of claims made against governments through the ISDS mechanism included in investment and trade agreements are significant and Vietnam should take warning from cases such as the Eli Lilly vs Government of Canada example.

In its drive to secure FDI and gain access to more markets, Vietnam must weigh up agreements carefully to ensure provisions are not to the long term detriment of its citizens. There is not enough evidence that the inclusion of the TRIPS-plus provisions and ISDS mechanism has any benefit other than to protect and bolster the profits of large MNCs, whereas the detrimental effects to society are clear.

CONCLUSION

Attempts to change the mechanism will bring significant challenges from investors and arbitrators who reap the benefits from the current system (Poulson, 2015). Due to huge pressure from European citizens, it is now unlikely that the Transatlantic Trade and Investment Partnership between the EU and the US will go ahead in the same ISDS form. Vietnam and other TPP countries should take this discontent on board and demand to not settle for the damaging ISDS mechanism in their agreement. For Vietnam to forfeit the ability to make policy decisions freely without the possibility of large cases being brought against it is a huge political cost to take on.
The political economy of solar photovoltaics

Energy access and security in Mali

JONATHAN KOCH

INTRODUCTION

Mali is facing an energy crisis. Inadequate access to affordable energy, sharp discrepancies between rural and urban areas, and the dependency on petroleum imports encumber its economic development. While renewable energies, and in particular solar photovoltaics, have an enormous potential to alleviate energy poverty, further policies are required to provide a predictable and stable environment for investments. The implementation of a feed-in tariff could open the market for private capital and promote a rapid and sustained deployment of solar energy, helping the country satisfy a growing demand.

I • STATUS QUO

Challenges and constraints

The landlocked West African country of Mali has experienced considerable economic growth in the last decade and is one of the strongest democracies on the continent, with free and fair presidential elections in 2013, despite an extremist uprising in the North in 2012. It is however one of the poorest countries in the world (166th) and ranks low on human development indicators, such as infant mortality, life expectancy and health consequences among the population and exacerbates environmental degradation (IEA, 2015).

Moreover, the supply of energy distributed by the grid is generated almost exclusively through imported fossil fuels thus exposing the economy to the volatility of oil prices and dependence on foreign reserves (Khennas 2012). The inconsistent and unreliable power is further constraining manufacturing businesses which have to endure power outages 63 days on average per year (EDM-SA, 2014), leading to significant losses of sales revenues and expensive purchases of energy production equipment such as diesel-powered back-up generators.

The demand for electricity is rising exponentially not least because of the fast growing population (World Bank, 2014). Particularly the mining sector, accounting for more than a third of Mali’s exports, is suffering from an unsatisfied low-cost supply, significantly constraining the sector (AFDB, 2014). The modernisation of agriculture, warranting the survival of the majority of the population and driving the economy as a whole through cotton exports is equally constrained by energy scarcity.

Furthermore, limited energy access has had considerable consequences on the social welfare and human development of the population. The impact is most notable, on poverty indicators such as infant mortality, life expectancy and education, while the discrepancy in power outages between the poor and the rich further aggravates inequality and discriminatory access to fundamental services (IEA, 2015). With 65% of its land being desert, the heavy reliance on biomass and the resulting scavenging of trees is hastening desertification and topsoil erosion and makes the Sahel country one of the most vulnerable to climate change (IRENA, 2014).

II • POLICY RECOMMENDATION

Solar potential for sustainable development

The renewable energy sub-sector has considerable potential to alleviate many of these challenges, paving the way towards energy security and access, and ultimately to a sustainable development of the country. While hydropower is the only large-scale renewable energy currently installed, solar photovoltaics is largely undeveloped albeit being particularly promising due to substantial radiation levels. Mali ranks among the countries with the most advantageous solar exposure, with an average of 2500 sunlight hours and an estimated solar insolation of 5.7kWh/m2/day – which is equivalent to the number of peak sun hours - and even more substantive results in the Saharan region in the North of the country (UNEP, 2012).

The small size and speed of construction of solar photovoltaic make it the most flexible power generation technology and more importantly, the most cost-competitive for decentralized off-the-grid electrification schemes, as production costs have dropped in the last five years (Moe and Midford, 2014). Solar technology could thus be particularly well suited to narrow the current rural-urban divide and help the country achieve its target of rural electrification of 61% by 2033 (GoM, 2013), without having to spend billions expanding the national grid.

Furthermore, electricity generated from solar technology could decrease the opportunity cost of firewood collection times, as studies have shown that women and children in Africa spend on average more than four hours per day on that activity (Heltberg et al., 2000). From an environmental point of view, finally, it would contribute to the reduction of greenhouse gases, mainly emitted by dirty biomass consumption and deforestation. While the Government of Mali has been committed to scaling up its budget assigned to the RE sector, allocating 8.9 million USD in 2011, it constituted a mere 0.30% of the national budget (EDM-SA, 2014), and solar energy still only accounted for 0.1% of the total electricity mix in 2014 (AFDB, 2015). International organizations have started financing some public investment projects and supporting renewable energy deployment through technical assistance, but private sector contributions and foreign direct investments are currently close to nil (AFDB, 2015).

In order to scale up solar photovoltaic through concentrated large-scale solar projects - as a source for on-grid electricity - as well as decentralized off-grid applications and small-scale electricity supply for rural households and communities significant investments will be required (Thiam, 2010). As in most developing countries however, budgetary constraints and weak financial institutions have hindered the successful and rapid development of modern energy (Heinrich-Böll-Stiftung, 2013). Increasing private sector participation and attracting foreign capital, thus appears necessary to improve energy access and security through sustainable power (Thiam, 2011; AFDB, 2015).

It is in our view, that the current regulatory framework does not sufficiently encourage private investments and that the creation of favourable
Some efforts have been made in recent years to accommodate “green investments” (ADB, 2014). The Investment Code, for example, establishes a preferential customs and tax regime for private investors and, with respect to trade policies, a decree was passed in September 2009 on “suspension of the value added and duties on imported renewable energy equipment”; abolishing taxes and thus promoting the importation of solar technologies. There has similarly been a hesitant utilization of subsidies to buy down capital investment costs, or recover losses of the EDM-SA (API, 2011), however those efforts have been insufficient, and do not provide an adequate financial incentive to trigger increased and sustained private investment.

Feed-in-tariff for investor confidence

The implementation of a renewable energy feed-in tariff (FIT) tailored to the local context and the political economy of Mali could, in our view, provide for the assurance and predictability necessary to generate investor confidence and promote solar energy production at every scale (Bugaje, 2006). As proven by the strong international track record – and success in some neighbour countries such as Senegal or Algeria, feed-in-tariffs can be successful in reducing risk perception and promoting the use of green energy sources if properly implemented (Komentatova et al., 2009; Sarkar and Singh, 2010). According to the traditional definition, FIT schemes establish a system of guaranteed and stable purchase price for a fixed period of time. Those schemes have the reputation of being particularly “expensive” policies, putting a strain on ratepayers and taxpayers and presupposing a well-developed electricity grid (Del Río, 2012); both assumptions need not necessarily be true. The literature has, until now, focused on incentive mechanisms in developed countries (Menanteau et al., 2003; Neuhoff, 2005), however different models and structures exist, and a feed-in-tariff customized and amended by provisions to accommodate national circumstances can provide similar benefits for decentralized mini-grids, empowering dispersed communities and encouraging self-governance (Couture and Gagnon, 2010).

As every other policy, feed-in-tariffs possess advantages and drawbacks and it is therefore essential to decide where the priorities lie and design the regime accordingly. We have identified, in our previous discussion, a sharp discrepancy between rural and urban areas, hindering the socio-economic development of the country, and would thus propose to insist on the importance of promoting rural electrification. Provisions should therefore be included to support and stimulate local ownership structures and independent mini-grid installations managed by households and communities to improve local participation and the sustainability of the project. Moreover, as our argument is particularly focused on Mali’s potential for solar technology, a differentiated FIT, prioritizing solar energy through tariff levels or a technology-eligibility criterion, would narrow the scope and emphasis of the policy and thereby reduce involved costs.

We would further propose a market-independent FIT scheme with a fixed-price policy and purchase guarantee, which we deem more suitable than a feed-in premium, for several reasons.

The former could indeed provide for adequate payments determined by the specific generation costs and recover project expenses over the life span of the venture and therefore better-aligned remuneration to investors. It would further limit windfall profits or losses for producers and the risk of government budget exhaustion due to electricity price fluctuations -as with market-dependent models or spot market gap models (Kwon, 2015; Sarkar et al. 2010). With the fixed price scheme, the guaranteed payment would not be subject to any changes except from inflation rates, and would thus form a stable base for calculation of expected profits and a reliable environment for ventures. Two supplementary amendments would however permit to fine-tune the policy to avoid unnecessary costs and further decrease investor risk perception. The former provision has already been implemented in Uganda. Known as front-end loaded model (UNEP, 2012), it consists in skewing cash flows over time to account for technological improvements and related price reductions, as well as for the declining costs’ the producers have to pay over time (Del Río, 2012). While initial payments might thus be higher, it accommodates more adequately the development of the utility and avoids overcompensation towards the end of the project’s life span. Finally, albeit a currently low inflation rate of 0.9%, Mali has suffered from fluctuations during the last decade, with an all time high of 9.2% in 2008 (World bank, 2014).

We would therefore recommend a full or partial inflation adjustment mechanism coupled to the fixed price model, to prevent a decrease in the real value of project returns and provide an additional security for investors (Couture and Gagnon, 2010). While it might seem to put an additional cost-factor to the regime, inflation rates are predicted to stay low for the next years and this provision would thus entail a relatively ‘cheap’ complementary commitment to private investors. To circumvent additional costs through FIT implementation burdening the rural, low-income population excessively we would further recommend operating a tier-pricing scheme similar to the one applied in Namibia, with lower prices for low electricity consumption and higher charges for bigger consumers such as industrial complexes (Heinrich-Böll-Stiftung, 2013).

A front-end loaded, fixed price feed-in-tariff with inflation adjustment, prioritizing solar applications, would thus, in our view, provide a favourable and reliable investment climate with foreseeable revenue streams, for attracting private capital.

Power pool and regional trade

On a second note, we would recommend strengthening the regional integration and developing the interconnection system with other West African countries within the WAPP created in 1999 under the auspices of ECOWAS (EDMSA, 2014). Aiming at integrating the national
power systems into a unified regional electricity market to ensure a stable electricity supply, it has however suffered from lacking member commitment and limited interconnection and transmission networks (AfDB, 2015). Further enhancing it could improve the reliability of the national grid by stabilizing fluctuation in power generations through reserve sharing, cut power outages and increase the potential market size, thus becoming more attractive for investors (Komendantova et al., 2012). As studies have shown, power pools have a good return on investment, with cross-border transmission returns as high as 30% (AfDB, 2014). Regional cooperation and commitment could finally encourage information sharing. ‘South-South’ exchanges, that could promote innovation and experimentation.

III • FURTHER CONSIDERATIONS FOR IMPLEMENTATION

Funding
It is without doubt, that the proposed feed-in tariff will put an additional burden on the government’s budget. Financial concerns thus rank among the chief concerns when considering barriers to implementation (Goldthau and Sovacool, 2012). However, we would opine that the chosen FIT model amended with the above described provisions allows for a relatively cost-effective, ‘conservative’ structure, particularly so through the exclusive targeting of solar technology.

External pressure however is often not enough to encourage policy-making (Cao and Prakash, 2012). Political obstruction and vested interests can impede policy implementation and have thus to be considered (Bernhagen, 2008). In the present case however, as Mali is not an oil endowed country but importing its fossil fuels, private sector opposition would potentially be limited to current biomass producers and related commercial actors (kerosene and charcoal sellers, truck owners etc.), whereas the mining sector would surely encourage proposed policies as they have the potential to be more cost-competitive than current solutions and capable of meeting their increasing demand. The scarcity of civil society organizations within the energy sector, as well as relatively high corruption indicators (World Bank, 2014), might be an impediment to building public pressure. However, energy policies rank high on the political agenda of the current government, which has already applied a number of policies to attract private capital, proving its political commitment (AfDB, 2015). As the level of political constraints is currently relatively low, we would opine that de jure policy change – the mooring of a feed-in-tariff in law – could ensure its continuity in case of a change in government (Cao and Prakash, 2012).

International momentum and climate change
Green investments from international donors has seen a widespread uptake in recent years and particularly so after the Paris Agreement in December (Heinrich-Böll-Stiftung, 2013). Seeking funds through the National Adaptation Programme Action of the UNFCCC – as has been undertaken by Ghana -, the Green Climate Fund or Development Banks to support a precise and well-designed FIT scheme in accordance with the pledged INDC is conceivable and will put further pressure on domestic institutions for successful implementation (Bernhagen, 2008).

