Message from the Editor

The *Whitehead School* recently began its tenth year with the announcement of Ambassador John K. Menzies as its new dean. With his extensive diplomatic experience, as well as his proven worth in furthering academic achievement, his arrival is very promising for the continued advancement of the *Whitehead School*. The staff of the *Journal* was particularly delighted to find that Ambassador Menzies had served as Chief of Mission at the US office in Kosovo, where he participated in the international peacebuilding operations taking place in the region. For the theme of the first issue of our eighth volume, the *Whitehead Journal* has focused on the topics of post-conflict reconstruction and transitional justice. Throughout the production of this issue, we have developed a thorough understanding of the complex difficulties and overwhelming challenges the world faces when confronting a society torn apart by humanity's most destructive forces. We are, thus, confident that Ambassador Menzies' successes in places such as Kosovo will make him an invaluable guide in the administration of the *Whitehead School's* ambitious path.

As the title of our theme indicates, the articles that follow are an attempt to evaluate the most consequential issues of contention within the international community, regarding how the world should seek to repair the damage, and smooth the scars, of conflicts brought about by the worst of human nature. With the troubled past of Clinton's humanitarian intervention in Somalia and Bush's democracy promotion in Iraq, what is left to aspire to when confronting the obligation of helping a doomed state that can no longer stand on its own? How can the world assist in the redevelopment of a properly functioning system of justice in lands soaked in blood that cries out to the survivors for retribution? Can the international community collectively operate through the self-interest of its individual members to prevent the greatest of atrocities? With the potential for an independent Republic of Kosovo, the continuation of genocide in Darfur, and the ever-widening gap between Iraq and peace looming over the heads of the international community, the debates encountered in this issue are of great consequence to the necessity of constructing a perspective through which to approach the greatest challenges of our day. We hope that this issue will serve as a more in-depth introduction to some of the more challenging aspects of international peacebuilding and the promotion of lasting justice. Our authors represent a diverse field of perspectives, and we are confident that their collective knowledge and experience will provide for a comprehensive discussion of this issue's theme.

In addition to those articles dealing specifically with our theme, this issue also features a number of essays that explore more general topics of international affairs. From the creation of a regional security organization in the former Soviet Union, to a discussion on the effects of US opposition to the International Criminal Court, as well as a look at the use of formal modeling in the study of conflict intervention, this section attempts to cover some of the broader areas that are currently of interest in the study of internal relations. In the final section, we are pleased to include a number of reviews of some notable books from the field of international affairs.

To conclude, we would like to thank the faculty of the *Whitehead School* for their indispensable assistance in the production of the *Journal*. We would also like to extend a special thanks to Associate Dean Rosa Alves-Ferreira for all of her assistance throughout the production process. As always, we are indebted to our advisor, Dr. Philip Moremen, for his crucial guidance and support in all aspects of our work.

Jason Brookhyser

Nation-Building: The Dangers of Weak, Failing, and Failed States

by Richard S. Williamson

Iraq continues to be in the throes of violent turmoil. The cost in treasury and blood is higher than anyone anticipated. Despite numerous "turning points," milestones, and benchmarks, there is no neat solution in sight. The American people are thus understandably disheartened, discouraged and dismayed.

After over a decade as the world's sole superpower, the brief and circumscribed US military actions in the first Persian Gulf War, Bosnia and Kosovo, and the quick defeat of the Taliban regime in Afghanistan, the American people were ill-prepared for a lengthened, bloody post-conflict engagement in Iraq. "Black Hawk Down" in Somalia was the rare exception, not the rule.[1] America's high-tech military power was capable of vanquishing foes quickly and at acceptable cost. It was also thought that once Saddam Hussein and his brutal regime were brought down, Americans would be hailed as liberators and, like Eastern Europe after the fall of Communism, Iraqi democracy would emerge like a phoenix from the ashes. However, it is clear that the history of the 1990s and the history being written in blood in Sadre City, Baghdad, and elsewhere in Iraq, are tragically different.

A democratic broader Middle East would be a safer and more stable region. People desire the dignity, human rights, and opportunity granted them by their creator and promised by a freedom agenda. It also is undeniable that Saddam Hussein was a vicious dictator who victimized his own people, sought weapons of mass destruction, and threatened his neighbors. Testament to this indictment is found in Saddam's mass graves and torture chambers, in his nuclear program in the 80s and early 90s and use of chemical weapons against Iran and Iraqi Kurds, in the long, bloody war initiated against neighboring Iran, the blitzing invasion and occupation of Kuwait, and his on-going military spectacles and bellicose rhetoric.[2] The world is better off without Saddam Hussein in power. Even given all of that, should Iraq have been invaded? That matter is for the historians to debate. My purpose is not to relitigate that issue, but to recognize that any discussion of nation-building going forward must be informed by the chaos and conflict in post-Saddam Iraq.

Ambassador Richard S. Williamson served as Assistant Secretary of State for International Organization Affairs in the Reagan Administration; he has also served as ambassador and US representative to the United Nations for Special Political Affairs, as well as ambassador and US representative to the UN Commission on Human Rights. He was named the inaugural Thomas J. and Ruth Sharkey Distinguished Visiting Scholar of UN Studies at the Whitehead School of Diplomacy in 2006.

It is abundantly clear that we were not adequately prepared to deal with the challenges of Iraq after the fall of Saddam. We have memoirs from some of the principles that, sometimes unwittingly, describe an overly optimistic view of Iraq after Saddam, based upon meager planning and unrealistic resource allocation.[3] We have a growing library of books and other reports by journalists that seem to reinforce that conclusion.[4] Moreover, our most powerful indication comes from the events on the ground.

These events have brought into question the wisdom of nation-building. Is it ever possible? If so, is the right sort of societal history, habits, and harmony a prerequisite for success? Is it worth the cost? If so, when and why?

Discretionary Foreign Policy Is Gone

During the "long twilight of the Cold War," America faced a great and terrible foe. The Cold War was a face-off between fundamentally different ways of life. The conflict centered on not just who prevailed, but about competing understandings of the nature of man: freedom versus coercion, individual rights versus collective responsibilities. The ideological battle lines between the West and the Soviet Union were clear: democracy versus communism, freedom versus totalitarianism, and market economies versus controlled economies. The terror of "mutually assured destruction" and the threat of nuclear Armageddon were known and thus focused the mind. Furthermore, the Cold War induced a sense that no corner of the globe was so remote, no place too small, no arena so insignificant that it was not a part of the great face-off between Washington and Moscow.

While approaches might vary from George Kennan's "containment theory" to Ronald Reagan's strategy to "rollback communism," the requirement to meet the Soviet threat was widely recognized. It compelled an engaged, focused, and assertive foreign policy. The United States was engaged in a titanic struggle of values, political power and military might. Failure was not an option.

The Cold War confrontation provided a logic to global affairs; there was a bipolar ballast that imposed an order of sorts. The bipolar gravitational pull was geographic, ideological, and powerful. Few countries were immune to this force.

The competition played out in political influence, economic strength, cultural reach, and military might. Each side sought to contain the other, while trying to relentlessly expand its own sphere of influence. From time to time proxy wars broke out and costly mistakes were made, such as Vietnam and Afghanistan. There were also internal upheavals here and there. The Cold War only looks simple from a rose-tinted rearview mirror. At the time, the stakes were high and recognized as such. The commitment to prevail was deep and enduring, with a willingness beyond doubt to pay the price required to carry the day.

In 1989, the Berlin Wall fell and the Soviet Empire imploded. This was followed, in December of 1991, with the collapse of the Russian Empire. The Cold War came to its conclusion. Thus, a threatening cloud was lifted and a "new world order" seemed possible.[5]

Without the specter of nuclear Armageddon, the American people wanted a "peace dividend," which politicians in Washington were happy to provide. Concern over foreign affairs, seldom dominant among the American people, diminished further. Without the Soviet threat, America entered a period that Professor Chester Crocker has described as "discretionary foreign policy."[6] No longer faced by the global totalitarian threat of the Nazis, then the Soviet Communists, America seemed to feel it could pick and choose what to engage, what to off-load to the United Nations, and what to ignore.[7] It seemed the United States' "unipolar moment" became a "unipolar era."[8]

SEPTEMBER 11, 2001

That all seemed to change on September 11, 2001. Al Qaeda's attacks on America not only brought down the World Trade Towers, destroyed part of the Pentagon, and claimed a passenger airplane in Pennsylvania, it also ended the illusion that our superior military might and two vast oceans immunized America from the dangers of a menacing world. It became painfully clear that there are people and forces that wish America ill. Furthermore, September 11th established that there are not only competitors for economic, political and cultural influence; there are forces unleashed that could inflict great harm on America. America's foreign policy could no longer be discretionary; it had to refocus to meet the new threat of global terror networks.

Importantly, President Bush immediately recognized that the civilized world not only had to counter the terrorists themselves, but also the countries that harbored terrorists. Al Qaeda was not only based in Afghanistan, it had helped turn Afghanistan into a terrorist state. Osama bin Laden was able to achieve this base of influence because Afghanistan was a weak state. This was in part because the West provided minimal humanitarian assistance and other aid for the Afghan refugees returning from Pakistan after the Soviet troops were driven out in 1988. The post-Soviet Afghan civil war, and vicious rule of the Taliban and various warlords, seemed inconsequential to Washington.