External pressure however is often not enough to encourage policy-making (Cao and Prakash, 2012). Political obstruction and vested interests can impede policy implementation and have thus to be considered (Bernhagen, 2008). In the present case however, as Mali is not an oil endowed country but importing its fossil fuels, private sector opposition would potentially be limited to current biomass producers and related commercial actors (kerosene and charcoal sellers, truck owners etc.), whereas the mining sector would surely encourage proposed policies as they have the potential to be more cost-competitive than current solutions and capable of meeting their increasing demand. The scarcity of civil society organizations within the energy sector, as well as relatively high corruption indicators (World Bank, 2014), might be an impediment to building public pressure. However, energy policies rank high on the political agenda of the current government, which has already applied a number of policies to attract private capital, proving its political commitment (AfDB, 2015). As the level of political constraints is currently relatively low, we would opine that de jure policy change – the mooring of a feed-in-tariff in law – could ensure its continuity in case of a change in government (Cao and Prakash, 2012).

Stakeholder participation
It has further been noted, that the urban-rural divide is often exacerbated by the fact that political power is detained primarily by urban elites, which might limit their disposition for rural infrastructure projects (Khenchas, 2012). This need not to be true for Mali however, as the pluralistic political system provides for a decentralization framework, allocating grants to local bodies for self-management (AfDB, 2014). Allowing rural communities and other concerned stakeholders to participate in the policy design would nonetheless be important to bridge potential divides, and warrant an enabling environment in remote communities where populations often distrust new technologies (Thiam, 2010).

Transactions costs
Scholars have noted that cumbersome bureaucracies, which delay project accreditation, increase transaction costs and discourage investors (Levy and Spiller, 1996). While there is indeed little coordination and weak cohesion in the energy sector characterised by a multitude of actors with overlapping functions (c.f. Appendix), the licensing process in Mali is being streamlined through a single entry point for all contracting formalities (API-Mali).

In a survey conducted by the UNCTD, 43% of responses identified war, conflict and political stability as a major risk factor for global FDI (Komendantova et al., 2012). The effect of terrorist threat on investments has similarly been documented in the literature (Homer-Dixon, 2002). As mentioned in a preceding section, security in the north of Mali was destabilized by violent conflicts with extremist groups in 2012, and terrorist attacks remain a threat. The French army and a United Nations mission have however helped the authorities regain control and stabilize conflict regions, and the situation is largely secured throughout the country. While the threat of terrorism continues to be a risk for investments in renewable energies, we might opine that it has not undermined the stability and functioning of the democratic institutions and that the country still ranks high on the Polity IV indicator (World Bank, 2014).
Information and technical capacity

On a final note we would emphasize that the lack of technical capacity and insufficient information about renewable energies might hinder the policy’s success (Thiam, 2012). It is therefore crucial to integrate the project in a wider development strategy and endeavour future projects of capacity building, awareness raising and vocational training to successfully embark the country on an odyssey towards a sunny future.

Conclusion

Solar energy has the potential to free Mali’s economy from the burden of oil purchases while fuelling its socio-economic development and preserving the environment. In a country with a rapidly expanding population, persisting rural energy poverty, and budgetary constraints, attracting private capital has become a necessity. The implementation of a well designed feed-in-tariff would provide a stable and cost-effective measure to increase investor confidence and lead the country towards sustainable energy availability, accessibility and security.

Appendix

A multitude of actors have mandates related to the energy sector. The Prime Minister oversees the different bodies with partially overlapping functions (AFDB, 2015). Attached is a list of relevant governmental actors:

- Electricity and Water Regulator Commission (CREE)
- Ministry of Energy (ME)
- Ministry of Environment, Sanitation and Water (MAEE)
- Ministry of Economy and Finances (MEF)
- Ministry of Rural Development (MDR)
- Ministry of Women, Children, and Families (MFEP)
- National Centre for Solar and Renewable Energies (CNESOLER)
- Energie du Mali Société Anonyme (EDM-SA)
- Malian Agency for the Development of Household Energy and Rural Electrification (AMADER)

Sources


INTRODUCTION

Personal exposure to air pollution is regarded as one of the world’s biggest killers. In 2012, around 7 million people died – one in eight of total global deaths – as a result of air pollution exposure, with 3.7 million of these deaths being attributable to ambient air pollution (AAP) (WHO, 2014). Vehicles are the principal source of AAP exposure, due to their ubiquity and proximity of the exhaust emission to people. Despite the incremental strictness of vehicle emissions regulation – as demonstrated in Table 1 and 2 – these regulations are failing to meet the predicted improvements.

TABLE 1: EURO EMISSIONS STANDARDS FOR DIESEL CARS

<table>
<thead>
<tr>
<th>Euro Standard</th>
<th>Year</th>
<th>Carbon Monoxide (CO)</th>
<th>Oxides of Nitrogen (NOx)</th>
<th>Particulate Matter</th>
</tr>
</thead>
<tbody>
<tr>
<td>EURO 1</td>
<td>1992</td>
<td>2.72</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>EURO 2</td>
<td>1996</td>
<td>2.20</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>EURO 3</td>
<td>2000</td>
<td>2.30</td>
<td>0.15</td>
<td>–</td>
</tr>
<tr>
<td>EURO 4</td>
<td>2005</td>
<td>1.00</td>
<td>0.08</td>
<td>–</td>
</tr>
<tr>
<td>EURO 5</td>
<td>2009</td>
<td>1.00</td>
<td>0.06</td>
<td>0.005</td>
</tr>
<tr>
<td>EURO 6</td>
<td>2014</td>
<td>1.00</td>
<td>0.06</td>
<td>0.005</td>
</tr>
</tbody>
</table>

TABLE 2: EURO EMISSIONS STANDARDS FOR PETROL CARS

<table>
<thead>
<tr>
<th>Euro Standard</th>
<th>Year</th>
<th>Carbon Monoxide (CO)</th>
<th>Oxides of Nitrogen (NOx)</th>
<th>Particulate Matter</th>
</tr>
</thead>
<tbody>
<tr>
<td>EURO 1</td>
<td>1992</td>
<td>2.72</td>
<td>–</td>
<td>0.014</td>
</tr>
<tr>
<td>EURO 2</td>
<td>1996</td>
<td>1.00</td>
<td>–</td>
<td>0.08</td>
</tr>
<tr>
<td>EURO 3</td>
<td>2000</td>
<td>0.64</td>
<td>0.50</td>
<td>0.05</td>
</tr>
<tr>
<td>EURO 4</td>
<td>2005</td>
<td>0.50</td>
<td>0.25</td>
<td>0.025</td>
</tr>
<tr>
<td>EURO 5</td>
<td>2009</td>
<td>0.50</td>
<td>0.18</td>
<td>0.005</td>
</tr>
<tr>
<td>EURO 6</td>
<td>2014</td>
<td>0.50</td>
<td>0.08</td>
<td>0.005</td>
</tr>
</tbody>
</table>

(Auto Express, 2015)
A number of recent studies have demonstrated that there is a discrepancy between laboratory-based type approval test results and “real-world”, on-road, emission levels:

• For Carbon Dioxide (CO2) emissions of passenger cars in the EU, this “gap” has grown from less than 10% in 2001 to about 40% in 2014 (Tietge, et al., 2015).

• For Oxides of Nitrogen (NOx), emissions of EURO 6 diesel passenger cars were found to be on-average about seven times higher than in “real world” driving conditions than in their official laboratory results (Franco, Posada, German, & Mock, 2014).

No example of this discrepancy is more extreme than the case of real-world NOx performance, and the revelation that Volkswagen (VW) had employed an illegal “defeat device” to comply with regulatory criteria, but essentially bypass this emission abatement during normal driving (Thompson, Carder, Besch, Thiruvegadam, & Kappanna, 2014).

This problem is larger than just the recent media and regulatory attention on VW. As can be seen in Image 1, despite the relative improvements in emissions standards when moving from EURO 5 regulated passenger cars to EURO 6, there continues to be a discrepancy between real world and reported emissions: EURO 6 Cars are regulated to emit 0.08 g/km of NOx, however on the road they were emitting 0.37 g/km.

RELEVANCE

The scale of the system failure in the wake of the VW scandal has thrust the issue of effective compliance monitoring into the public arena. As a result, we are now in a regulatory discontinuity, where environmentalists, politicians, and institutions are in a position to mobilise public opinion to push for more stringent regulation.

The discrepancies between reported and real-world emissions need to be addressed for the following reasons:

1. To protect the environment - the increasing CO2 emissions gap means that only about half of the CO2 reductions achieved by light-duty vehicles over the last 10 years are “real,” making it more challenging to meet agreed-upon climate mitigation objectives. Similarly, urban areas in the EU are still struggling with high ambient NOx concentrations and the associated health problems (EEA, 2014).

2. To protect the consumer - the increasing CO2 emissions gap between reported and “real-world” results in higher than expected fuel costs. An average EU car driver will pay an estimated €450 more per year on fuel than manufacturers’ sales brochure claims suggest (Tietge, et al., 2015).

3. To protect our economies - the CO2 gap can mean a significant loss of tax revenues, as most EU member states base their vehicle taxation schemes on type approval CO2 emissions. Fiscal incentives could therefore have been granted for vehicles that are not as environmentally beneficial as official tests originally suggested (Tietge, et al., 2015).

4. To protect our industries - the discrepancy for both CO2 and NOx has the potential to undermine the credibility of the entire auto industry, an industry that provides 12.1 million jobs in Europe (ACEA, 2015).

COP22 is the best opportunity for the EU to raise these issues on the global stage, and to send two important messages. Firstly, to members of the union, that the EU is committed to restructuring regulatory effects to improve ambient air quality. Secondly, to the international community, that the EU will be driving policy in a certain direction. In raising these issues, the EU must focus strategically on two challenges. Firstly, the EU needs to understand where it can extract movement from key players: namely the U.S. and China. Secondly, the EU needs to consolidate its position within its union, in order to reduce its credibility gap. The EU is facing issues of legitimacy: the EU Commission has had to act against 18 EU member states for breaching pollution levels (Transport & Environment, 2015).
REGULATORY CONTEXT

Since 1992, EU legislation on the type approval of light-duty vehicles’ emissions has been based on a laboratory test conducted whilst the vehicle is driven over the New European Driving Cycle (NEDC).

Over the past few years, the Commission has been working to tighten up both the actual NOx emissions limits and the testing procedures, culminating in the Worldwide Harmonised Light Vehicles Test Procedure (WLTP) and the Real Driving Emissions for Light Duty Vehicles (RDE). The RDE procedure will supplement the laboratory-based procedure, and will be used to check in-use conformity, which will be phased in from 2017.

On the global stage, the EU participated in the development of the WLTP at the United Nations Economic Commission for Europe (UNECE). WLTP is a multilateral effort to define a global harmonised standard for determining the levels of pollutants and CO2 emissions. In the EU, implementation of the WLTP is planned for 2017, and from then on, every new vehicle type must be tested using the WLTP instead of the NEDC (Mock, et al., 2014). The hope was that enhanced EU-US cooperation would lead to the adoption of common Global Technical Regulations (GTR), however, the U.S. withdrew from the WLTP working group in 2010. The EU, Japan, India and South Korea mostly drove the process, and it is likely that the WLTP eventually will be implemented in these markets and possibly other markets as well (for example, China also frequently contributed in the WLTP meetings).

STRATEGIES FOR COP22

The EU’s goal must be to reduce the level of observed discrepancy between official and real-world emissions. The EU should continue to work under the principle of using the best available techniques not entailing excessive costs (BATNEEC) in implementing integrated pollution prevention and control (Official Journal of the European Union, 2010).

The BATNEEC for the EU to reduce the level of observed discrepancy between official and real-world emissions is to develop a framework that incorporates:

1. **Independent Type Approval** – official confirmation from an independent body that a manufactured item meets required specifications.
2. **In-use conformity testing** – independent testing using PEMS (Portable Emissions Measurement Systems) to ensure that there are “real-world” measurements for NOx, and CO2.
3. **Inspection & Maintenance (I&M)** – The average age of the current vehicle fleet in the EU is 9.65 years old, so need to make sure that old vehicles are also compliant to a certain standard (ACEA, 2014).

POLICY OPTION 1: WLTP

More than half of the world’s cars are produced in Asia (OICA, 2015). When you combine this with the EU’s contribution of roughly a third of the global market, it is evident that combining these two markets under the auspices of the WLTP would effectively create a global standard for the Type Approval for new vehicles.

Despite this, there are serious doubts as to whether WLTP will indeed result in significantly more realistic test results. It is expected that the WLTP procedures will bring some improvements and reduce the level of observed discrepancy between official and real-world emissions, however it is also expected that a substantial gap will still remain and may grow again in the future (ElementEnergy and ICCT, 2015). The principle reason for this is a lack of enforcement through confirmatory tests, a situation that will remain unchanged even after the introduction of the WLTP (ICCT, 2014). However, this should not raise too much concern, as the EU’s impending RDE legislation (beginning in 2017) should correct this through widespread in-use conformity tests using PEMS. Whilst WLTP does little to address the issue of a lack of I&M of older vehicles, its potential contributions to achieving an effective “global” type approval should not be underestimated.

However, despite the improvement of the WLTP Type Approval procedure, it must be noted that it does not establish an Independent Type Authority. At COP22, the EU must pressure its Asian partners to go deeper in WLTP and establish an independent European type-approval authority with regional specifications, as proposed by the ICCT (ICCT, 2015). This would allow EU-wide standards to be reliably monitored. In terms of regional specifications, it would ensure that the regulatory standards are as good as possible. For example, 14C as a test temperature better represents European driving – rather than the 23C which we see in WLTP – and would reportedly reduce CO2 emissions by 2g/km (Mock, et al., 2013).

POLICY OPTION 2: TTIP

Considering that the U.S. produces 4.9% of the world’s cars (OICA, 2015) - far less than the EU and Asia – it is less important to push setting a multilateral global standard for Independent Type Approval, or even for in-use conformity testing: strategies that are more concerned with new vehicles. However, an EU-U.S. relationship focusing on I&M could be beneficial in “cleaning-up” the current vehicle fleet.

Working within the developing framework of TTIP to harmonise efforts to effectively inspect and maintain vehicle fleets certainly seems attractive. The EU-US relationship would set the global standards in this area, sending a message to other countries that regulation for existing vehicles is as important – if not more important – as regulating for new vehicles.

However, this approach would come with considerable difficulties. Firstly, it has been historically difficult to harmonise standards between the EU and the U.S., as both have highly developed regulatory systems, and would be unlikely to be willing to embark a complete change of system. Moreover, it remains to be seen whether the EU will be able to induce the U.S. to turn away from its traditional reluctance to adopt international standards, as evidenced in the comments from the U.S. advisor in the Group of Experts on Pollution and Energy...
(GRPE) for WLTP: “U.S. test procedures (should) be considered as the framework for world harmonized test procedures” (GRPE, 2009). Nonetheless, there is room for optimism that a deal can be struck in this arena. The USEPA currently conducts in-use surveillance tests to monitor the compliance of older vehicles to regulatory standards (ICCT, 2015). However, it only carries out 150-220 tests per year (EPA, 2013).

Whilst the U.S. may be hesitant to adopt international standards, it would certainly be more interested in setting the international standards. Therefore, the EU should use COP22 to look at developing the U.S. system of I&M to increase its scope, with a view to adopting its conclusions.

A COMPREHENSIVE APPROACH

The EU’s best position for COP22 would be a comprehensive approach, comprising an amalgamation of Policy Option 1 and 2. By the EU taking a strong stance on emissions at COP22, working multilaterally with the U.S. on strengthening its I&M programme (with a view to adopting its conclusions) and concurrently with the Asian manufacturers on deepening WLTP to include independent type approval and regional specifications, the EU will force industry to develop their technologies. The viscous elastic forces between regulation and technology are well documented:impending legislation – or even the threat of legislation – forces industry to innovate.

Between Policy Option 1, 2, and the impending RDE, the EU would have a comprehensive approach to reducing the level of observed discrepancy between official and real-world emissions. It can achieve this by improving the type-approval of new vehicles, ensuring their compliance through in-use testing, as well as cleaning up the current vehicle fleet.


A Deeper Look: South Africa’s Migrant Farmworkers

ALIYA DANIELS

Photos taken in Mpumalanga Province in South Africa (2013)
few years ago, I met a Mozambican man named Antonio on a farm in northern South Africa where I was doing research on foreign labour in the country. Ready to begin our interview, I sat down on a broken, dust-covered black plastic crate and took my notebook out of my bag, while Antonio removed his worn-in canvas gloves and placed his dull machete on the ground beside his feet. I asked him where he was born while he peeled the burnt husk off of a long stalk of sugarcane. He bit into it, chewed, spit out the pulp, looked at me and said ‘Maputo, in Maputo province’.

Antonio, like many others, is a migrant working in South Africa’s agricultural industry. He crossed the border from Mozambique in 1994 and has been working in the country ever since. Though he once possessed a work permit, the legal documentation to be employed within South African borders, he’s been unable to obtain this status again. Accordingly, Antonio lives and works as a sugarcane cutter in South Africa without documentation, a precarious existence that leaves him permanently vulnerable to expulsion.

My meeting with Antonio took place while conducting qualitative research for the Migrating for Work Research Consortium (MiWORC) a large-scale research project investigating the role of migrant labour within South Africa’s political economy. My research centered on foreign labourers working in South Africa’s agricultural sector, which included interviews with a variety of key participants in the Government, international organisations and unions, in addition to workers in Johannesburg and on three farms in the Mpumalanga province, located between the Mozambican and Swaziland borders. The research, designed to determine why and how the South African economy is structurally dependent on low-skilled foreign labour, joined analyses of other sectors of the economy to advise ongoing international partnerships and stakeholders towards better policy making.

When Antonio first entered South Africa, he worked in Johannesburg as a gardener in a private household, before deciding to leave the city in favour of work on a farm. When asked why he left his job, Antonio cited a perpetual fear of police screening and apprehension. He believed at the farm he could attain steady employment, and steady pay, without the pressures of law enforcement. When Antonio joined the farm’s labour force in 2006, his employer assisted him - and all of the migrants he employed - in obtaining proper work authorisation in South Africa, but this practice has since stopped. Farm owners in South Africa now refuse to help foreigners procure documents, and most migrants do not have the resources, specifically the money, information or employer support, to apply themselves. So, for the past two years Antonio has had to travel home to Mozambique every 30 days to renew the monthly tourist stamp on his passport, a trip
that takes time and costs money. Throughout our conversation, Antonio told me three times that he owned property and lived in his own house in South Africa. Despite these assets and his nearly 20-year residency in the country, there is essentially no course available for him to gain legal working status, as South Africa’s Immigration Act contains a costly visa-process dependent on employer endorsement. He and nearly another 200 workers on the same farm who come from Mozambique, Zimbabwe or Swaziland have become subject to a system of labour that depends on them, while simultaneously preventing them from achieving a dignified life as defined by the rights they should have access to as foreigners in South Africa’s territory.

Antonio’s narrative is one of many that highlight a range of common characteristics of the migration process – from decisions to move based on lack of economic opportunity and experiences of political volatility at home, to poor working conditions and cycles of social vulnerability and structural and xenophobic violence in South Africa. Nonetheless, these informative interviews also provided an otherwise inaccessible glimpse into migrants’ untold stories of identity, optimism and survival. The impressive accounts of entrepreneurship and networking systems reinforced the inaccuracies of the policies that governed these individuals’ lives. These stories have been undoubtedly useful in the formulation of recommendations to develop more comprehensive migration policies that not only promote greater regional and international cooperation to respond to the needs of national economies, but also a more human rights-centric approach that addresses the vulnerabilities and social concerns that impact foreign workers daily.
Climate change

The greatest human rights challenge of our time

Tom Pegram is Deputy Director of the UCL Global Governance Institute and Senior Lecturer in Global Governance at UCL Department of Political Science. In June 2016 the UCL Global Governance Institute, alongside the UN Children’s Fund (UNICEF-UK), with special guest, UN Special Rapporteur (Independent Expert) on Human Rights and the Environment, Mr John Knox, convened a one-day forum for practitioners, policymakers and academics to share perspectives on the potential for human rights to reinforce action on environmental protection. A jointly-authored outcome policy report is forthcoming.

Mary Robinson, former UN High Commissioner for Human Rights has recently declared climate to be “the biggest human rights issue in the world”. 13 million deaths could be prevented every year by improving environmental protections. Despite growing evidence of a direct link between the impacts of climate change and human rights, engagement across these two fields has only just begun. Recognition of rights has been largely absent within the international negotiations on climate change under the UN Framework Convention on Climate Change (UNFCCC) initiated in Rio de Janeiro in 1992.

However, a sea change in prioritisation is underway, exemplified by the actions of human rights and climate advocacy at the 21st Session of the Conference of the Parties in Paris (COP 21). John Knox, the first UN Special Rapporteur (Independent Expert) on Human Rights and the Environment, has declared that ‘state’s’ human rights obligations also encompass climate change” and has urged them to adopt a rights perspective in tackling environmental issues. UNICEF has highlighted climate change as a severe threat to children’s most basic rights, including those related to survival and wellbeing. COP21 has set out a framework for climate change action from 2020.

Academic and pragmatic critique is an essential aspect of this important shift in thinking, exemplified by the efforts of climate and
human rights advocates such as John Knox and practitioners working within a range of UN agencies, government bureaucracies and NGOs. There is much scope for mutual reciprocity across these two traditionally distinct policy areas. There is also a role for the academic community in this endeavour, especially in efforts to place human rights and environmental protection on a sound doctrinal and policy footing, and highlighting areas of compatibility, as well as potential tensions. Emergent efforts to cross-fertilise across fields of practice and scholarship also promise to provide a powerful statement on the value of cross-sectoral collaboration in human rights and environmental protection policy-formation, advocacy and research. Many regard it as essential that respect for human rights informs the decisions, actions and investments that flow from the COP21 framework which will be translated into national legislation in the UK and elsewhere. In realising the potential for the two distinct fields of human rights and environmental protection to mutually reinforce one another, legal experimentation by dedicated litigators as well as identifying creative channels for public policy delivery will be particularly important.

Human rights can serve as a powerful tool for mobilisation efforts on environmental protection, particularly on issues such as constraints on the abuse of power, procedural guarantees of remedy, social activism as a basis for change, and human well-being as the ethical core of a sustainable response to climate change. For its part, environmental advocacy promises to reinvigorate the foundations of human rights discourse and action by expanding its normative reach to the environment. The safeguarding of natural resources may require human rights advocates to revisit questions of private property, privacy rights, governmental regulation and due process, as well as rearticulate the relationship between the human and nonhuman living community. In turn, environmental advocacy has not always given sufficient regard to human well-being. The impact of climate change is likely to be particularly hard on vulnerable groups, including those living in poverty, women, children and indigenous peoples.

A key challenge and pending question is whether human rights are compatible with safeguarding of natural resources and environmental protection? For scholars, such as Conor Gearty, the human rights model – as currently conceived – displays serious omissions which raise the possibility of incompatibility. Antiquated rights categories, civil and political, ESCRs and groups rights, do not offer a compelling language for the safeguarding of natural resources. He argues that human rights advocates will have to transform long held rights touchstones, especially concerning property, privacy rights, governmental regulation and due process, if they are to come up with actionable policy prescriptions capable of providing a robust response to climate change while safeguarding human rights.

The actors, mechanisms, and processes of the global human rights apparatus have their antecedents in a desire to prevent massive violence and warfare. However, the remit has rapidly evolved to encompass a range of global policy challenges, from universal health provision to environmental protection. This is exemplified by the decision of the Human Rights Council in 2012 to appoint an independent expert on human rights and the environment.

The human rights regime is codified in a dense array of treaties, institutions, networks and standards and we now see normative running code beginning to bind human rights and environmental protection. Importantly, human rights language is for the first time made explicit in the preamble of the Paris Agreement:

‘…Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations…’

This shift reflects broader trends towards expansion and increased intrusiveness of global human rights norms in recent decades, especially in the legitimation of concern for the welfare of individuals and state behaviour regarding domestic human rights practices. Specifically, states are directed to consider not only environmental law but also international human rights law in addressing climate change. For John Knox, human rights brings three central benefits: (1) it clarifies what is at stake, (2) it provides guidance for developing robust, effective climate policies, and (3) it provides additional forums to address the adverse effects of climate change.

Attention now turns to implementation in practice. This will likely depend upon enabling pro-compliance domestic constituencies to effectively leverage Paris Agreement commitments with a view to both improving practices on the ground and holding government to account for failures to act effectively. While environmental protection within a rights-respecting framework may be the objective, we must not lose sight of the two halves of the implementation puzzle: strategy and execution. A formidably long series of steps separates UN deliberations in New York or Geneva from ensuring the proper conduct of local state officials in countries such as Brazil or Malaysia that are facing illegal destruction of rainforests. Accountability and remedy mechanisms at the national level present a new battleground for advancing human rights and environmental protections to the bounds, or even beyond, of state agreement. Indeed, as John Knox has observed, even if governments meet their current commitments under the Paris Agreement, they will not satisfy their human rights obligations. As such, it will be necessary to advance upon the current intended pledges which resulted from the Paris meeting.