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Indeed, throughout the 1990's many saw "nation-building" as a dubious enterprise. The killing of 19 marines in Somalia and the searing image of their bodies dragged through the streets of Mogadishu in 1993, for many, captured the risk and futility of nation-building.[9] However, in point of fact, the Clinton Administration repeatedly supported various nation-building enterprises in Haiti, Bosnia, Kosovo, Sierra Leone, and East Timor. These were the result of multilateral cooperation

through NATO or the United Nations. These operations achieved varying degrees of success, though they were usually achieved with little fanfare. Furthermore, skepticism over these enterprises continued to linger.

Governor George Bush appealed to this public hesitancy in his 2000 presidential campaign against Vice President Al Gore. In the Presidential debate on October 4, 2000, Bush said, "The vice president and I have a disagreement about the use of troops. He believes in nation-building. I would be very careful about using our troops as nation-builders."[10] On October 11th, Governor Bush further developed his position with the statement, "I don't think our troops ought to be used for what's called nation-building. […] Maybe I'm missing something here. I mean we're going to have kind of a nation-building corps from America? Absolutely not."[11]

However, the 9/11 attacks forced a serious rethinking of nation-building; bringing down the Taliban regime in Afghanistan was not enough. If we prematurely left the country, it could revert to a terrorist regime that welcomed al Qaeda. By April 17, 2002, President Bush's views had shifted radically. In a speech at the Virginia Military Institute, he said:

> *we know that true peace will only be achieved when we give the Afghan people the means to achieve their own aspirations. Peace will be achieved by helping Afghanistan develop its own stable government. Peace will be achieved by helping Afghanistan train and develop its own national army. And peace will be achieved through an education system for boys and girls which works. We're working hard in Afghanistan. We're clearing minefields. We're rebuilding roads. We're improving medical care. And we will work to help Afghanistan to develop an economy that can feed its people.*[12]

By May, 2005, President Bush went further. He said,

> *we're improving the capacity of our military to assist nations that are making democratic transitions. […] The main purpose of our military is to win the war on terror; is to find and defeat the terrorists overseas. [...] But at the same time, American Armed Forces are undertaking a less visible, but important task: helping these people of these nations build civil societies from the rubble of oppression. […] To give our military more resources for this vital work, we are rebalancing our forces—moving people out of skills that are in low demand, such as heavy artillery, and adding more military police and civil affairs specialists that are needed in these types of situations. By transforming our military, we will make our Armed Forces faster, more agile and more lethal—and we will make them more effective in helping societies transition from war and despotism to freedom and democracy.*[13]

Weak, Failing, and Failed States

Since the end of the Cold War, there has not been a simple overarching principle on which to organize American foreign affairs. Some have suggested the global "war on terror" provides that logic, others a "freedom agenda" of advancing democracy, the rule of law, and human rights. While both of these themes have merit and should help inform American strategy, both have been found wanting.[14] While terrorism is certainly a threat, and must be vigorously combated, it must be regarded as only an

instrument used by extremists to advance their fanatic cause. Terrorism is not the cause itself. Furthermore, while the advance of freedom is a worthy moral aspiration for building a safer, more secure world, it is inadequate to help guide policymakers in addressing a long and menacing list of immediate dangers and emerging threats.

Meanwhile, weak, failing, and failed states encroach upon a broad spectrum of American interests. While a strategy to deal with such diminished nation-states does not establish a grand strategy for United States foreign policy, its importance necessitates a more thoughtful, sustained, and effective engagement. America continues its current episodic and uncoordinated approach to dealing with diminished states at its own peril.

Diminished states lacking professional police and an independent judiciary are prime targets for organized crime and narcotics trafficking. The pestilence of this lawlessness not only plagues the host country, but reaches deep into the streets of American cities and suburbs. The social and economic cost to America of organized crime and narcotics is immense and, constantly growing.

In addition, diminished states invariably have poor public health systems. Hospitals, health care centers, doctors, nurses, and pharmaceuticals are scarce and their reach into the countryside limited and uneven. The education system is backward, superstition high, and traditional folkways tenacious. People in urban areas often live in crowded squalor. Malnutrition is common in the countryside. Clean water is scarce. Infant mortality is high. Easily assailable by pandemic diseases such as HIV/AIDS, these societies breed and spread pestiferous illness.

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Diminished states also suffer from unregulated commerce. Lacking industry, a skilled work force, intellectual property rights, and the rule of law, these desperately poor countries are often overly dependent on resource exploitation for their modest commerce. Exploitive strip mining and deforestation are examples of the environmental degradation all too common in these societies.

Diminished states also curtail American economic opportunities and growth. Often these weak states possess vast natural resources. Hundred of millions of workers and consumers live in these impoverished countries. Due to poor education, skilled workers are few. Because of corruption and lawlessness, investment is too risky. Thus, these workers languish in abject poverty. With limited trading capacity, these states are left segregated from the global economy. Therefore, as their population faces a low ceiling of depravation and poverty, so American industry confronts a small portal of economic opportunity. The potential for development, thus, is left unrealized.

The combustibility of diminished states makes them prime markets for fragmentation and convulsion. Consequently, they are often home to private militias, rebels, and warlords. The spread of small arms into and out of these diminished states is common.[15] In addition, diminished states often become markets for unconventional weapons of mass destruction, principally chemical and biological. As these terrible weapons make their way into the hands of rogue regimes and non-state actors, America is less secure.

By definition, diminished states are unstable. Lacking a strong central government, adequate army and police, as well as an effective rule of law, the environment of lawlessness and its consequences inhibits society. As violence spirals from ethnic tension to sectarian violence and on to full-scale civil war, the instability usually bleeds beyond borders. One state's mayhem and bloodshed spills over to neighbors, creating regional instability that threatens the broader interests of the neighborhood, and of America.

Weak, failing, and failed states are fertile ground for terrorism. Such states invariably are impoverished societies with little economic or social opportunity. Good governance and the rule of law, preconditions for stability and justice, are usually unknown. Warlords, criminal cartels, and the exploitation of resources often prosper in this environment. Furthermore, weak central governments provide space for fiefdoms such as that which was provided for al-Qaeda by the Taliban in Afghanistan. These hothouses of frustration and rage are especially susceptible to extremist ideologies and calls to violence.[16] Post-9/11, we must recognize that these squalls, however remote, can become gathering storms that shower destruction and death onto our homeland.

American exceptionalism is grounded in the belief that American values have universal application. Human rights, religious tolerance, the rule of law, an independent judiciary, representative government, and so on are not merely for the fortunate few, but the inalienable rights of all mankind. These values are transcendent. They are values for which American patriots have died. It is the opportunity and responsibility of Americans today to keep faith in those values at home, as well as in the animation of our foreign relations. Weak, failing, and failed states are places in which those values are denied, sometimes violently. These places are areas that offend American values. They are locations where America's efforts to project those values, and the benefits they provide, are denied.

The cascade of possible threats from weak, failing, and failed states is considerable. The spread of pandemic disease, environmental degradation, illicit drugs, narco-crime syndicates, organized crime, lost economic opportunity, arms proliferation, and lawlessness and disorder in general can lead to regional instability, and would thus present challenges to American interests. The war on terror properly commands urgent and sustained engagement. Therefore, the assault on human rights, and the humanitarian suffering common in diminished states, warrants our concern and aid. For all these reasons, diminished states must be taken seriously.

They warrant serious study, sustained diplomatic attention, and the development of policy to confront them.

Finally, America must come to terms with post-conflict scenarios. Traumatized, post-conflict states struggling to gain a sustainable peace are too familiar: Haiti, Somalia, Bosnia, Kosovo, Timor Leste, Sierra Leone, the Democratic Republic of the Congo, Afghanistan, and Iraq, to name just a few. In these states, warfare has wrecked havoc and death. The fabric of society has been torn, and state institutions have been discredited and destroyed. The people are traumatized and habits of civility broken. Sometimes the warfare has turned into a long and brutal civil war. Sometimes there has been ethnic cleansing that compelled the international community—including America—to militarily intervene to stop the carnage. In Afghanistan, the United Sates-led coalition acted in self-defense to hit back at terrorists who had attacked America, and the Taliban government that harbored them. In Iraq, America unleashed a pre-emptive strike against a gathering storm. The whys, ways, and means differ, but in each case, the remains of the day are rubble from which must rise new state institutions, new order and security, new commerce, and a new day of possibilities. To walk away without helping to rebuild state institutions, in all likelihood, increases the possibility for the descent backwards to chaos.[17]

In light of the torturous post-Saddam struggle in Iraq and the reversal of fortunes in Timor Leste, it is necessary to examine whether nation-building, especially in post-conflict societies, is even possible.

In some cases, the United States bears a special responsibility to help rebuild. As Secretary of State Colin Powell famously said before the invasion of Iraq, if you break a society by bringing down the old order, you have a heavier responsibility to help the reconciliation, reconstruction, and rejuvenation of that society.[18] However, beyond whatever special responsibility the United States might have for post-conflict Iraq, it is very much in America's self-interest, as well as for Europe, Japan, China, the Middle East and on and on, to stabilize Iraq. Indeed, an Iraq that continues to be a cauldron of mayhem and calamity endangers the stability of the entire greater Middle East, and threatens global energy supplies. Similar interests can be seen with a Balkans in disarray and disorder, which threatens the underbelly of our European allies.

Thus, there are both moral motives and pragmatic reasons of self-interest to nation-build.

Can Something Be Done?