A new generation of human rights practitioners, advocates and scholars are setting their sights on leveraging this rapidly changing strategic environment to devise global policy interventions which actually work. The scientific consensus is that time is running out if we are to prevent a catastrophic rise in global average temperature. However, political action by public authorities at all levels should not come at the expense of human rights protections. The temptation to sideline human rights should an emergency situation be declared in the future will be great. Such an eventuality must be resisted. The response to climate change must prioritise the avoidance of potential harm to actual persons. In this way, human rights provides the overarching ethical imperative to guide the difficult task which lies ahead: motivating collective action on an unprecedented scale through sustained and serious engagement with politics and power.
I • INTRODUCTION: WHY DOES VALUATION MATTER

For thousands of years, we have been explicitly valuing economic assets through market transactions. This has made recording the value of these transactions an easy task, as the values themselves are directly observable. Moving into the 18th and 19th century, the application of differential calculus in a ‘marginal revolution’ of economic theory made these observable transactions easily translatable from an analytical framework of marginal costs versus marginal benefits (which are not observable). This relationship between observable transactions and mathematical tools has allowed the discipline of economics to flourish as a unique social science with natural-science like empirical measures of value. This standardised construction of value metrics based on market transactions is also well reflected in other disciplines such as accounting and finance.

Moving into the late 20th and early 21st century, several accounting scandals including high profile cases such as WorldCom and Enron, were built, to a great extent, on the creative classification and valuation of assets and liabilities which were generally aligned with acceptable accounting standards. Since the financial crisis of 2007-2008, the world had progressed significantly in the classification and valuation of economic assets where a growing number of transactions have evolved into complex contractual agreements to complete sequences of transactions at future dates. These contractual asset/liability relationships have created historically unprecedented interlinkages through legal obligations to engage in transactions on a global scale, leading some of the key holders of these contracts to be deemed ‘too big to fail’. In this modern framework, accountants have found themselves faced with not only providing a clear and well-structured method of classification for a complex web of interlinked legal entities, but also with difficult decisions on how to value things like, non-tradeable real assets (e.g. pyramids in Egypt, Petra, Angkor Wat), intangible assets (patents, ideas, logos, names), illiquid financial assets (equity on public corporations) and, what should be included in a national accounts framework when computing high level figures like gross domestic product (e.g. illicit drugs, prostitution, raising children).

In this new world where companies can use mark-to-market principals to creatively value their illiquid assets, companies such as Twitter with very few tangible (book value) assets can have enormous market values and, names can be valued in the billions of USD, it is surprising that political science has yet to engage with the accounting community to build some foundations for a classification system and standardised metrics of political value. Instead, political science and public policy scholars and practitioners have tended to rely on more varying, noisy and contestable measures of everything ranging from democracy to war to social capital and cohesion.

The purpose of this note is not to conquer a larger philosophical question of defining value itself but to begin an exploration of the extent to which the classification and valuation principles and practices used in economics, accounting and finance can be integrated into a political context. In order to do this, this note will explore the idea of a social contract in a standard national accounts setting.

II • STOCKS AND FLOWS IN A STANDARD FRAMEWORK

Example I: Investing in Equity

Suppose you decide to purchase equity in one of two corporations (A and B). If A has a better promise of meeting your investment objectives, then you proceed to enter into a transaction to form a legal agreement with A, whereby they are accountable to their risk/returns and ethical promises in return for your cash. Note that, at the time of the agreement, neither you, nor company A become any richer or poorer, but over time, the market value of your investment in A can experience losses or gains (which do make you richer or poorer) based on the performance of corporation A.

Figure 1: Transactions in Asset and Liabilities

![Diagram of transactions in asset and liabilities]

YOU → Financial/legal claim on A

A → Financial/legal obligation to you

CASH ↓ EQUITY ↑
Looking at this investment over time reveals the extent to which A fulfils its promises and gives those holders of equity the right to attend shareholder meetings and provide input on the future direction of the company. Suppose you invest 10 in corporation A (transaction) during period t. Over the course of the year, corporation A fails to fulfil its promises, due to poor management which leads to a 20% decrease in their market value. In this case, A is now worth 0% less because of their poor performance and you are now left with a stock of 8 at the end of period t. This simple scenario can be seen above on Table 1.

The basic idea here is that transactions in financial assets and liabilities creates legal/contractual obligations between two (or more) parties which can be observed over time through well-structured value metrics. In this framework, financial contracts create a dynamic scenario where both parties are accountable to each other over the life of that contractual agreement with the ‘quality’ of investment being reflected in other economic flows (valuation changes). Noting the N/A’s from Table 1, transactions in consumable goods and services (revenue and expenditure), by definition, cannot be stocks and cannot change in value over time (they are consumed).

III • STOCKS AND FLOWS IN A POLITICAL FRAMEWORK

Since the 17th century, philosophers, political scientists and economists have contributed a wide array of insight into the ‘social contract’ which has become particularly empirically relevant since the early 20th century when governments began to take on a much greater role in the economy. In its simplest form, this can be observed through the taxation for representation ‘contract’ between the government and those they govern. Thinking about this in a standard framework, some may argue that taxation takes on similar characteristics to a financial asset by creating a living contract between government and households/corporations, as opposed to a transaction in consumable goods and services, which decreases wealth (as it is currently classified in national accounts). The fundamental question here is whether paying taxes should be seen as purchasing goods and services from government with no contractual obligation, or whether paying taxes is an investment in the government sector whose value depends on the performance of the decisions and actions of the current executive over time, much like a corporation.

Putting this into a stock-flow framework, we could think about the social contract as (at least) three separate transactions between a particular tax base and the government sector:

i) transactions in consumable goods and services,
ii) transfers to other households/corporations and
iii) investment in government. The first would measure the market value of all goods and services produced by government which are consumed by any particular household or corporation over the course of the fiscal year. Here we would see net beneficiary and net contributor households and corporations depending on their effective tax bill and degree of consumption of public goods and services. From this, we can compute the degree to which an individual tax bill has been used to purchase goods and services and how much you have transferred/received to/from the state. Effectively, this would show the extent to which you, as a taxpayer, have purchased goods and services from your government such as, defence, health care, park maintenance, roads and the extent to which you provided funds above or below the market value of those goods and services. These first two transactions could be recorded in a similar way to current accounting practices with a more detailed and individualised breakdown of tax for consumption and tax as a transfer. The third category (investment) is where we can envision a financial asset-liability type of contractual relationship. Assuming that we know government total expenditure and can compute total expenditure on consumable goods and services, the difference could be seen as government investment much like in households and corporations. Government investment decisions (the

<table>
<thead>
<tr>
<th>TABLE 1: INTEGRATING STOCKS AND FLOWS (INVESTING IN A)</th>
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<tbody>
<tr>
<td>Stocks (t)</td>
</tr>
<tr>
<td>-----------</td>
</tr>
<tr>
<td>Revenue</td>
</tr>
<tr>
<td>Expenditure</td>
</tr>
<tr>
<td>Total financial assets</td>
</tr>
<tr>
<td>- Cash</td>
</tr>
<tr>
<td>- Equity</td>
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</tbody>
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allocation of these residual funds) in everything from nonfinancial assets like the increasingly popular commissioned reports/audits (e.g., Chilcot Report in the UK, Senate expense audit on Canada) to, financial assets like shares in blue chip corporations could be viewed much in the same way as investment in a private corporation where shareholders are provided with a statement reviewing the costs and benefits (holding gains/losses) on their investments. More generally, we could define political assets as i) transactions and contractual agreements with government (social contract, campaign contributions), and/or, ii) a transaction resulting in an increase/decrease in influence over national ideology (e.g. state endorsement/enforcement of religious, cultural beliefs) where there are no expected economic gains.

Some readers may note that it is extremely difficult to define marginal consumption of some (especially pure) public goods and to place a value on the marginal benefits of publically provided goods and services. For example, what is the market value of a government report that exposes corruption, promotes equality, or teaches us lessons about going to war without a clear plan?

In a standard framework, the value of government’s performance in providing goods and services is not based on the quality of the executive decisions and actions during their time in office, but instead can only be assessed by assuming that tax revenue is being spent equally efficiently by any government evidenced by their ability to collect it (i.e. tax is no different than the free exchanges that take place in the private market). Over time, this means that no obligations are created and the ‘value’ of government is measured by how much tax they can collect. A simple scenario can be seen in Table 2 where a citizen pays 10 in tax.

**Figure 2: Transactions in Political Assets and Liabilities**

| YOU | No financial/legal claim on government |
| CASH | ? |
| GOVERNMENT | No financial/legal obligation to you/corporation |
| CORPORATE SECTOR | ? |

**Table 2: Integrating Stocks and Flows for Voter Political Assets in an SNA Framework**

<table>
<thead>
<tr>
<th>Stocks (t)</th>
<th>Net transactions</th>
<th>Other economic flows</th>
<th>Stocks (t+1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>N/A</td>
<td>0</td>
<td>N/A</td>
</tr>
<tr>
<td>Expenditure (tax/political contributions)</td>
<td>N/A</td>
<td>10</td>
<td>N/A</td>
</tr>
<tr>
<td>Total financial assets</td>
<td>10</td>
<td>-10</td>
<td>0</td>
</tr>
<tr>
<td>- Cash</td>
<td>10</td>
<td>-10</td>
<td>0</td>
</tr>
<tr>
<td>- Equity</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Comparing Example 1 with example 2 may raise some questions about what makes a contract with corporations different from a contract with government. And, if these have similar fundamental characteristics, how can we incorporate the social contract and other political transactions into an accounting framework? This leads to a more complicated question of valuation: if we want to incorporate political assets and liabilities into a standard framework, how do we value them?

IV • VALUING ECONOMIC AND POLITICAL ASSETS

The gold standard for valuation in a national accounts framework is market value – the value at which an asset could be bought or sold at a point in time. In some circumstances, market value is directly observable and therefore easy to record with reliable metrics, however, in an increasing number of circumstances, computing the market value of economic assets is a more difficult task. In fact, the only truly reliable market value of an economic asset is that which we can observe at the time a transaction is made. As soon as we introduce the notion of time and liquidity, market value becomes more abstract and difficult to estimate as time increases and liquidity decreases. Some real world example (of which there are many) mentioned in the introduction to this note would be the Egyptian pyramids, Petra, Angkor Wat and, the Taj Mahal. A more modern day example would be the valuation of real estate or equity in poorly managed state owned corporations.

Sticking with a desirable benchmark of market value, this note briefly looks at three different real world scenarios: in the first the market value of assets is directly observable, in that, the value of a transaction, or stock, reflects the true market value of the goods/services at question at that point in time. The second looks at the market value of assets which are, at any particular point in time, non-observable, but accurately computable. Thirdly, I examine assets with non-observable market values which are not computable with any degree of accuracy.

Assets with Observable Market Values

As noted in the introduction to this note, the valuation of economic assets can be a relatively straightforward and easy task, depending on time, liquidity and uniqueness. Moving from easiest to most difficult in our framework from sections II and III: transactions in goods and services have directly observable market values, as do transactions in non-financial and financial assets at the time of exchange – whatever a buyer is willing to pay and seller is willing to take determines the market value at the time the deal is made; stocks of financial assets and liabilities should, for the most part, have observable market and nominal values (which will be equal at the time of the exchange), but will vary depending on their liquidity – the market value of shares in blue chip corporations are available almost instantaneously, whereas the market value of government bonds from a small developing country might be more difficult to accurately compute at any point in time; other economic flows should follow the same fate as stocks when it comes to the accuracy of value metrics – highly liquid assets reveal market sentiment with high frequency while illiquid assets lack any clear insight into underlying market sentiment.

From a political viewpoint, there are no truly observable market transactions from a Wicksell/Lindahl perspective. As noted in the introduction to this note, this inability to directly observe market values for political transactions has been one of the factors contributing to the scientific appeal of economics.

Assets with Non-Observable but Computable Market Values

From the above discussion, the value of any asset or liability that is not frequently traded, after a meaningful amount of time, will be increasingly difficult to value. In the absence of a directly observable market value, one next best option is to have an observable market value for a similar asset that is either highly liquid or, has been traded very recently, or, to rely on a close approximation such as nominal value, which can be defined simply as the contractually agreed upon terms of repayment in an accrual based accounting system. Without going into great detail on types of valuation (for which there is an abundance of literature), I will focus on the concept of ‘similar markets’ or matching and replacement cost. Where there exists a relatively large pool of a ‘type’ of asset or liability with similar characteristics, functionality and quality, we can rely on the imperfect measures of market value for this large pool of assets or liabilities to derive a reliable estimate for the underlying value. For example, in the case of poorly managed public corporations which issue equity that is highly illiquid due to a lack of demand. If we have a large sample of these corporations worldwide, we could examine the book value, share prices and other economic flows (where they exist) from this large pool in order to get a clearer understanding of the underlying value of one particular corporation.

From a political viewpoint, the value of taxation and political contributions can be directly observed on the cost side but not the marginal benefit. Generally speaking, public goods are not easy to value, but we can use matching to similar markets and replacement cost to get a reliable estimate of some of these. For example while we cannot value a public park, we can find estimates of how much patrons of private parks will pay to access them for a specific period of time. We could also compute the value of the land on which the park is situated if it were to be sold in the private market. To derive an estimate of marginal benefit would require a difficult feat of data collection (voluntary surveys from those who want to receive a cost/benefit breakdown as proposed in section V).

Assets with non-Observable and non-Computable Market Values

From an economic perspective, this category will generally comprise nonfinancial assets, but can also include historical financial contracts which were agreed upon unique circumstances (e.g. war, speculative attacks, natural disasters, debt default). In a more general sense, any asset, from unique artistic real estate, to new digital corporations that are unique and not traded often will be difficult to value in a meaningful way. Because political assets and liabilities tend to be unique, illiquid, intangible and/or nonmonetary, it is in this category where we will find a large proportion of them. Without going into any great detail here, some examples may help in at least stimulating conversation: nonfinancial assets could include a country’s constitution, laws which have been passed by parliament, and technological advancements in bureaucratic ability to meet public demand. We could also consider transactions in political beliefs which do have value but do not come with realistic economic benefits – financially supporting social interest groups (e.g. pro-life vs pro-choice; gay
V · SOME CONCLUDING REMARKS

The central focus of this note has been the integration of the classification and valuation of political assets and liabilities into a more cohesive framework which has been adopted by a collection of disciplines including economics, finance, accounting and law. It is certainly true that we as a society do engage in, and intrinsically value, political assets through the payment of taxes, voting, protest, political donations, social media, reading newspapers, etc. It is also true that the majority of political assets and liabilities are latent transactions and contracts which may seem difficult to value, but, as emphasised throughout this note, accountants, financial experts and economists have been busy trying to value assets for many years now which are equally abstract to political assets. By designing cohesive structural foundations for the valuation and classification of political assets would also provide us as a society with more effective ways of holding elected officials accountable to their campaign promises. This would also provide us with better ways to estimate the marginal value for money of tax payments and the efficiency of the political system itself. This note is not meant to create a comprehensive framework but hopefully motivates critical readers to engage in productive conversations about the merits and feasibility of classifying and valuing political assets and liabilities.
Within mainland China, there are two minority ethnic groups which have attracted attention worldwide for their independence movements: the Uyghur people and Tibetans. Emerging and growing from within the soil of China, these two independence movements have bloomed totally different types of flowers. The Tibetan independence movement, led by the Dalai Lama, is more peaceful, and therefore receives sympathy from the international community. Here, the extreme way Tibetans demonstrate their anger is through self-immolation, which the Tibetan government in exile regards as the “highest form of non-violent struggle” (Choesanj, 2013). The Uyghur independence movement, by comparison, is more violent in nature. According to Shichor, by the early 21st century, at least 200 violent terrorist attacks, which are reported to be conducted by radical Islamic separatists, occurred in Xinjiang, killing 162 people and injuring over 440 (2005, p. 121). Moreover, the East Turkestan Islamic Movement (ETIM), a radical independent organisation in Xinjiang, is believed to be “linked to not only the Afghani Taliban regime, but also to al-Qaeda and Osama bin Laden himself” (LeBlanc, 2010, p. 9). Such connections undermined the justification for their independence and provided an excuse for the Chinese central government to disrupt the movement (Shichor, 2005, p. 131).

Therefore, a central question arises: given that they share so many similarities, what made the independence movements in Xinjiang and Tibet develop in different directions? And why is one so much more violent than the other?

Scholars provide two answers to this question. Some of them attribute it to the fact that the Uyghur independence movement faces tougher suppression by the government while the Tibetan one is treated comparatively less harshly (Misra, 2010, p. 204). But this argument blurs the causal relationships between violent demonstration and highly suppressive policy. Other scholars imply that the different beliefs in religion may be the distinguishing factor (Mukherjee, 2010, p. 426; Mackerras, 1998, p. 34). However, they fail to explain in detail how Islam and Buddhism, the religions of the Uyghur people and Tibetans respectively, affect the outcome. This article contributes to filling this gap by thoroughly examining the role religion played in the independence movements of Xinjiang and Tibet.

The article follows John Stuart Mill’s method of difference, whereby these two cases share similar features while diverging significantly in the outcome (Lijphart, 1971). The first section explores the common causes of the independence movement in the Xinjiang Uyghur Autonomous Region (XUAR) and the Tibetan Autonomous Region (TAR).

In the second section, the different roles religion has played in these two cases will be presented and examined. By adopting a comparative method, I will control for similar variables while observing how the changing variable of religion has shaped the methods pursued by the Uyghur people and the Tibetans in their pursuit of independence.

The above, however, does not explain why these groups and their conflicts erupted into demands for independence. Nonetheless, another incident, the disintegration of the USSR, has left a huge impact on the independence movements of ethnic minorities in China. The newly founded ethnic based countries like Kazakhstan, Tajikistan, Uzbekistan and Kyrgyzstan showed immediate were living examples to Uyghur people and Tibetans of what was possible (Dreyer, 2005, p. 70). In 1990-1991, Uyghur people in Xinjiang attacked police and Chinese residents; their banners and slogans included calls for Uyghur equality and independence, as well as religious sentiments” (ibid, p. 17). The pro-independence movement in Tibet, meanwhile, grew and took to the streets in 1993. It is estimated that more than 1000 Tibetans took part in these demonstrations (Human Rights Watch, 1996, p. 6). In 1995, a further series of pro-independence demonstrations happened in Tibet, resulting in Beijing’s tighter control of Lhasa (Human Rights Watch, 1996, p. 3). Overall, these illustrations of unrest during the 1990s in Xinjiang and Tibet are symptomatic of the increasing nationalist emotions of local ethnic groups after the end of cold war.
The Chinese government has been trying to accommodate the nationalist uprising by creating economic prosperity. Indeed, both TAR and XUAR have benefitted from China’s economic boom. The 2012 White Paper in Tibet pointed out that the GDP of Tibet has risen substantially in recent history from 129 million yuan to 701 million yuan (The State Council Information Center, 2013). Meanwhile, the total value of trade in Tibet is 3.4 billion dollars, 800 times more than the value in 1953 (ibid.). Similarly, GDP of Xinjiang in 2008 was 420.3 billion yuan, 84 times more than when the Xinjiang Uyghur Autonomous Region was established in 1955. Annual income per capita today is 11,972 yuan in XUAR, 35 times more than the figure in 1978 (The State Council Information Center, 2009). The White Paper also implied that residents from TAR and XUAR are enjoying a materially better life. For example, Engel Curves in Xinjiang declined from 60% in 1978 to 37% in 2008 (The State Council Information Center, 2004, p. 10). On the other hand, GDP per capita is much lower than the XUAR average in Hotan, Kashgar, Kizilsu and Aksu, where Uyghur and other minority groups exceed over 90% of the population (ibid.). In Tibet, Dreyer argued that as nearly all Han people in Tibet live in cities, it can be assumed that they enjoy a higher income to rural Tibetans (2003, p. 430).

Even within urban areas, the income gap between ethnic groups is obvious. Zang revealed that in Xinjiang, Han people are considered more competitive than Uyghur people. Consequently, Han people are generally favoured by private enterprises while Uyghur people only have equal treatment in state-enterprises, which are supported by government (Zang, 2011, p. 148). Zang’s data demonstrated that overall Uyghur people earned 31% less than Han people in the city of Urumqi, the capital of XUAR (ibid., p. 154); in non-state enterprises, the gap was up to 51% (ibid., p. 155). Dreyer suggests that similar discrepancies exist in Tibet as well (2005, p. 70). He even argues that Han enterprises are more prosperous than Tibetan ones in the selling of traditional Tibetan products because they are better funded and managed (2005, p. 82).

This unequal distribution is unlikely to change. Thus far, attempts at reducing material gaps between Han and other minority areas has generally had the opposite effect, benefitting the Han people over the minorities, further increasing the gap and worsening the relationship between the two groups (Dreyer, 2005, p. 82). Although Beijing never stops the pace of subsidising Xinjiang and Tibet, most of the money has been invested in large infrastructure projects (Clarke, 2008, p. 278), which are believed to serve the interests of the ‘metropolitan powers’, namely Han people in urban areas, as opposed to the masses of minority people living rurally (Mukherjee, 2010, p. 429).

Local Han people have not only benefitted most from the economic development in XUAR and TAR, but also from the substantive political power they hold. Despite the heads of government generally being from an ethnic minority background, the first secretary of XUAR, who retains the actual power, are invariably Han people. Clarke noted that among 958,000 Communist Party members in Xinjiang, only 37% of them are ethnic minorities (2008, p. 281). Although this is nominally much better in Tibet, with more than 85% of the high-ranking officials and 75% of the total number of officials Tibetan, the political reality flies in the face of these statistics (The State Council Information Center, 2004). Since the establishment of TAR in 1965, all of the first secretaries of TAR, the actual rulers of Tibet, have been Han people. This may be expected in provinces in which most inhabitants are Han people, however, in regions like XUAR and Tibet, where ethnic minorities prevail, this reality only reflects the marginalised political position of the Tibetan and Uyghur people.

Marginalised political and economic status: Unequal distribution of wealth and power

During the development process, ethnic minority groups in TAR and XUAR discovered that they have gradually become economically marginalised. Cao points out that in 2000, Xinjiang ranked fourth in terms of the urban-rural income ratio among 31 provinces in mainland China while in 1978, the figure was slightly beyond the national average (2010, p. 968). Tibet did even worse. It ranked last on income per capita while enjoying the widest urban-rural income gap (Cao, 2010, p. 968). Han people consist of the majority of the urban population in XUAR and TAR while most of the people living in rural areas are ethnic minorities. Therefore, regional unequal distribution of wealth is in essence based on ethnicity and rural-urban conflicts can also be interpreted as inter-ethnic conflicts. Toops points out that nearly 78% of the people in Urumqi, Karamay, Changji and Shihezi, where people generally have the highest income and GDP per capita in XUAR, are Han Chinese (2004, p. 10). On the other hand, GDP per capita is much lower than the XUAR average in Hotan, Kashgar, Kizilsu and Aksu, where Uyghur and other minority groups exceed over 90% of the population (ibid.). In Tibet, Dreyer argued that as nearly all Han people in Tibet live in cities, it can be assumed that they enjoy a higher income to rural Tibetans (2003, p. 430).

Since the establishment of TAR in 1965, all the first secretaries of TAR, the actual ruler of Tibet, have been Han people. This may be common in provinces which most inhabitants are Han people. However, in regions like XUAR and Tibet where ethnic minorities prevail, such phenomenon only reflects the marginalised political position of Tibetans and Uyghur people.'
Absence of a dominant people

Also, it is worth noting that, whilst Han people constitute 90% of China’s total population, they do not enjoy demographic preponderance in Xinjiang and Tibet. According to the National Bureau of Statistics of China, only 40% of people in Xinjiang are Han (2011), whilst Tibetans consist of more than 90% of the population in TAR (National Bureau of Statistics of China, 2011).

Nevertheless, in three other autonomous regions in China, Han people account for the majority of the population. In the Ningxia Hui Autonomous Region, Han people occupied 64% of the total population (National Bureau of Statistics of China, 2011). In the Inner Mongolia Autonomous Region, only 20% are ethnic minorities, whilst a 62% majority in the Guangxi Zhuang Autonomous region are Han (ibid.). Interestingly, along with these three Autonomous regions being dominated by Han people instead of ethnic minorities, there are also seldom voices of independence in these regions. In order to determine whether there is any correlation between the absence of the dominant Han people in XUAR and TAR and the instability in those areas I will need to pick apart this relationship further.

Some scholars have argued that the relative stability of a pluri-national federation depends on the extent to which the majority people constitute the Staatsvolk, or states’ people (McGarry & O’Leary 2009, p. 15). Although China is not a federation, the relative absence Han people in Xinjiang and Tibet may nonetheless be a cause of instability in these regions. As touched on before, primary officials in charge of TAR and XUAR are Han, but other ethnic groups dominate the populations. As a result, a minority of Han party members are ruling over the majority of Tibetans and Uyghur people in TAR and XUAR. This kind of rule, which lacks legitimacy, is prone to generating inter-ethnic conflicts or even civil wars (Gellner, 1983, p. 1). The absence of dominant Han people in the wider population of XUAR and TAR, married to their exclusive rule in that region, has predictably had a disharmonious effect. It has marginalised the ethnic minorities both politically and economically.