In light of the torturous post-Saddam struggle in Iraq and the reversal of fortunes in Timor Leste,[19] it is necessary to examine whether nation-building,

especially in post-conflict societies, is even possible. Once shattered, can states be reconciled, rebuilt, and rejuvenated? Each nation-building exercise is particular, with unique dynamics and special challenges. Can it be done?

To have an appreciation of the difficulty of nation-building and, therefore, the humility in which nation-building should be undertaken, it is worthwhile to step back and reflect on how challenging and long the process has been that led to modern industrial nation-states. Nearly a millennium ago, the norm was many small, loosely integrated dynastic fiefdoms. Gradually, through surges of integration and disintegration, larger dynastic states formed. Independent groups went through integration tensions and conflicts, struggles for power, preferences and prestige. There came a wide range of fault lines as different groups dealt with the structural tensions, struggles, and conflicts of integration, fearing domination or annihilation through reciprocal interdependence. Identity based on narrow chronicles of custom and culture lacked harmony with larger amalgamations. The familiarity, comfort, and loyalty of the particular clan became absorbed in the trade-offs of the larger society. Struggles between landowning elites, the rising middle class, and a growing industrial working class sought mechanisms to arbitrate power, keep order, and promote social harmony. New forms of representative and democratic governance emerged to absorb these tensions, distribute decision-making, and protect minority rights. It took centuries for segments of society to develop acceptable "functional interdependence" within a larger whole of the nation-state.

As Professor Norbert Elias has written:

> *Societies assume the characteristics of nations is the functional interdependence between its regions and its social strata as well as its hierarchic levels of authority and subordination becomes sufficiently great and sufficiently reciprocal for none of them to be able to disregard completely what the others think, feel, or wish.*[20]

It is clear that the history of tyranny and turmoil in many weak, failing, and failed states provides little confidence in the possibility that either restraint or respect among groups can emerge. A losing vote today negates all hope for tomorrow when the only thing known is the brutality and desperation in the fight to hold power. In such a condition, it may seem better to maintain a weak or failed state, where violence is a familiar tool, than suffer likely subjection, injustice, and possible eradication under the rule of a hostile majority. Therefore, there is little reason for promises of democracy to inspire a leap of faith when the public calculus still holds a loss at the polls as equal to death.

The habits of distrust and despair are well imbedded. The steps of shared power—compromise, conciliation, and cooperation—are unfamiliar. Building a bridge from a dark past to a liberal future is difficult, perhaps impossible. It is on such a rugged terrain that the constructs of nation-building seek firm footing.

The United States experience with nation-building goes back a long way, with some placing its origins in the Reconstruction era, following the ravages of the Civil War. Over 100 years ago, America devoted resources to rebuilding the Philippines

and Haiti, with mixed results. The long, comprehensive post–World War II effort to make a democratic Germany and Japan are often pointed to as examples of successful nation-building operations. [21] As the pace has quickened in the past fifteen years, with missions in Bosnia, Kosovo, East Timor, Sierra Leone, Afghanistan, and Iraq, America's understanding and expertise has broadened. However, as has been especially evident with post-conflict Afghanistan and Iraq, there still remains much room for improvement.

Going Forward

The United States Government has been slow to accept that our vital interests are advanced by nation-building. We have been delinquent in accepting that nation-building will be a repeat task in which America must engage. Consequently, the United States Government has been slow to organize itself for this assignment. We have yet to put together our "lessons learned." We have not established adequate personnel, resources, and coordination mechanisms to do this vital work. Tragically, these failures are playing out in Iraq. The status quo is insufficient; it is unacceptable; and it must change.

As stated by James Dobbins, a long-time foreign service officer with, perhaps, the most experience of any American with post-conflict nation-building, "Not every recent military expedition fits this description, but nation-building, peace-building, or stabilization operations, depending on one's preferred terminology, have become the dominant paradigm for the use of armed forces in the post–Cold War world."[22]

Given the frequency and variety of recent nation-building efforts, a great deal of experience has been accumulated. There are smart and talented people developing "lessons learned" at think tanks and universities. The tasks seem clear: establish security, order, and the rule of law, re-establish basic services such as electricity, provide the ways and means to rejuvenate the economy, promote reconciliation, and launch sustainable representative governance in which minority interests are represented and minority rights protected. Each of these categories are complex. Most require high guardrails to promote new habits, and form new patterns of behavior. The obstacles are substantial.

We need to develop doctrines for each of these tasks with sequencing and flexibility.[23] We need to develop a better understanding of the skills required, and organize a talent pool, within and outside government, to call on as required. We need to establish protocols for coordination within the United States Government and between the United States and other significant participants, both bilateral and multilateral.[24] Finally, and perhaps most important, we have to give nation-building a priority and seriousness of purpose generally lacking.

Following the challenges faced in post-conflict Afghanistan and Iraq, the United States Government created the Office of Reconstruction and Stability in the State Department, and, in December of 2005, the United Nations launched a Peacebuilding Commission. These are positive steps. However, neither appears to

contain the priority or promise of real progress. Policymakers should provide greater support to such new mechanisms in order to ensure that their future decisions are better informed, and their strategies more effectively implemented.

Finally, we should be more humble. There are limits to our capacity to impose solutions on troubled societies.[25] Additionally, there are limits to the response of collapsed societies. When our reach exceeds our grasp, we invite failure at great cost to us, and for those who struggle for normalcy and hope at home.

Therefore, we need a rigorous matrix for analysis of history, culture, happenstance, and the perilous road ahead for weak, failing, and failed states. In order to maximize our potential to assess the realistic probabilities for success, we need hard analysis of the cost before we engage. Ultimately, we require attainable objectives.

Weak, failing, and failed states should be a significant concern for us. They threaten our interests and can challenge our prosperity, safety, and security. Recognizing this looming threat, and responding accordingly, is demanded of us. We let these challenges drift at our own peril.

Notes

[1] See, Mark Bowden, *Blackhawk Down* (New York: Atlantic Monthly Press, 1999). See also, John L. Hirsch and Robert B. Oakley, *Somalia and Operation Restore Hope* (Washington, DC: United States Institute of Peace, 1995).

[2] See, for example, Lawrence F. Kaplan et al., *The War Over Iraq: Saddam's Tyranny and America's Mission* (New York: Encounter Books, 2003).

[3] See, Tommy R. Franks and Malcolm McConnell, *American Soldier* (New York: Harper-Collins, 2004); and L. Paul Bremer, *My Year in Iraq: The Struggle to Build a Future of Hope* (New York, N.Y.; Simon & Shuster; 2006).

[4] See, Michael R. Gordon and Bernard E. Trainor, *Cobra II: The Inside Story of the Invasion and Occupation of Iraq* (New York: Random House, 2006). James Risen, *State of War: The Secret History of the CIA and the Bush Administration* (New York: Free Press, 2006). Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of its Enemies Since 9/11* (New York: Simon & Schuster, 2006). Thomas E. Ricks, *Fiasco: The American Military Adventure in Iraq* (New York: Penguin Press, 2006). Michael Isikoff and David Corn, *Hubris: The Inside Story of Spin, Scandal, and the Selling of the Iraq War* (New York: Crown Publishers, 2006). Bob Woodward, *State of Denial: Bush at War* (New York: Simon & Schuster, 2006). See also, David Rieff, *At The Point of a Gun: Democratic Dreams and Armed Intervention* (New York: Simon & Schuster, 2005).

[5] As Professor David Hendrickson observed in 1993, the end of Cold War tensions "persuaded many observers that we stand today at a critical juncture, one at which the promise of collective security, working through the mechanisms of the United Nations, might at last be realized." David C. Hendrickson, "The Ethics of Collective Security," *Ethics and International Affairs* 7, no. 3 (1993): 2–3.

[6] Chester A. Crocker, "A Dubious Template for U.S. Foreign Policy," *Survival* 47, no. 1 (Spring 2005): 51–70.

[7] As former Secretary of State Madeleine Albright wrote, " 'Let the U.N. do it' had become the operative phrase in Washington and other capitals. This shift was partly due to the hope the U.N. would finally fulfill the dreams of its founders. But it was due as well to the desire of many national governments, including the United States, not to take on the hard tasks themselves." Madeleine Albright, *Madame Secretary* (New York: Miramax Books, 2003), 135.

[8] See, Charles Krauthammer, "The Unipolar Moment Revisited—United States World Dominance," *The National Interest* (Winter 2002). See also, Charles Krauthammer, "The Unipolar Moment," *Foreign Affairs* 70, no. 1 (1990/1991).

[9] See, Mark Bowden, *Blackhawk Down* (New York: Atlantic Monthly Press, 1999).

[10] George W. Bush, Presidential Debate, University of Massachusetts, October 4, 2000. Available at: http://www.debates.org/pages/trans2000a.html (Accessed Jan 23, 2007).

[11] George W. Bush, Presidential Debate, Wake Forest University, October 11, 2000. Available at: http://www.debates.org/pages/trans2000b.html (Accessed Jan 23, 2007).