In general, the revival of nationalism along with the demonstration effect of the collapse of the USSR both internally and externally stimulates the emotions of independence of Tibetans and Uyghur people. Given the fact that they are economically and politically marginalised, dissatisfactions arise.

This has given rise to a dissatisfaction in the minority groups. Along with the revival of nationalism and the demonstrational effect on display with the collapse of the USSR, these factors have pushed Tibetans and Uyghur people towards independence.

However, despite the clear commonalities shared by the two independence movements in XUAR and TAR, curiously, they evolved in different directions. Uyghur people used violence, retaliation and even terrorism as a means to achieve independence, whilst Tibetans struggled in a non-violent way. One of the factors distinguishing the two is the different role religion plays in the two cases. I posit that this did have an impact on the outcome of the two movements and will explore the ramifications of this distinction in more detail below.

DIFFERENCES: RELIGION AT WORK

Spiritual Dimension

Islam, the religion followed by Uyghur people, facilitated, in this instance, the use of violence as a means of demonstrating their opposition to the central government. Although Islam does not actively encourage violence, it does leave space for that interpretation. In order to reach heaven, Islam dictates that one must show his or her loyalty to Allah. One way of manifesting that dedication is through jihad. This is the struggle against a visible enemy, a devil or oneself, and can be observable in several ways. Take jihad-bil-nafs for example; it refers to “the spiritual exertion to curb one’s lower desires and evil inclinations and to try to increase in the doing of good in order to attain nearness to Allah”. Jihad-bil-saif, another commonly understood type of jihad, involves the use of limited violence as a means of self-defence against attackers who are non-believers and the enemies of Allah. Although it is clearly outlined in the Koran that such violence must be the last resort, it still nonetheless enables the justification for potentially violent behaviour towards others.

After the opening up of China in the 1980s, Uyghur people were exposed to elements of radical Islam during their travels to the Middle East (Gladney, 2003, p. 461). Compared to the Hui, another Muslim group in China, Uyghur people are more beholden and strict in their observation of religion and culture. Consequently, some Uyghur people used tougher and more brutal means to express their opposition to the establishment. They saw the Chinese government as the enemy of Islam and believed that the violent means of struggle they adopted necessary in order to protect their faith (Mackerras, 1998, p. 34). For many other Muslims these actions by the Uyghur people betrayed the true spirit of Islam (Shichor, 2005, p. 128). But despite the fact that Islam generally advocates peace, the existence of physical jihad provided the moral high ground for some Uyghur separatists which allowed them to resort to violent retaliation.

Buddhism, on the other hand, was channeled in a way that helped pacify the Tibetans’ discontent towards the central government. Upon death, Buddhists believe that the individual will be reborn again into another life, and what a person did in this life will affect his or her next life. If a person lives a good life, he or she is more likely to be reborn in one of the heavenly realms in their next life. However, if a person continues doing bad things, a rebirth as an animal or torment in hell in the next life awaits them. In order to have a better status in the next life, individuals must perform only positive actions and avoid negative actions (Powers, 2007, pp. 54-55). Buddhism not only discourages violence but also cuts off any possible avenue to violence. One should accept
his or her own fate even if life is miserable. Any kind of ‘jihad’ is prohibited. Under such guiding principles, it is almost impossible for Tibetans, the firm believers of Buddhism, to use violence as a weapon of rebellion.

Having said that, appealing to the tenets, or spirit, of the religion does not in itself constitute a strong argument. As Sautman points out, Tibetans, including monks, have long borne arms “both against outsiders and against each other” (2005, p. 97). Also, the rebel records in the 1950s and 1960s reveal another side to the peaceful Tibetans (Sautman, 2005, p. 97). In the early period of the 1950s, for instance, the nomadic Tibetans rebelled against the Chinese government when it intended to change their political system (Norbu, 1979, p. 80), while the CIA-backed Tibetan militants continued their violent resistance against China after the Communist Regime took over Tibet in 1959 (McGranahan, 2006, p. 103). Therefore, whilst religion was often a catalyst, in the context of Xinjiang and Tibet, there are often defining political dimensions that we must also pay heed to. The political character caused these religiously motivated independence movements to develop in different directions.

Political dimension

The political power of the Dalai Lama, which is derived from his high religious position, has helped unify the Tibetans’ independence movement through the formation of non-violent demonstrations. Tibet used to be a theocratic regime, which enjoyed a high-level of autonomy within China, and the Dalai Lama was both its religious and political leader (The State Council Information Center, 2009). Although he was exiled for years, his power and reputation never diminished. For instance, when the Dalai Lama told Tibetans not to wear animal furs in 2006, they started to burn furs in public to show their loyalty to him (Yeh, 2013, p. 319).

Before 1980, the widely-recognised peaceful Tibetans of today were not peaceful at all. The armed rebellion against the Chinese government in 1959 and the border-crossing strikes in the 1960s and 1970s illustrate this fact (Sautman, 2005, p. 97). However, after the Dalai Lama proposed his non-violent strategy, known as ‘the middle way’, Tibet seldom engaged in violent demonstrations again. Instead of resorting to terrorism, Tibetans would rather commit self-immolation, which is the extreme way for them to express their despair without hurting others. By comparing the difference in the way Tibetans chose to demonstrate before and after the proposal of ‘the middle way’, it is clear that the Dalai Lama was instrumental in shaping the tactics of the independence movement. He has managed this by using his political influence, which his religious position has entitled him.

Conversely, Islam did not manage to unite the Uyghur Diaspora under a single leader. Rather, the religion had a divisive impact on their quest for independence. Crucially, Uyghur Diaspora organisations diverged on the issue of separation between state and religion. For example, the World Uyghur Congress, an organisation set up in Munich, favoured a secular state with Islam as an organ within it (Mackerras, 1998, p. 38; Shichor, 2005, p. 122). Leaders from the Congress wanted to avoid stressing the Islamic identity as they believed it would threaten their own host countries such as Germany, the U.S. and Canada (Shichor, 2005, p. 128). Some radical Islamic organisations, however, preferred a considerably stronger Islamic approach (Shichor, 2005, p.126; Mackerras, 1998, p. 36). These divergences have ultimately resulted in different strategies for pursuing independence. The World Uyghur Congress and its affiliated associations have been “engaged in promoting Eastern Turkestan independence by using peaceful means” (Shichor, 2005, p. 122), whilst Islamic fundamentalist Uyghur militant groups in Central Asia have declared a ‘Holy war’ against the Chinese government. This violence has resulted in the death of innocent civilians, the destruction of public order, and left the Uyghur Diaspora people separated into two camps: the secular group and the conservative group. The secular group has managed to strive for independence peacefully while the conservative group attracts international attention through its acts of violence. Due to its notorious reputation, the latter is often perceived by the public as the sole means through which Uyghur people struggle for independence, but that is not the case.

Politics of Culture and Identity

Although the preconditions for the independence movements in Xinjiang and Tibet are very similar, the different roles played by religion has been instrumental in determining the different outcomes of the two movements. Spiritually speaking, because Tibetan Buddhism prohibits violence, the religion serves as a pacifier which helps to moderate Tibetans’ opposition towards the central government. However, due to the presence of jihad in Islam, violence has become the catalyst for Uyghur people to express their dissatisfactions in a more radical way.

Assessing the movements along their political dimensions sheds further light on their respective developments. Buddhism unified the Tibetan independence movement under the leadership of the Dalai Lama and his non-violent strategy. The collective-nature of these efforts enhanced their effectiveness and resulted in world-wide acknowledgment and respect for their peaceful tactics. On the other hand, religion has divided and weakened the uniformity of the Uyghur independence movement, with secular leaders preferring peaceful and political means for struggle, while Islamic radicals use religion to justify their violent attacks on society. The presence of these radicals has damaged the overall image of the Uyghur independence movement within China and throughout the world.
This does not necessarily mean that religion and its political interpretation is the single distinguishing factor in these two cases. There may be other factors present that also influenced the development of the two movements in different directions. Nonetheless, the explanation provided in this article presents a picture that demonstrates the considerable role religion played in the independence movements of Xinjiang and Tibet.


Intra-group political mobilisation and outbidding

What role does identity play?
A look at Palestinian political party in-fighting

CAROLYN MAURER

The narrative of a unified ‘Palestinian people’ striving for ownership over a land to host their nation is a common, core thread of Palestinian identity. However, political party mobilisation of that identity leads to a two-front conflict: pitting Hamas-supporting Palestinians against Fatah-supporting Palestinians; and pitting Palestinians against Israelis.

To understand this dynamic this research will explore two questions. First, when facing an ‘external threat’, what is the most effective way for a party to mobilise? Second, under what conditions do parties lead to outbidding, the process of parties competing through increasingly centrifugal policies that moderates do not support, instead of mobilisation and common support against that threat? I argue that identity is the key mobilising factor, but it only works if national identity is largely unified. In situations where multiple parties attempt to mobilise the same ‘nation’ group, but that ‘nation’ is fractionalised into clear sub-identities, then mobilisation attempts will instead lead to outbidding. Three main theoretical topics need to be examined for this argument: identity and groups, dynamics of mobilisation, and parties and elections (specifically ethnic-inter-party relations and outbidding).

The article will present a literature review to break down the mechanisms of identity, mobilisation and political parties, starting with what is identity and how is it utilised for mobilisation, followed by how mobilisation leads to outbidding. These theories will be combined to present the argument that dynamics of inter-ethnic political competition, like ethnic party mobilisation and outbidding, can also be applied to understand intra-party dynamics, as there are layers of identity within ‘nation’ or ethnic groups akin to different ethnic groups within a nation or region. Then identity’s role in mobilisation and outbidding between Palestinian political parties will be evaluated, as this case study demonstrates how Hamas and Fatah outbid instead of mobilise, as the ‘unified Palestinian identity’ they put forward does not exist, as clear internal divisions created intra-group competition.

THEORETICAL LITERATURE

A Brief Exploration of Identity

Identities are multifaceted, with attributes holding different intensities, which can be called upon at different times. The inherent complexity of identity, and how it quickly coalesces into larger blocks that divide groups is demonstrated by Roy, where violence was instigated by clashes between distinctions in caste, class, culture, and religion, despite all participants belonging to the same community (Roy, 1994). Roy’s work evidences how people hold tightly to certain identities more than others depending on the larger political context, for example Mr. Gosh, a farmer and an interviewee in Roy’s work about conflict in a Bengali village, had a closer affinity with Hindus (despite differences in caste, which has strict internal identity structures) when in conflict with Muslims.

Ethnicity, kinship, and nationality are frameworks for expressing identity, which can be used for mobilisation. However, each type of identity could split the members of a given community along different lines, thus each type of mobilisation could create different amalgams of members from the same geographical community.

There is a “common practice of employing ethnicity as a cloak for several different types of identity” (Connor, 1978, p. 387). An ethnic group has two categories of descent-based attributes necessary for membership: nominal and activated (Chandra, 2011, p. 154). Nominal categories are traits a person is declared as having from membership to the group, regardless of whether they agree. Activated categories are traits a person agrees makes them a member of the group and adheres to having a shared identity (Chandra, 2011, p. 154). However, this definition differs from kinship, which is familial relations and based on blood ties, as opposed to ethnic membership’s shared descent history, whether nominal or activated (Weber, 1978, p. 389).

Anderson defines a nation as:

“an imagined political community...because the members of even the smallest nation will never know most of their fellow-members...[and] because, regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship” (Anderson, 2006, p. 6-7).

Identity Mobilisation in Conflict

To explore how parties mobilise national sentiment, it is necessary to probe what makes identity and nationalism a strong attraction for people. Leaders can utilise identity to provoke constituents, even if the heart of the conflict is not about identity. Identity is a drive so strong that “rulers either harnessed national sentiment or risked being replaced by rival elites who insisted on forging a popular state that could tap national enthusiasm” (Snyder, 2000, p. 47).

The process underneath identity mobilisation and conflict shown in Roy’s work, can be explained by Bar-Tal’s eight interrelated themes of social beliefs, which concern beliefs about: the justness of the in-group’s goals, security concerns, positive collective self-image, in-group victimisation, de-legitimisation of the opponent, patriotism, unity and peace. These eight variables create strong perceptions and beliefs about a group’s entitlement, treatment and respect of power (Bar-Tal et al., 2012). Political parties can then manipulate these social beliefs to incite the community towards action by drawing upon their constructed social identity and fear of, or hostility towards other groups, thus gaining support from the party’s constituent base, even if the party has radical or unfavourable policies, cementing that party’s power and influence in the larger society.

Leaders and parties’ can also mobilise these ethnic or group identities by creating or capitalising on important symbols. Ethnic symbols can include common language, heritage, customs, historical memories, linkage to a territory, and
In conflict prone societies, campaigning parties can appeal to voters’ support through these identity loyalties. The “easiest way to mobilise voter support at election time is often to appeal to the root insecurities of the population, turning electoral politics into a contest between sectarian parties on identity issues” (Reilly, 2006, p. 813). This could occur because identity systems are a low cost way to maintain control (Mozaffar et al., 2003), incentivising politicians to capitalise on identity (and factors relating to the eight points by Bar Tal et al.), to ensure support from the constituents, thereby securing their power.

This follows with Chandra’s assertions, as parties often call upon certain facets of identities, especially during elections, by drawing upon the nominal and activated perceptions of identity. It could further be argued that if a party’s mobilisation can turn a nominal characteristic into an activated one, the parties strengthen the role of that identity in the lives of its members, leading to increased mobilisation, especially by ethnic parties.

Horowitz’s general theory of competition and ethnic party politics, states that competition within an ethnic group can be intense, as only members of that ethnicity will vote for that party, and that competition changes the party’s behaviour (Horowitz, 1985). In circumstances where voters are undecided and have vote fluidity between different parties, those parties would need to use centripetal tactics that are moderating, thereby pulling voters from across the political spectrum to the centre. However ethnic parties have strict voter support bases, leading to centrifugal outbidding tactics that increase extremism (Horowitz, 1985) and prevent other voters in the community from supporting the party’s platform.

Horowitz outlines why ethnic party systems promote conflict, and one key aspect is the manipulation of identity due to competition from multiple parties seeking to represent the group.

“The possibility of intragroup party competition creates strong incentives for parties to be diligent in asserting ethnic demands, the more so when they consider the life-or-death implications of that competition for the party’s fortunes. Outbidding for ethnic support is a constant possibility” (Horowitz, 1985, p. 346).

Bringing this argument forward, the competing needs and identities within one ‘nation’ could create multiple parties or political factions to answer to those needs, with these parties then competing, outbidding and conflicting within the ethnic group, similar to how ethnic parties of different ethnic groups compete and outbid.

While the literature describes how and when political parties use centripetal or centrifugal policies, and how those dynamics affect conflict emergence, there is markedly less discussion about multiple ethnic parties within one ethnicity and the relations between these groups. For example Horowitz details how if one party is seen as ‘foreign’, then centrifugal outbidding develops. However, there is little mention of other types of competing parties that would have rigid voting blocks, thus the following examination of intra-ethnic party competition seeks to start filling that gap in the literature.

Horowitz espouses different causes for conflict between ethnic groups, arguing that tensions between ethnic groups derive from comparing what oneself has in comparison to other group(s) and that competing claims for legitimacy leads to ethnic conflict (Horowitz, 1985). Applying this to intra-group competition, there could be many causes for divisions within one ethnicity or national identity, including different access to economic opportunities, social mobility, freedom of movement, political representation,
political participation, access to human rights, or educational opportunities, among other possibilities. Ergo, if within one identity group, ethnic or otherwise, citizens are comparing the differences between themselves and others in their group, competing social blocks will develop with different needs that opportunistic actors could exploit politically, intentionally or unintentionally.

In turn this would break down the unity of the identity group, institutionalising those social divides into the political environment through party competition. This process occurs as each party’s mobilisation caters to certain segments of the population but not to the whole, exacerbating the divisive cracks within that identity. These centrifugal antics, often coupled with increasingly outlandish rhetoric and policies, marginalise community members who do not see themselves within the increasingly limited spectrum each party represents, closing off voter fluidity between the parties.

Limiting voter fluidity deeply impacts mobilisation attempts. Horowitz presents an example where competition between parties representing one group breeds increasingly centrifugal demands. However, when the identity base is fractionalised, then rival leaders could claim the other party or leader is not doing enough to support the group, which would be echoed by a considerable number of constituents who support the opposing party whose policies vastly differ, lending the claims credence. Consequently this leads to parties becoming more extreme, influencing constituents in ways similar to ethnic parties, especially in regards to mobilisation tactics and outbidding wars. This dynamic can be seen through the American Republican Party’s evolution over recent years, where a considerable constituency felt the Republicans were not representing the needs of the members, creating the Tea Party movement from the far right members. This extreme movement cracked the Republican Party and started significant in-fighting for power using extremist rhetoric and campaigning.

In summary, intra-identity political parties can compete, mobilise, and outbid similar to inter-ethnic parties, thus those theories and impacts could be taken from the macro-level and applied to this more specific case.

**PALESTINE: A CASE STUDY**

**Palestinian Identity: The Unity Myth and the Actual Fractions**

Hamas and Fatah both claim to fight for ‘the Palestinian people,’ a nation that has a rich history of shared myths, norms, language and symbolism. However, Palestinians are spread across multiple territories, and based on where they were born, have different levels of citizenship and access to rights such as mobility, economic opportunities and educational prospects. These factors arguably created six sub-identities: Palestinian citizens of Israel, Jerusalem ID holders, Diaspora members (largely North American or European citizens), West Bankers, Gazans, and Diaspora refugees across the Middle East.

This could be interpreted through Horowitz’s idea of ranked and unranked groups (Horowitz, 1995), as some of these sub-groups have better opportunities and access to the land they consider their national homeland, pre-1948 Palestine. Gazans, under rule by Hamas, are largely confined under a blockade and rarely are allowed to enter Israel, Jerusalem, or the West Bank, even to visit immediate family. On the other hand, West Bankers, under Fatah control, have more movement locally and internationally; however, they also face systematic challenges in quality of life aspects. For example, there are no PhD programmes in the West Bank, so if West Bankers want to continue their education, they must go abroad, and obtaining visas can be challenging. Thus West Bankers, Gazans, and all other groups of Palestinians have different daily experiences, leading to different blocks of opinions, needs, wants, social networks and political leanings.

**Fatah and Hamas Competition: Mobilisation Turns to Outbidding**

Due to their different access to rights and opportunities, Palestinian sub-identities compare themselves to each other, creating in-group, out-group tensions akin to Bar Tal and Horowitz’s dynamics. However, both Hamas (a religious nationalist party) and Fatah (a secular nationalist party) claim they represent the Palestinian people and rely on calls of nationalism and patriotism to mobilise support. But, there are two major issues that divide voters; theocracy and legitimacy of violence. Hamas is a religious party while Fatah is secular, and Hamas supports violent resistance against Israel while Fatah does not and prefers negotiations (Ahmad, 2010). As these two issues have opposite implications for policy, there is little fluidity between the parties, so moderates are pulled between the Fatah and Hamas.

Both parties use nationalism to mobilise supporters, possibly because “nationalism is a convenient doctrine that justifies a partial form of democracy: the elites rule in the name of the nation but aren’t fully accountable to its people” (Snyder, 2000, p. 45).

This could explain why both parties play upon nationalism and patriotism, because they cannot agree to hold elections out of fear of unexpectedly losing power, so they prefer to keep mobilising until there is a clear majority. This mobilisation leads to what Pappé and Hroub describes as two types of support: genuine and conditional. Genuine voters support the party (and constitute non-fluid votes), but conditional votes are based on the political atmosphere with Israel (Pappé and Hroub, 2007, p. 77), thus are more fluid.

Hamas and Fatah then outbid for who is more nationalistic to capture the conditional voters, leading to an endless mobilisation competition, with one side pursuing unilateral moves in the name of Palestine, driving the other party to take further action. For example, when Hamas negotiated the release of 1,027 political prisoners in exchange for the Israeli soldier Gilad Shalit, Fatah feared a shift of support for Hamas, so went to the U.N. to gain recognition of Palestine as a state.

It can be argued that both parties overestimate how much of the population falls into the conditional support category that they could ‘win,’ because even as they fight over constituents, no party gains a clear majority. But due to mobilisation on extreme identity divisions, the parties institutionalised the divides between
Palestinian groups into the political system, thereby further dividing Palestinians. Even though since June 2014, Hamas and Fatah formed the Palestinian Unity Government, in line with Horowitz’s multi-ethnic coalition solution, they still compete and outbid, unable to co-govern. Fearon explains commitment problems as groups anticipating instability, so fighting and possibly winning all power might be preferable to sharing power and losing long-term.

**IMPLICATIONS**

Identity can be a strong mobilising pull, or a devastating tear in the myth of a unified ‘nation.’ The Palestinian case demonstrates that when multiple parties claim to represent one group, and mobilise on that identity, if there are major rifts between the constituents, political parties fill those niches and end up creating parties with little overlap in policy. Then mobilisation can breed competition and outbidding, despite belonging to the same ethnic group. The unity of the group can become so impacted that even concerted efforts to reunite the fractures, such as a multi-party coalition, could fail due to fears over the other party’s commitment to stop outbidding.

This research demonstrates through the case study of Palestinian political parties how we can apply the literature about competition and conflict between ethnic groups and ethnic parties to the study of intra-ethnic competition and conflict in conditions where identity is fragmented. By doing this, we have a foundation for understanding the root causes of these tensions, their implications, and how to support resolution. The mechanism outlined above could also be helpful in solving other types of conflicts, as some conflicts between different ethnicities cannot be resolved due to underlying internal tensions within each group’s population. Therefore resolving internal strife could lead to better inter-ethnic mediation.

Connor, W., 1978. A nation is a nation is a state, is an ethnic group is a… Ethnic and racial studies, 1(4), pp.377-400.
Fearon, J.D., 1994, September. Ethnic war as a commitment problem. In Annual Meetings of the American Political Science Association (pp. 2-5).

**SOURCES**

President Barack Obama talks with German Chancellor Angela Merkel at the G7 Summit at Schloss Elmau in Bavaria, Germany, June 8, 2015. (Official White House Photo by Pete Souza).
In the field of International Relations (IR), few theories offer such contrasting accounts of world politics as Poststructuralism and Realism. At its core, Realism assumes that world politics consists of sovereign states interacting in an international system lacking a central form of government, a condition referred to as anarchy. Poststructuralism, on the other hand, finds this starting point of anarchy troublesome, with most Poststructuralists claiming that there are no fixed or perennial qualities to world politics, and that states themselves are continually in flux. Given these obvious ontological differences, Poststructuralism and Realism offer distinctly different accounts of how “power” is employed in world politics. In this essay, I examine both Realist and Poststructuralist interpretations of how power functions in world politics. To carry out this examination, I deconstruct three Realist concepts: the relationship between anarchy and power, power balancing and the link between power and human nature. As an alternative, I offer three Poststructuralist concepts related to power: governmentality, perspectivism and the link between language and power. Throughout this essay, I acknowledge both the distinctions and overlaps between Realism and Poststructuralism, as well as the internal limitations and contradictions within each theory. Ultimately, I argue that Poststructuralists provide superior accounts of how power is employed in world politics through their acknowledgement of power as multifaceted and shared, rather than state-centric.

A primary assumption of Realism is the claim that the anarchic nature of world politics leads states to inevitably desire power. In its earliest, and Classical Realist form, Thucydides offers this interpretation of power by emphasising that the lack of a central authority to mitigate conflict ensures that “independent states survive [only] when they are powerful” (Thucydides, 431, p. 52). Power, then, is not necessarily employed by states of their own choosing, but instead, because states must counter the advances of their adversaries as no other, higher form of authority will. Consequently, power for Thucydides is understood as both material power, in the form of an army, but also as psychological power, in terms of the ‘alarm’ or fear this army may induce in the opposing, weaker state (Thucydides, 431, p. 11). Hans Morgenthau also approaches power from both a psychological and material perspective, though unlike Thucydides, he identifies psychological and material power as being mutually exclusive (Morgenthau, 1948, pp. 26-27), and presents anarchy as an intrinsic quality of world politics in which the stately ‘struggle for power is universal in time and space’ (Morgenthau, 1948, p. 31). One clear problem with this interpretation is that world politics can subsequently only be understood as ‘power politics’ (Morgenthau, 1948, p. 29), with the anarchic nature of world politics representing an unalterable, timeless law. This concrete interpretation of world politics to some extent mirrors Thomas Hobbes’ assertion that anarchy creates a ‘perpetual and restless desire of power after power, that ceases only in death’ (Hobbes, 1651, p. 58).
interpretation of power is also contradictory when placed alongside his moral definition of power as ‘the power of a man...to obtain some future good’ (Hobbes, 1651, p. 50). In sum, Thucydides, Morgenthau and Hobbes agree that anarchy can be seen as a primary cause of power in world politics. However, there is little consensus between these three Classical Realists over what power is, who employs power and why anarchy is perennial.