[12] George W. Bush, "President Outlines War Effort," Remarks to the George C. Marshall ROTC Awards Seminar on National Security, Virginia Military Institute, Lexington, Virginia, April 17, 2002. Available at:

http://www.whitehouse.gov/news/releases/2002/04/20020417-1.html (Accessed Jan 23, 2007).
[13] President George W. Bush, Remarks to the International Republican Institute Dinner, Washington, DC, May 18, 2005. Available at: http://www.whitehouse.gov/news/releases/2005/05/20050518-2.html (Accessed Jan 23, 2006). See also, Wayne Washington, "Once Against Nation-Building, Bush Now Involved," *Boston Globe*, March 2, 2004.
[14] See, for example, Chester A. Crocker, "A Dubious Template for U.S. Foreign Policy," *Survival* 47, no. 1 (Spring 2005): 51–70.
[15] See, for example, Larry Kahaner, "Weapon of Mass Destruction," *Washington Post*, November 26, 2006.
[16] See, for example, Jennifer Seymour Whitaker and Arthur C. Helton, "Nation-Busting from Afghanistan to Iraq; the War on Terror," *International Herald Tribune*, November 15, 2002.
[17] Professor Chester Crocker has written that "successful military action can defeat enemy forces, topple regimes, seize and occupy territory, or deter immediate threats, but such action creates only brief moments of opportunity, not lasting political results." Chester A. Crocker, "A Dubious Template for U.S. Foreign Policy," *Survival* 47, no. 1 (Spring 2005): 59.
[18] For an interesting history of "how efforts to stop the war (in Bosnia) turned into a broader responsibility for building a lasting peace" see Jim Mokhiber and Rick Young, "Nation-Building in Bosnia," PBS/Frontline Report. Available at: http://www.pbs.org/wgbh/pages/frontline/shows/military/etc/peace.html (Accessed Jan 23, 2007). See also, Ivo H. Daalder, *Getting To Dayton: The Making of America's Bosnia Policy* (Washington, DC: Brookings Institute Press, 2000).
[19] See, "Foreign Troops Bring East Timor Violence Under Control," *Agence France Presse*, May 30, 2006. Jane Perlez, "Poverty and Violence Sink Grand Plans for East Timor," *New York Times*, May 31, 2006. Nancy-Amelia Collins, "Humanitarian Crisis Looms in East Timor," *Voice of America*, May 31, 2006. "Eyewitness: East Timor Unrest," *BBC News*, May 25, 2006. Lirio da Fonseca, "Foreign Troops Land in East Timor as Violence Rages," *Reuters*, May 25, 2006. "Residents Flee East Timor Capital," *BBC News*, May 5, 2006.
[20] Norbert Elias, "Process of State Formation and Nation-Building," Transactions of the 7th World Congress of Sociology 1970, Vol. 3, Sofia ISA, 274–284. Available at: http://www.usyd.edu.au/su/social/elias/state.html (Accessed Jan 23, 2007)
[21] James Dobbins et al., *America's Role in Nation-Building: From Germany to Iraq* (Santa Monica: Rand Corporation, 2003).
[22] James Dobbins, "The US and UN Ways of Nation-Building," *UNA-USA Policy Brief*, No. 8, June 1, 2005.
[23] For some excellent work on this topic see, James Dobbins et al., *America's Role in Nation-Building: From Germany to Iraq* (Santa Monica: Rand Corporation, 2003). James Dobbins et al., *The UN's Role Nation-Building: From the Congo to Iraq* (Santa Monica: Rand Corporation, 2005). Brent Scowcroft and Samuel E. Berger, "In the Wake of War: Getting Serious About Nation-Building," *The National Interest* 81 (Fall 2005): 49–53. Karin Von Hippel, *Democracy By Force: US Military Intervention in the Post–Cold War World* (Cambridge: Cambridge University Press, 2000). Jochen Hippler, *Nation-Building: A Key Concept for Peaceful Conflict Transformation* (Ann Arbor: University of Michigan Press, 2003). Francis Fukuyama, "Nation-Building 101," *The Atlantic Monthly* 293, no. 1 (Jan/Feb 2004): 159–162. Samuel R. Berger and Brent Scowcroft, "The Right Tools to Build Nations," *Washington Post*, July 27, 2005. Stuart E. Eizenstat et al., "On the Brink: Weak States and U.S. National Security," The Commission for Weak States and U.S. National Security. Available at: http://www.cgdev.org/section/initiatives/_archive/weakstates (Accessed Jan 23, 2007). Francis Fukuyama, "Nation-Building: the Failure of Institutional Memory," in *Nation-Building: Beyond Afghanistan and Iraq*, ed. Francis Fukuyama (Baltimore: John Hopkins University Press, 2006). Simon Chesterman, "Tiptoeing Through Afghanistan: The Future of U.N. State-Building," *International Peace Academy* (September 2002). Chester A. Crocker, "Engaging Failing States," *Foreign Affairs* 82, no. 5 (Sept/Oct 2003): 32–44. Gareth Evans, "Nation-Building and American Foreign Policy," Remarks at the Cato Institute, Washington, DC, December 12, 2001. Available at: http://www.crisisgroup.org/home/index.cfm?id=2290&l=1 (Accessed Jan 23, 2007).
[24] See, Max Boot, "Washington Needs a Colonial Office," *Financial Times*, July 3, 2003.
[25] Some argue that nation-building is not a realistic option. See, for example, Gary T. Dempsey, *Fool's Errands: America's Recent Encounters with Nation Building* (Washington, DC: Cato Institute, 2001). Morton Abramowitz and Heather Hurlburt, "The Shaky State of Nation-Building: It Doesn't Work. Is there Another Way?," *Washington Post*, July 11, 2004. Claudia Rosett, "Against 'Nation Building'," *Wall Street Journal*, September 27, 2001. James L. Payne, "Deconstructing Nation Building," *The American Conservative*, October 24, 2005. George F. Will, "Transformation's Toll," *Washington Post*, July 18, 2006. Albert Somit and Steven A. Peterson, *The Failure of Democratic Nation Building: Ideology Meets Evolution* (New York: Palgrave MacMillen, 2005). Others have pointed out how devishly difficult it is to stop ethnic cleansing, genocide, as well as other humanitarian crises; thus compounding the challenges of some nation-building operations. See, Ivo H. Daalder and Michael E. O'Hanlon, *Winning Ugly: NATO's War To Save Kosovo* (Washington, DC: Brookings Institution Press, 2000).

From Foes to Bedfellows: Reconciling Security and Justice

by Jean-Marc Coicaud and Jibecke Jönsson

This article aims to show how and why justice is, and should be, an integral part of security, and why this relationship is important to address, especially in the international context. It does so, first, by arguing that the current model of international security, by disconnecting the quest for security from the pursuit of justice, is self-defeating. As long as the contribution that justice can make to security is overlooked, international order, let alone international security, will not be achieved. Second, the article looks more closely at why and how justice is key to security. Taking justice seriously in the context of international security is particularly challenging because of the national bent, which states impose upon international relations.[1] Third, the article points to a few measures that could help to better embed security and justice at the international level. In this regard, while suggestions are made for how international policymakers are to advance the idea of an international rule of law, it is also pointed out how this development is to be paralleled by continuous efforts to foster certain attitudes and values within people and societies of the international community. Finally, questioning if today's culture and decision-makers are actually prone to truly dovetail justice and security, the article concludes with some words of cautious optimism.

Limits of the Current Model of International Security

Security is not simply a primary right, but it is the primary right of persons from which all others derive, and on which all others depend.[2] It is the primary right that, at least ideally, serves to protect the human right to life in a peaceful society.[3] Short of benefiting from security and peace, the very existence of persons is impeded—their ability to subsist, develop, and flourish. In other words, "[l]asting peace is a prerequisite for the exercise of all human rights and duties."[4] Consider the Universal Declaration of Human Rights. In its first article, it states that "[a]ll human beings are born free and equal […]" and they "should act towards one another in a spirit of brotherhood." It is from the very outset acknowledged that the most fundamental of human rights is conditioned by the relations that humans have to other humans.

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Freedom and equality are dependent on being secured by certain behavior of fellow humans.[5] Indeed, the subsequent article three of the Declaration articulates this connection clearly when it states: "Everyone has the right to life, liberty, and security of person."[6]

But identifying security as a primary right is not without complications. Although it might simplify the notion of security in certain regards, it also introduces a host of difficulties. The problems fall into two main categories: the first concerns the tension between the "self" and the "other," and between who is included in, and who is excluded from, security considerations; and the second entails the scope and depth of security requirements. Both categories contain problems that stem from a seemingly unavoidable order of priority, or hierarchization, where some rights are protected on the account of others.

Security is not simply a primary right, but it is the primary right of persons from which all others derive, and on which all others depend.

If security is first and foremost about ensuring survival, about ensuring that persons have the ability to sustain themselves, it calls for securing this right in the setting within which they evolve. In this regard, the search for security is fundamentally shaped by the divide between notions of the "self" versus the "other," in which the "other" is seen as a source of uneasiness, if not a threat. The difficulties associated with this divide are threefold.

First, determining where to draw the line between the "self" and the "other," between who is included and who is excluded, and therefore between who is seeking security and who is perceived to be a source of insecurity, can be problematic. As there is arguably a continuum from the "self" to the "other" in which the two exist in relation to, as well as in interaction with, each other, this is not an easy task. Second, when faced with the necessity to choose between whose security is more vital, prioritizing between persons and their security presents a daunting challenge. For example, faced with the necessity to choose between one's own death, or that of a loved one, whose life is determined to be more valuable? How to best tame the insecurity that may stem from interacting with the "other" presents a third difficulty. From cooperation to conflict, there is a whole range of possibilities and combinations that may result from the interactions between the "self" and the "other."

The other category of problems that springs from the understanding of security as a primary right concerns security requirements. What is exactly required to protect and guarantee this right? What is needed to achieve security? Three issues surface from such questions, ones which engage the very meaning of security itself.

To begin with, is security essentially limited to the protection against physical harm, or does it extend to the protection against less tangible threats related to civil,

political, economic, social, and cultural rights (including the right to development)? Is security simply about ensuring that people are able to subsist without direct threats to their existence, or does it include acquiring what is needed to improve and live a meaningful and dignified human life? If the latter is true, what other aspects, besides physical protection, belong to security? Furthermore, how is the threshold for the requirements of the scope and depth of security calculated at any given time? Assuming that security calls for a plurality of requirements, which might not all be possible to satisfy simultaneously, then a third difficulty is the necessity of choosing one (or a few) over others.

Already extremely complex to address at the national level, these challenges become even more difficult at the international level. Traditionally, in the international realm, the conceptualization and implementation of security has been based on three considerations and the respective priorities associated with each: 1.) the "we" versus "them" divide, with priority given to the national community over the international community; 2.) the dualism between the state and the individual, with priority given to the former over the latter; and 3.) the tendency to dissociate protection against physical threats from "softer" needs or rights, with priority given to physical protection.[7] This has led the mainstream understanding of security at the international level to be particularist (or exclusionary), as well as state and defense-driven, with national interest and military concerns at the center of preoccupations.[8]

Certainly, since the end of the Cold War, a tendency to redefine security has encouraged both academics and policymakers to revisit the model of collective security.[9] The notion has, and still is, expanding so as to include actors other than states—institutions, organizations, and networks—as security providers. But it is also expanding in terms of what security means to those who are protected. The development can be conceptualized in a more human rights-inclined model of collective security, which has put several new items on the international security agenda in the past fifteen years or so, such as human security[10] and the "responsibility to protect."[11] However, the impact of these new items has been limited by the weak institutional and structural development that leaves their provision to be largely dependent on traditional military state power. The chronic limitations of the United Nations (UN) and its most progressive policies, together with the Bush administration's "war on terror" as a way to address the attacks of September 11th, demonstrates well how confrontation and physical might continue to play a major role in international security.[12] That such a path achieves security is far from obvious. It is even tempting to think the contrary.

Physical might may contain violence for a certain period of time, but it rarely puts an end to it. In fact, in today's world, it often invites those actors eager to settle scores to simply be prudent and wait for the right moment to strike.[13] Moreover, since action and reaction is shaped in, and by, interaction, a confrontational attitude is likely to trigger a similar posture in others. Consequently, interaction is put on a dangerous course marked by calculations of means and intentions and by distrust,

which is likely to lead actors to rely on an arms race or entertain the launch of preemptive attacks in their quests to achieve security. Such considerations illustrate how security, when narrowly understood, runs the risk of leading to overall insecurity.

This does not mean, however, that we should abandon altogether the traditional conception of international security. Because of the accumulation of grievances and tensions among persons and states over time, a totally open and defense-free existence is likely to leave populations vulnerable. A level of caution and protection from physical harm is therefore still necessary for a sense of security to prevail.

Ultimately, there is a need to grasp what has been identified as the "security dilemma"[14] and seek a middle ground. In this regard, the following questions should be kept in mind: How can it be ensured that caution and protection do not end up being the captives of paranoia? How might a policy of security that does not undermine itself be envisioned and implemented? The answers lie in grounding the search for security in the acknowledgment of, and response to, the demands of justice.

Taking Justice Seriously: The Best Guarantee for International Security

What makes the demands of justice so important to the quest for security? As Jean-Jacques Rousseau once said, "[t]he strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty."[15] For, if one feels that the society in which he operates and interacts does not uphold his rights in a fair or just manner, he is likely to disregard his responsibility towards those with whom he shares this society, or towards the social arrangements and political institutions that preside over their relations, for concerns of his own survival. The sentiment that the survival and well-being of others is of no relevance to him is likely to deepen if the social and political setting appears to unduly favor a limited few. No "tranquility of spirit,"[16] so to speak, can be expected. Not even the powerful are immune from this state of affairs. As those in power are associated with responsibility over the shortcomings of the political and social arrangements, the powerful are indeed prone to be a target of resentment and acts of violence from those who feel cheated by the system. In fact, as history has often shown, the abusive concentration of power tends to eventually become self-defeating for the powerholder(s).

For example, consider a typical dictator's fate: more often than not, the dictator ends up being the victim of his/her own rule. As the style of governance encourages people to dispose of the leader when the possibility arises, the dictator is essentially condemned to be in constant fear for his/her life. "Being on the run" in his/her "kingdom" frequently becomes reality. It has been noted, for instance, that long before the summer and fall of 2003, when US troops in their search forced him from one hiding place to another, Saddam Hussein had made a habit of not sleeping in the same place more than two nights in a row.[17] A dictatorial way of ruling will

therefore not only instill fear in its population for the ruler but also, within the ruler by the ruled as a result of the unjust dictatorship. As a result, oppression will only be reinforced, as will fear in both the ruler and the ruled.

Against this background, four reasons suggest that taking account of the demands of justice strengthens security. First, as previously discussed with reference to Rousseau and the "tranquility of spirit," as long as the rights of persons are protected, people have no real incentive to violate the rights of others. The sense of relative contentment that settles in makes it possible for an individual to translate respect for others' rights into a duty-bound feeling of responsibility that, in turn, helps others feel equally duty-bound towards his/her rights. The mutual dependency associated with the intertwining of rights and duties creates a social dynamics of cooperation (i.e. of cooperative solidarity among actors), which is essential to the structure and climate of security.[18]

Second, the sense of predictability that a functioning system of rights and duties brings fortifies security in two ways. It minimizes the feeling of uncertainty and the worries associated with it that often heighten insecurity and push people to think and act in preemptive ways vis-à-vis possible threats. In addition, predictability works by creating confidence, which consequently enhances security. When people know what to expect in, and from, their interactions with others in normal, but also in extraordinary, circumstances, faith in the justice system and the security that it provides are reinforced.[19]

Accounting for demands of justice supports security in a third way: Moving people away from a victim mentality and culture can avoid a collapse of the societal and individual fabric, and the insecurity that can accompany it. When injustice is perceived as systemic, the social organization of society, and the political institutions that guarantee it, lose legitimacy. In the process, the people's spirit and behavior also disintegrates. The end result is a decriminalization of crime that is apt to facilitate insecurity.

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At the societal level, the loss of social and political legitimacy blurs the normative line between what is permitted and what is not, between what is a crime and what is not, and undercuts the power to enforce. An outlook of "anything goes," as well as increasing disorder, becomes more and more acceptable, spreading to all sectors of society and life. This is reinforced at the individual level, where more damage is done.

In societies without recognized mechanisms to address or vindicate grievances, there is a risk for victims to develop a permanent victim identity that is prone to

perpetrator behavior. By offering reparations, a functioning system of justice (in a functioning society) allows victims to, as much as possible, isolate their grievances and unlock themselves from them. It allows them to reconcile with themselves and their environment. In removing the sense of victimization, justice is intended to empower the victim by enabling the past to be left behind and the present to regain possession of reality. In the process, justice allows the victims to become active agents freed from the possible danger of turning violent outward. By contrast, not taking care of, let alone healing, the wounds disconnect the victims from themselves, which usually translates into a diminished empathy for others. At times, what follows is more than simple anger. A spirit of resentment to reality as a whole may very well develop. Such spirit can induce people to lash out against those viewed as the never-condemned guilty party. This, in turn, can also open the "revenge" gate to broader targets.[20] The terrorized can very well become the terrorists. When this has become the prevailing climate, when victimization has proliferated to the point of consuming the character of a society and its members, both victim and perpetrator collide, widening and deepening the trauma even further.[21] Insecurity, physical as well as psychological, turns into a morbid way of life.

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Fourth, considering the various benefits of a justice-minded society, its people tend to have much to lose if it unravels. By the same token, the more vested interests people have in satisfying the demands of justice, the less society is challenged in a negative way at the systemic level, and the more the security society provides is strengthened. Against this background, the value of creating and maintaining flexible justice-minded societies, capable of embracing change to the best interest of all, is underlined. However, as people are prone to stick to the status quo, especially if it is to their benefit, such a change may not come easily.[22] Yet, there is more security to be achieved in accepting the instability that comes from embracing change than in hanging on to an order outrun by reality.[23]

If establishing a bridge between justice and security is already a complex endeavor at the national level, it is even more of a challenge at the international level. However, it is precisely because of this greater difficulty that it is all the more imperative to try to do so.

The deep sense of disconnect between the search for security and the pursuit of justice at the international level, and the problems associated with it, spring from the national bent—from the tendency to favor national interests in international life.[24] International socialization is shaped by, and around, national society. This bent fundamentally limits the projection, both in conceptual and practical terms, of justice and security at the international level. The wall built between the national and

the international realm leads to a disassociation of security from justice, favoring the former over the latter. In the process, it encourages an exclusive and confrontational approach to international security. Hence, it promotes the realist logic of pursuing security independently from justice, which pays more attention to defense against external threats and military needs than to the inclusive demands of international justice.

Multilateralism seeks to tame this divide between the national and international realm and the effects that they have on the capacity to bridge security with justice. Nevertheless, it far from eliminates the problems. In the multilateral context, states, especially the more powerful ones, tend to find a greater number of reasons to narrowly pursue their respective interests than to cooperate for the public good. The result is the marginalization of multilateral organizations, such as the United Nations, which are left as weak providers of international justice. This weakness is illustrated by the relatively poor track record of the UN in human rights protection on the ground.