Post-structuralists such as Richard Ashley destabilise the Realist link between power and anarchy by challenging the claim that anarchy and sovereignty are fixed. Instead, Ashley rightfully asserts that there is an ‘undecidable play of ambiguity and chance in history’ that means one cannot interpret anarchy as being an unchanging, fundamental condition of world politics (Ashley, 1988, p. 254). Under Ashley’s terms, power can no longer be seen to be either a direct product of anarchy or solely emanating from the state. The proliferation and growing influence of NGOs in world politics provides crucial evidence for this point (Nye Jr, 2004, p.87), and as Ashley notes, states can no longer be understood as ‘the identical source of sovereign and power’ (Ashley, 1988, p. 234). R.B.J Walker contributes to this line of thought by proposing that a modern global commitment to ‘non-intervention’ has produced phenomena such as universal human rights that ‘transcend the claim to state autonomy’ (Walker, 1993, p. 76). Unsettling Realist assumptions even further, Walker also points out that Realism refuses to acknowledge the potential for co-operation in world politics as the theory depends upon the ‘dangers of a fragmented world’ (Walker, 1993, p. 17). One notable limitation to this analysis of Realism is that power can only be understood in terms of how coherent and convincing Realism is as an explanation of world politics, rather than how power is employed in common political scenarios such as inter-state war. However, Walker’s inability to provide an alternative understanding of power is not his undoing. For both Ashley and Walker expose a serious mismatch between the present condition of world politics and the Realist assumption that power is a product of anarchy and is employed solely by the state.

Michel Foucault’s concept of “governmentality” acknowledges the dynamism of power in world politics that Realism struggles to explain. For Foucault, governmentality can be broadly understood as the ‘tactics of government that make possible the continual definition and redefinition of what is within the competence of the state’ (Foucault, 1978, p. 221). Here, Foucault indicates that the power of a modern state derives from the government, not the sovereign, and in particular, the government’s ability to represent itself as the legitimate authority and protector of a population. In this sense, Foucauldian power represents a ‘productive network’ (Foucault, 1977, p. 119), whereby the government’s ability to rule over a population is dependent upon obvious material forces such as the army and police, but more importantly, upon discourse, or the continued interaction between the population and its government. This assertion troubles Realist assumptions around power on two fronts. Firstly, because power can no longer be understood as deriving chiefly from the state, given that it is the product of interactions between the government and its population. Secondly, because a state’s inclination to survive is no longer an inevitable consequence of anarchy, but instead, a consequence of ‘the general tactic of governmentality’ (Foucault, 1978, p. 221). With this latter point, Foucault perceptively notes that the domestic conditions within a state affect its functioning at the international level. Critics who challenge this point argue that Foucault only comprehends governmentality on a domestic level (Lipschutz, 2005, p. 15), with the application of governmentality to the international level being far from straightforward (Joseph, 2010, p. 3). However, recent Post-structuralists have been successful in using governmentality to explain the relationship between both. David Campbell’s Writing Security, for example, outlines how the United States’ foreign policy was shaped by its domestic emphasis on security (Campbell, 1998a, p. 1). Moreover, Sending and Neumann outline how the International Campaign to Ban Landmines (ICBL) was brought out by interactions between the Norwegian government and local NGOs (Sending and Neumann, 2006). The value of governmentality, then, is that it draws attention to the fact that power is employed by both the state and the population and affects both the domestic and international level.

Neorealist interpretations of power tend to differ from their Classical Realist counterparts by emphasising the concept of power balancing (Vasquez, 1997, pp. 903-904). For Kenneth Waltz, power balancing represents the fact that when ‘faced with unbalanced power, some states try to increase their own strength or they ally with others to bring the international distribution of power into balance’ (Waltz, 2000, p. 28). By taking anarchy as a starting point, Waltz argues that states are predisposed towards power balancing as ‘the perennial uncertainty about their fates presses governments to prefer relative over absolute gains’ (Waltz, 2008, p. 39). One key inconsistency within Waltz’s presentation of power balancing is whether or not it can be considered a fundamental condition of world politics such as anarchy. In the above statement, Waltz toys with this problem by taking anarchy as perennial and power balancing as a highly likely consequence of anarchy. Elsewhere, Waltz is less equivocal, asserting that ‘balancing theory does not predict uniformity of behaviour’ (Waltz, 2000, p. 38). However, this assertion is clearly at odds with another Waltzian axiom: ‘As nature abhors a vacuum, so international politics abhors unbalanced power’ (Waltz, 2000, p. 28). The internal dilemma revealed by these series of statements is that Waltz fails to identify precisely who employs power in world politics. If power balancing can only be a likely effect of anarchy, why does Waltz believe it can be used to create universal truths such as ‘international politics abhors unbalanced power’?

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Post-structuralist discussions of Realism' power balancing concept expose further flaws in its underlying logic. Campbell, for example, demonstrates that the practical application of power balancing in Bosnia actually ‘confirmed and exacerbated the differences between Bosnians and Bosnian Croats’ (Campbell, 1998b, p. 413). The problem Campbell's argument raises is that the resolution of post-conflict scenarios is often more complex than Realist theories can tolerate. Lene Hansen comes to a similar conclusion in her analysis of Realism, criticising the fact that 'conventional, realist studies of security take national identity to be settled' (Hansen, 1997, p. 375). This points to a greater epistemological problem within Neorealism, namely, that states are stable, rational actors that can be studied using a scientific approach. Hansen skillfully denounces Realism on these very grounds by arguing that Neorealism's scientific approach to politics is based upon a 'mechanical interpretation of the balance of power' (Hansen, 1997, p. 363). Here, Hansen is perceptive in noting that world politics does not act as a machine, consisting of parts (such as states) with perfectly defined functions and identical outputs. The argument that this forces us to concede is that Neorealism 'has led to a loss of the historical perspective and political awareness of classical realism' (Hansen, 1997, p. 363). Campbell and Hansen therefore expose the inadequacy of power balancing as an explanatory tool, as well as the difficulty Neorealism faces in quantifying how much power states employ.

A sophisticated Post-structuralist alternative to power balancing can be found in Campbell's examination of the Bosnian war using perspectivism. Campbell's perspectivist approach is rooted in the following proposal by Hayden White: 'when it comes to apprehending the historical record, there are no grounds to be found in the historical record itself for preferring one way of construing its meaning over another' (White, 1987, p. 75). Here, White claims that because no historical account can ever be totally impartial, one is unable to favour one historical account over another. By extending this approach to interpreting narratives on the Bosnian war, Campbell is able to present multiple interpretations of power alongside one another and ultimately shows that power rarely has a singular meaning. Instead, Campbell effectively demonstrates that in the Bosnian context, power took the form of political or religious ideology, as well as violence (Campbell, 1998c, pp. 267-275). Colin Wight challenges this approach by arguing that Campbell misappropi- rates perspectivism, given that in its original Nietzschean form ‘not all perspectives were equally valid’ (Wight, 1999, p. 312). Wight's statement suggests an important contradiction in Campbell's analysis: Campbell cannot accept that historical narratives are impartial but aspires towards being impartial by placing these narratives on an equal footing. However, in Campbell's defence, the aim of his analysis is not to treat narratives equally, but instead, to present a 'pluralisation of perspectives' or 'clash of competing narratives' (Campbell, 1998c, p. 281). Post-structuralists such as William Walters show that this approach is particularly useful in understanding power as it highlights that power inevitably ‘intersects’ with other elements such as language and knowledge (Walters, 2002, p. 89). Understood in these terms, power ceases to represent a rational entity that can be quantified by adopting a scientific approach. Post-structuralism is therefore correct in showing that power is rarely employed by an individual political actor as its meaning is always contested.

In Classical Realism, the pursuit of power is also understood as being rooted in human nature. Morgenthau argues this point in Politics Among Nations through his central claim that power is `a phenomenon to be found whenever human beings live in social contact with one another’ (Morgenthau, 1948, p. 97). In an attempt to validate this bold claim, Morgenthau asserts that all human beings desire power as the human will to dominate exists as one of the 'elemental bio-psychological drives' (Morgenthau, 1948, p. 31). In this sense, Morgenthau perceives human beings as primarily egoistic, and power as always inextricably linked with the human struggle to survive. As Waltz rightfully points out, this understanding is, however, rather unsatisfactory, in that Morgenthau sees 'power as an end to itself' (Waltz, 1979, p. 23), with political leaders forever trying to acquire more power, regardless of their current position. By distinguishing himself from Morgenthau, Waltz indicates both the fragmented nature of Realism as a theory of IR, as well as the difficulty in accepting a proposed link between power and human nature. Chris Brown also acknowledges the division between Morgenthau and Waltz and criticises Classical Realism for ascribing innate qualities to human beings as yet to be falsified by modern psychoanalysis (Brown, 2009, p. 268). By incorporating other Classical Realist thinkers such as Machiavelli, Rousseau and Augustine within his discussion, Brown also hints at misinterpretations of power being widespread throughout Realism. One notable omission from Brown's analysis is, however, his claim that the link between power and human nature is an 'unstated assumption' in Machiavelli's work (Brown, 2009, p. 264). In truth, Machiavelli directly acknowledges the inherent egoism of the individual in his claim that there is an 'end which every man has before him, namely, glory and riches' (Machiavelli, 1532, p. 121). In missing this proposition, Brown effectively downplays the link between human nature and power within Classical Realism. This ensures Brown overlooks an unresolved tension within Realism: How can power be solely employed by the state if it is innate to all human beings?

Post-structural discussions of the link between power and human nature primarily criticise humanism in liberal democracies (Hutcheon, 1989, p. 13; Rosenau, 1992, pp. 47-48). However, more insightful Post-structuralist discussions examine how power interlinks with language. Michael Shapiro, for example, perceives this link to be a fundamental condition of world politics, arguing that 'international politics...is always mediated by modes of representation' and 'sensitive to textuality' (Shapiro, 1989, p. 12). Likewise, in James Der Derian's attempts to outline the core qualities of world politics he asserts that 'power is implicated by the problem of language and other signifying practices' (Der Derian, 1989, p. 6). For Derian and Shapiro, the link between language and power is perceived to be a fundamental within world politics, with both language and power also understood as co-dependent. Importantly, the co-dependent quality of this relationship offers power, as seen with Classical Realism, as a fundamental, though also marks it out as distinctly different, in the sense that power exists alongside language rather than as a derivative of it (as Classical Realism implies with human egoism). One obvious benefit to this Post-structural interpretation has been
outlined in William Connolly’s work on coercive language strategies (Connolly, 1983). Connolly demonstrates that because language shares a co-dependent relationship with power, power can be understood as a ‘paradigm’ adaptable to a ‘variety of different circumstances’ (Connolly, 1983, p. 143). The range of Connolly’s research also testifies to the effectiveness of this approach, with power being examined in the form of Christianity and Capitalism in the USA (Connolly, 2008), as well as in the contexts of Neuroscience and political negotiating techniques (Connolly, 2002). In the broader field of Post-structuralism, critics such as Walters have also used the link between language and power to demonstrate how the EU’s use of signs and charts were critical to its success (Walters, 2002). In sum, the Post-structuralist focus on the fundamental link between language and power highlights how power takes on a range of different forms in world politics, depending on whom it is employed by.

Through a deconstruction of Realist and Post-structuralist understandings of power, I have demonstrated that Post-structuralism provides a superior account of how power is employed in world politics. To best demonstrate the strength of Post-structuralist accounts of power, my argument has alternated between Realism and Post-structuralism, and I have deconstructed Realist concepts using Post-structuralist techniques. Clear benefits to this approach can be seen in the difficulty Post-structuralism poses for three key Realist concepts: the relationship between anarchy and power, power balancing and the link between power and human nature. As an alternative, I have likewise examined three Post-structuralist concepts: governmentality, perspectivism and the relationship between language and power. These Post-structuralist concepts are critical to understanding power in world politics as they rightly see power as multifaceted and not wielded solely by the state. In clarifying this condition, Post-structuralism is able to offer insights into how contexts above and below the state relate to its international functioning. By all admittance, Post-structuralism has a broad scope, and I have been forced to limit my analysis here to essential concepts of Post-structuralism, a theory that rarely presents its underlying assumptions in a roadmap like fashion. This is at obvious odds with Realism, which predominantly offers anarchy and power balancing as fixed conditions of world politics. However, one would be mistaken for interpreting this as a serious defect to Post-structuralism or a testament to its lack of focus. Future Post-structuralist research into concepts such as governmentality should result in important contributions to IR. Ultimately, Post-structuralism provides many of the essential techniques needed to appreciate the complex and turbulent nature of power in world politics.

Photograph taken in the Burmese refugee camps in Thailand by Max McClellan (2015)