As most states remain focused on narrow national interests and concerns, the United Nations suffers from the difficulties associated with convincing the member states of the benefits associated with the global public good, including the global protection of human rights. A resulting consequence is the inability of the UN to be a strong international security provider. Indeed, historically, the United Nations has more played the role of a bystander than of an enforcer, rarely acting, or only acting reluctantly, to provide security to people and states under attack. Such behavior indicates how the self-interested attitude of member states translates not only into the hampering of international justice but also, the incapacitation of international security.

The danger of disconnecting security from justice in the international realm could not be graver. By undermining political legitimacy at all levels while fuelling "the geopolitics of passions,"[25] international security is at risk of being put further out of reach. The war in which America and terrorism are locked is just one aspect of this story, something towards which Kofi Annan pointed a warning finger in his final speech as UN Secretary-General to an American audience. Annan underlined how the international community, by allowing terrorism to serve as the legitimizing factor for actions of collective security that go against international norms and rules, risks to delegitimize, and weaken, that which it aims to protect in the first place.[26]

Consequently, achieving real international security requires multilateralism to escape from being captive to particularist approaches—something which precisely calls for dovetailing security with justice at the international level. Short of this, the deficiency of international justice will remain the deficiency of international security.

Modest Propositions to Reconcile Security and Justice

If international security requires that justice be taken seriously, how can this be achieved? More specifically, what are the changes that could contribute to the realization of this goal? To better embed security into justice and, moreover,

strengthen security by strengthening justice, two types of change are recommended: first, a change of attitude regarding fear and democratic values, so as to recognize the danger that the former poses to the latter when it turns into paranoia; and, second, a policy change as a way to enhance the international rule of law by ensuring that international justice has an influence beyond that of being dependent on states' particular interests for its application and enforcement.

It is understandable that fear is at the heart of the pursuit for security. Desiring to protect oneself and being afraid of suffering harm are one and the same thing. However, fear does not have to turn into paranoia. Ensuring that paranoia does not result is essential to a healthy and efficient quest for security. When the line between fear and paranoia holds, the search for security has a better chance to connect with, and achieve, greater security.

The behavioral patterns that paranoid fear brings about in persons are easily reproduced throughout society. While people will be eager to control others, they will also isolate themselves and limit communication to the extent that the sense of community, let alone social intimacy, in society will dissolve. To avoid such a course of action, fear has to be controlled in a positive manner. An exaggerated defensive attitude towards fear must be prevented from leading to a pathological dimension or prevailing over a healthy, prudent attitude. This calls upon encouraging cautious behavior without triggering paranoia.

Fear has to be managed in a way that motivates people to embrace life and each other. After all, is it not the sense of finitude that instinctively urges human beings to live their lives to the fullest and make contact with others? Although, in times of weakness, keeping others at arms length is a sensible measure, it should only be a temporary one, because when it becomes a structural behavior separating people, pathology prevails. This is just as valid in politics, be it international or national politics. This is well illustrated in modern totalitarianisms where politics of paranoia has repeatedly come to backfire, leaving a trail of destruction both at home and abroad.

How can an environment in which persons have the courage to make themselves more vulnerable be established? An environment in which the strength of persons, as exposed in the acceptance of their vulnerabilities, empowers society? An environment which fosters a society that is grounded in the trust, rather than the fear, between its members? This is perhaps the biggest challenge for the search of security (psychological and physical security), and it is the predicament of modern democratic culture.

Rousseau's overall intellectual quest is exemplary in this regard. It can be argued that one question that runs through Rousseau's writings is: under which conditions am I going to open to the other, so that the exposure resulting from it does not diminish me but makes me stronger and more present to myself, to others, and to the world in general?[27] Rousseau's answer resides in seeking to fulfill the promising character of democratic values.[28] He sees democratic values as a key to both individual and social responsibility, to the acceptance of, and duty towards, oneself as well as others.

This does not mean that any attitude towards, or interpretation of, democratic values will do. Democratic values can be used in a non-democratic manner for purposes and interests contrary to their message of inclusiveness. As such, they can themselves be a source of insecurity. Therefore it is important to ensure that they are continuously prevented from being instrumentalized or underutilized. This requires that democratic values abide as much as possible by their progressive character and that their critical approach of reality not only be geared externally, towards non-democratic regimes, but also inwardly, towards democratic regimes.

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In turn, the transformation of attitude vis-à-vis fear and democratic values calls for a policy change, i.e. an improvement of the current international rule of law. The opportunity for this to take place depends upon four considerations. First, there is the need to expand the notion of international security by complementing it with an approach to international justice that goes beyond being merely a moral concern dependent on the whims of states.[29] This means adopting an international public policy approach of international justice—one which, by dovetailing justice with security through the integration of moral considerations into public policy expressed and defended by law, would strengthen international security.

Second, a system of international security embedded in justice has to be built around addressing powerlessness wherever it is, without altogether abandoning national demands and overlooking the responsibility that even the powerless hold. The goal is to give a sense of responsibility even to the less powerful.

Third, the relations of the international rule of law with democratic values have to be revisited. This entails recognizing that, although international life encompasses great discrepancies of power, the principle of equality among states and people is a key aspect of *de jure* international relations. The international rule of law cannot amount to the universalization of a one-sided view of the world. In this regard, rather than giving way to a narrow and absolutist search for security, the ability of the international rule of law to socialize uncertainty and instability rests, to a certain extent, on being a pluralist and open-ended process.

Fourth, enough resources have to be allocated to implement the strategic services to be delivered by an international rule of law that is taken seriously. The reasons to limit redistribution (including scarcity of resources, the corruption of governments at the receiving end, and competition) do not justify inaction or poor action. There is no alternative to working on identifying a structure of international justice that is able to create an overall synergy between social justice and efficiency, so as to not, as the saying goes, "rob Peter to pay Paul."

Concluding Thoughts

Considering that the national bent and the divisions (normative, mental, political, social, economic and knowledge divisions) it introduces among countries in international relations is going to persist for the foreseeable future, a gap between justice and security will remain in the international realm. This is a formidable challenge, especially since developed countries that have been historically committed to intertwining social solidarity and security policies and are among the most active internationalist actors are increasingly moving away from a "social state" approach at home.[30] Faced by the pressures of economic liberalism and international competition, they seem less and less inclined to embed the political and legal dimensions of the rule of law in welfare policies to tame individual mischance. How could, then, a philosophy of order and justice, aimed at dovetailing security and justice, be endorsed in the international realm while it is being dismantled at the domestic level?

Yet, with democratic values increasingly shaping modern identity, nationally and internationally, the structures of international security and justice are becoming more co-dependent and complementary (both in normative and practical terms) than perhaps ever before. Because this is so, it is essential for the establishment and maintenance of security to push the line of inclusive pluralism as far as possible, within and beyond borders.

NOTES

[1] Issues of justice and security, to a large extent, remain matters which states handle first and foremost according to their national concerns and interest—independent of the international good. As such, international relations and international affairs are marked by a national bent that, at times, even conflicts with, if not contradicts, the international interest. See Jean-Marc Coicaud, *Beyond the National Interest: Peacekeeping and Multilateralism in Times of US Primacy* (Washington, DC: United States Institute of Peace Press, 2007) or Martha Finnemore, *National Interests in International Society* (Ithaca, NY: Cornell University Press, 1996).

[2] Emma Rothschild, "What is Security?," *Deadalus* 124, no. 3 (1995): 53–98.

[3] The human right to life is often used in the context of environmental law, or in ethical discussions related to especially religious and cultural considerations. However, here it is used in its fundamental meaning of simply a human's right to live. For a discussion of the term, see for example Franciszek Przetacznik, "The Right to Life as a Basic Human Right," *Revue des droits de l'homme/Human Rights Journal* 9 (1976): 589, 603.

[4] These were the opening words of the former Director-General of UNESCO, Federico Mayor, in his declaration on the "The Human Right to Peace" made in January 1997. Since the Declaration was adopted by UNESCO in Paris in 1997, the notion of a "human right to peace" has garnered much support and many efforts have been undertaken, especially by non-governmental organizations, for it to be officially recognized as a human right. Thus far, the most formalized success has been in the UN General Assembly resolution on "Declaration and Programme of Action on a Culture of Peace" adopted in September 1999 (A/RES/53/243, 6 October 1999), however without the "right to peace" actually being explicitly mentioned. For more information, see for example Douglas Roche, *The Human Right to Peace* (Toronto: Novalis Press, 2003).

[5] For more on rights defined by the relations between persons in a community, as well as the larger framework which serves to secure these relationships in case of default, see Jean-Marc Coicaud, *Legitimacy and Politics: A Contribution to the Study of Political Right and Political Responsibility*, trans. and ed. David Ames Curtis (Cambridge, MA: Cambridge University Press, 2002), especially chapter 1, "What is Political Legitimacy?"

[6] United Nations, *Universal Declaration of Human Rights*, GA res. 217A (III), UN Doc. A/810 at 71 (1948).

[7] The division between "soft" and "hard" rights is often drawn between economic, social, and cultural rights on the one hand, and civil and political liberties on the other. This division can also be mirrored in the

difference between raising the standard of living and guaranteeing the right to life.
[8] This is an understanding that grows out of the mainstream realist perspective of the world and especially, the realist understanding of power. See for example Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 4th ed. (New York: Alfred A. Knopf, 1967) and Kenneth N. Waltz, *Man, the State and War: A Theoretical Analysis* (New York: Columbia University Press, 1959).
[9] The shift in the international security climate expressed in the reconsideration of power, which led to a gradual redefinition of security, has come to expand across all schools of international relations. See for example Barry Buzan, *People, States, and Fear: An Agenda for International Security Studies in the Post–Cold War Era* (Boulder, CO: Lynne Rienner Publishers, 1991); Barry Buzan, Ole Waever, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, CO: Lynne Rienner Publishers, 1998); and Emanuel Adler and Michael Barnett, eds., *Security Communities* (New York: Cambridge University Press, 1998).
[10] See the special issue of *Security Dialogue* 35, no. 4 (September 2004) and, for a comprehensive account of what human security entails, see Human Security Center, *Human Security Report 2005: War and Peace in the 21st Century* (New York: Oxford University Press, 2006).
[11] The 2005 World Summit Outcome document (A/RES/60/1, 24 October 2005), adopted by the UN General Assembly as the result of the UN World Summit held in New York on September 14–16, 2005, endorsed the acceptance of the collective responsibility to protect civilians from genocide and other crimes against humanity.
[12] This was paralleled with the development of the understanding of power, particularly with theories of "soft" power gaining attention. These alternative understandings, however, remained based in the assumption that "hard" power is the ultimate power that not only grants power to the "soft" power but also, is to be fallen back on in "real" crisis. See for example Robert O. Keohane and Joseph S. Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977); David A. Baldwin, *Paradoxes of Power* (New York: Basil Blackwell, 1989), especially chapter 7, "Power Analysis and World Politics: New Trends versus Old Tendencies;" and for a post Cold–War account, Robert O. Keohane, Joseph S. Nye, and Stanley Hoffman, *After the Cold War: International Institutions and State Strategies in Europe 1989–1991* (Cambridge, MA: Harvard University Press, 1993).
[13] This is something that had been previously pointed out by Carl von Clausewitz in his 19th century work *On War* and has remained a subject of international security discussions since. See Carl von Clausewitz, *On War*, rev. ed., trans. and ed. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1984).
[14] The notion of a "security dilemma" in international relations was first coined by John Herz in the 1950s and has since been extensively elaborated upon in many axes of international studies. See John H. Herz, "Idealist Internationalism and the Security Dilemma," *World Politics* 2, no. 2 (January 1950): 157–80.
[15] Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (London: Penguin Books, 1968), 53.
[16] Charles de Secondat, Baron de Montesquieu, *The Spirit of the Laws*, trans. and ed. Anne M. Cohler, Basia C. Miller, and Harold S. Stone (Cambridge, UK: Cambridge University Press, 1989), 157.
[17] See for example Kenneth M. Pollack, *The Threatening Storm: the Case for Invading Iraq* (New York: Random House, 2002), 298.
[18] This is a logic that can be traced back to contractual theory and many of its efforts to justify a rule, and its ruling, in the rational choice of man. One of the more recent examples can be found in John Rawls' description of society as "a cooperative venture for mutual advantage;" see John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971), 4. See also David Gauthier, "Political Contractarianism," *The Journal of Political Philosophy* 5, no. 2 (June 1997): 135.
[19] Indeed, one of the assumptions on which the theory of a democratic peace rests is that of a stable system based on a certain degree of transparency and predictability of others, whether interpreted as grounded in institutional constraints or in informational properties. For a brief debate of the two accounts, and their logic for the democratic peace, see Kenneth A. Schultz, "Do Democratic Institutions Constrain or Inform? Contrasting Two Institutional Perspectives on Democracy and War," *International Organization*, 53, no. 2 (Spring 1999): 233–266.
[20] Revenge and resentment, although arguably connected at some level, are not identical.
[21] Zygmunt Bauman, "The Duty to Remember—But What?," in *Modernity and the Holocaust* (Ithaca, NY: Cornell University Press, 2000), 236–237. These are, of course, issues at the heart of what it is that the project of transitional justice is trying to come to terms with. For a thorough introduction to issues of transitional justice, see for example Neil J. Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Washington, DC: United States Institute of Peace Press, 1995) and Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000).
[22] In his theory of justice, John Rawls tries to solve part of this problem by calling upon the notion of the "veil of ignorance," which is closely linked to his second principle of justice. See John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Belknap Press of Harvard University Press, 2001),

15–16. Also, refer to pp. 42–43 and 97–100.
[23] Jean-Marc Coicaud, "Legitimacy, Socialization and International Change," in *Power in Transition: The Peaceful Change of International Order*, Charles Kupchan et al. (Tokyo: United Nations University Press, 2001).
[24] Jean-Marc Coicaud, "International Politics and Dilemmas of International Solidarity," in *Beyond the National Interest: Peacekeeping and Multilateralism in Times of US Primacy*.
[25] Pierre Hassner, "La revanche des passions," *Commentaire* 110 (2005): 299–312.
[26] Kofi A. Annan, Farewell Speech, Truman Presidential Museum and Library, Independence, MO, December 11, 2006. Available at: http://www.trumanlibrary.org/annan.htm (accessed February 27, 2007); for additional thoughts on how terrorism works to provoke the underwriters of the international system to delegitimize their own system of legitimacy, see Friedrich Kratochwil, "Moles, Martyrs and Sleepers: The End of the Hobbesian Project?," *Ethnologia Europaea* 33, no. 2 (2003): 57–68.
[27] In Jean-Jacques Rousseau's writings, the search for an enhanced presence is conducted in relation with the autobiographical, and objectified, self in *The Confessions*, trans. J.M. Cohen (New York: Penguin Books, 1953); the teacher in *Emile: Or, on Education*, trans. Allan Bloom (New York: Basic Books, 1979); nature in *The Reveries of the Solitary Walker*, ed. Christopher Kelly, trans. Charles E. Butterworth, Alexandra Cook, and Terence E. Marshall (Hannover, NH: University Press of New England, 2000); the lover in *Julie, or, the New Heloise*, trans. Philip Stewart and Jean Vache (Hannover, NH: University Press of New England, 1997); and fellow citizens in *The Social Contract*.
[28] Jean Starobinski, *Jean-Jacques Rousseau: Transparency and Obstruction*, trans. Arthur Goldhammer (Chicago: University of Chicago Press, 1988).
[29] Jean-Marc Coicaud, "International Politics and Dilemmas of International Solidarity."
[30] Robert Castel, *From Manual Workers to Wage Laborers: Transformation of the Social Question*, trans. Richard Boyd (Somerset, NJ: Transaction Publishers, 2002).

Building the Rule of Law and Establishing Accountability for Atrocities in the Aftermath of Conflict

by Louis Aucoin

As places like Iraq and Afghanistan dominate the news, perhaps never before has post-conflict reconstruction assumed greater importance. As the resources of countries around the globe are invested in these and other conflict and post-conflict situations, it has become increasingly clear that the establishment of the rule of law is essential to the success of these efforts. In fact, the authorities have begun to recognize that the failure to prioritize the rule of law has been one of the chief failings of recent post-conflict missions.[1]

In the Secretary-General of the United Nations' August 2004 report entitled "The rule of law and transitional justice in post-conflict societies," Kofi Annan has defined the rule of law as:

> *a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedure and legal transparency.*[2]

In the past few decades, international and local actors have been working separately and together to foster all of these aspects of the rule of law in countries where it has been destroyed by conflict. There are now a number of activities that have emerged as standard strategies for the promotion of rule of law and transitional justice in post-conflict societies. New lessons are learned from each international mission or intervention in post-conflict societies, and practitioners are beginning to identify important methodological approaches building on those lessons. So-called "top-down" approaches, in which international elites attempt to impose foreign models, are frowned upon, and "bottom-up" strategies designed to foster local ownership and legitimacy are favored. In addition, practitioners of rule of law

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promotion now call for a holistic approach to this field in which multidisciplinary teams coordinate all of their activities pursuant to a strategic plan, which itself is the result of a careful pre-deployment assessment.

The principal activities now intimately associated with this new field include: constitution-making, judicial reform, law development, democratic policing, establishing accountability/fighting impunity, fighting corruption, and the use of local customary practices in promoting the rule of law. This study analyzes the state of the art of rule of law promotion in the context of each one of these rule of law activities, briefly identifying the lessons learned, flagging questions unanswered, and, where possible, identifying the way forward.

CONSTITUTION-MAKING

One area of rule of law promotion that has received a great deal of attention in recent years is constitutional development. The world has watched as a constitution was created for Bosnia as part of the Dayton agreement; in East Timor, as the mandate of United Nations Mission in East Timor drew to a close; and in other post-conflict countries such as Rwanda, Afghanistan, and, most recently, Iraq. It has become obvious that the period immediately following the cessation of hostilities by warring parties is a "constitutional moment," when there is hope that opponents can find a common ground in devising a charter. In this unique moment, hostile parties can set forth principles, and the higher law of the constitution, to guide the nation and keep it off the course of conflict and instability. As a result, a great deal of effort has been devoted to constitution-making by local actors, who have the greatest stake in the process, as well as by international actors, who have often provided material and technical support.[3]

Although it may be too early and too difficult to evaluate the success of recent constitution-making processes that have unfolded in these post-conflict situations, some modest lessons can be derived from analyzing them anecdotally. Some analysts have taken note of a "new constitutionalism" that has evolved in recent years. Proffessor Vivien Hart has defined this new brand of constitution-making as consisting of:

> *prior agreement on broad principles as a first phase of constitution making; an interim constitution to create space for longer term democratic deliberation; civic education and media campaigns, the creation and guarantee of channels of communication, right down to local discussion forums; election for constitution making assemblies [which may be interim parliaments or bodies elected specifically for the purpose of agreeing on a constitution depending on the resources of the country involved]; open drafting committees aspiring to transparency of decision making; and approval by various combinations of representative legislatures, courts, and referendums.*[4]

In addition, this new constitutionalism is characterized by the view that the process is as important, if not more important, than the ultimate content of the final charter. The theory underlying this view is that an open and inclusive process will contribute to healing and reconciliation. Furthermore, it will serve to create a sense

of ownership by giving minorities and the previously disenfranchised (including, racial, ethnic, and religious minorities, as well as women) a voice.[5] The goal is for the process to enhance the legitimacy of the constitution and ensure the stability of the political regime established under it. Hart has gone so far as to suggest that the emphasis placed on the process, and the avenues of communication created by it, is so great that perhaps the moment has come when we can now view constitutions through the metaphor of a continuing conversation between the elites of a given society and the population. This, therefore, suggests the establishment of a sea change from the older view of constitutions as static and monolithic.[6]

In recent decades, several new constitutions have been adopted through such a process. The establishment of South Africa's Constitution in 1996 is perhaps the paradigm of this new approach, though many other countries, including Eritrea, Nicaragua, Brazil, and Kenya, have adopted new constitutions through processes that utilized the active engagement of their populations. While it is obviously too early to determine whether these new charters will survive the test of time, some anecdotal evidence suggests that they have succeeded in fostering legitimacy.[7]

In addition, apart from the inclusiveness and participation that characterize this new constitutionalism, international actors have also been assigned a new role. Whereas, in the past, international actors have dominated and driven constitution-making, particularly in post colonial countries, most international actors working in this context today have come to play a more neutral role, bringing expertise and resources to processes that are locally driven.[8]

Judicial Reform

Revitalizing and repairing damaged court systems in the aftermath of conflict is obviously an essential feature of rule of law promotion. Here, as elsewhere, assessment is critical.[9] Experience has shown that the needs with respect to judicial reform have differed enormously from one case to another. In some cases, such as Cambodia and East Timor, the creation of a judicial system suffered from an almost total lack of human resources on which to draw. In other cases, such as Bosnia and Kosovo, while there were enough individuals with judicial experience, many were nonetheless compromised in their ability to dispose impartial justice due to factors relating to the conflict. In other circumstances, like that of Rwanda, the problem was more one of competence than of impartiality.

Consequently, all reform in this area must begin with a comprehensive assessment of the current state of the judiciary, which includes: cultural factors, the effect of the conflict on the judiciary and on its infrastructure, and the history of the judiciary in the country. Appropriate action plans will depend greatly on the results of such an assessment. Nevertheless, while solutions to problems will thus need to be tailored to the particular circumstances, common problems and questions often arise.

Perhaps one of the most obvious problems commonly encountered is that of a damaged infrastructure. The challenge presented here requires a multidisciplinary

approach. Engineers and architects must work with judicial personnel to determine what will be required in the short term in order for the justice sector to function. Not only will it be necessary to repair or reconstruct courthouses, prosecutors' offices, and police facilities, it is also critical not to overlook the repair or reconstruction of correctional facilities. This has been another common failing in international missions such as Kosovo and East Timor. The oversight has been attributed to the fact that donors are often squeamish about corrections and correctional facilities out of fear that involvement in corrections may later associate them with allegations of human rights abuse.[10] Be that as it may, it is clear that security cannot be established in a post-conflict setting if there are no correctional facilities to detain dangerous and violent criminals. In addition, although even the most basic repair of the infrastructure may be resource-intensive, it is a *sine qua non* of the overall rule of law mission.

The failure to prioritize the rule of law has been one of the chief failings of recent post-conflict missions.

It will also be necessary to determine on a priority basis whether the local actors in the judicial sector will be capable of facing the challenges associated with establishing security in the immediate aftermath of conflict. The answer to this question will in turn determine whether international judicial personnel will be required. While it is always preferable to prioritize local ownership of the judicial sector, where possible, it has become clear that a bold international presence may be required initially in those cases where the local judiciary is not fully capable for one reason or another to assume the task without international assistance.[11] In East Timor and Kosovo, for example, international actors decided to immediately rely on local judicial personnel without giving adequate consideration to these questions.[12] As a result, in both cases, local actors had to be replaced by internationals in the early stages of the mission. This mistake had unfortunate consequences. It naturally fostered resentment and resistance on the part of the locals, who felt humiliated by the decision. The obvious lesson to be learned from both of these cases is that it is vastly preferable to begin with a "bold international presence" and restore local ownership gradually as capacity is built, rather than to rely on locals initially only to remove them in order to train them later.[13]

Nevertheless, both missions failed to devote sufficient effort to local capacity building. As result, the locals' ability to reclaim responsibility for the justice sector has proven to be a sensitive issue. In Kosovo, UNMIK has only recently transferred that responsibility, and in East Timor, questions on the capacity of the locals have continued to plague the justice sector after the mission has ended.[14] In hindsight, it is clear that internationals have put the emphasis on getting the job done, sometimes at the expense of local capacity building. Internationals must therefore remain mindful of the fact that, in any international mission involving rule of law promotion, the day will eventually come when the internationals depart, leaving full responsibility for the administration of justice with the local actors.

The failure to give adequate consideration to the need of building the capacity of local actors in the judicial sector can also be understood in light of the fact that capacity building in post-conflict situations is a relatively new and underdeveloped science. While there are, of course, educational institutions in developed countries around the world that prepare candidates for judicial and prosecutorial careers, these institutional models do not address the problems of competence and impartiality commonly encountered in the post-conflict context. As noted above, there are a whole range of problems relating to the capacity of the judicial personnel that impede the administration of justice in post-conflict settings. In some cases, such as Cambodia and East Timor, those who are called upon to function in the role of judge or prosecutor have had no prior experience at all in the performance of these roles. Although they may have had the required legal education, they lack the necessary skills of practice. Consequently, institutional models for education and training in developed countries are generally inappropriate, and training programs focused on practical courtroom skills are thus required. The challenge is compounded by the exigent circumstances that commonly impose significant time restraints. As a result, quick-impact programs must be developed to involve training judges, prosecutors, and police together in simulated exercises, which will expedite the task of building local capacity.

In addition, the problems relating to the performance of local judicial personnel are not always related to their professional skills. In some cases, local judges and prosecutors have shown themselves to be incapable of dispensing justice impartially, an issue that is usually related to factors associated with the conflict. Designing programs to address this failing is therefore particularly challenging. While there is no panacea, some capacity building measures have proven effective. One technique involves engaging judges and prosecutors in the development of their own codes of ethics, which must address issues of prejudice and partiality. Mentoring can sometimes address these issues, especially where mentoring programs are appropriately designed to ensure trust and confidentiality. Mentors can, without interjecting themselves into the performance of the judicial or prosecutorial role, engage the local judicial personnel in consideration of professional and ethical issues affecting their impartiality.

Furthermore, local judges will not be able to decide cases impartially if they lack judicial independence. In general, the protection of judicial independence, wherever it exists, depends upon the existence of appropriate institutions for the appointment, evaluation, promotion, and discipline of judges. The goal in establishing these institutions must be to insulate the judiciary from the control or influence of the other branches. The most undesirable situation is one where these critical decisions are made directly by the executive branch. Developed countries have had to learn this lesson from experience. In response, they have typically created collegial institutions and charged them with the responsibility of making these decisions. These institutions are in some cases composed of members of the judiciary exclusively. In other cases, they are composed of representatives of the all three branches, and in some recent cases they have included members of civil society.

In international missions relating to the rule of law, international and local actors should work together to develop an appropriate institutional response to the challenge of judicial independence. Given the urgency of appointing competent and impartial judges in post-conflict situations, those with executive authority may be tempted to appoint judicial personnel directly. These authorities should resist this temptation. Although such action may meet the challenge of the moment, it serves as a poor example. It has the potential of encouraging the kind of direct involvement by the executive in judicial affairs, which is almost certain to compromise the independence of the judiciary in the long term.

Moreover, in those cases where judicial personnel are already in place, the question arises as to whether they should be vetted for their competence, ethical standing, and impartiality. There is, unfortunately, no easy answer to this question. Although decision makers in post-conflict situations may feel compelled to weed out the bad apples, it is essential to note that vetting is an enterprise wrought with danger wherever it occurs.[15] The greatest challenge in this connection is designing a vetting program which affords sufficient due process protections to those who will be disenfranchised. One of the greatest dangers is that the process will become politicized, much to the detriment of those who are subject to it.[16] For these reasons, authorities have urged careful consideration as to whether the risks of vetting outweigh the benefits.[17] Although the Coalition Provisional Authority did recently effectively vet judges and prosecutors in Iraq, examples of failed attempts abound elsewhere. In the Brcko District of Bosnia, authorities required judicial personnel to resign and reapply through a procedure that was both transparent and merit-based.[18] Where vetting proves to be too difficult, the Brcko experience could serve as a model for an alternative approach.

Finally, the lack of strategic planning has frequently led to an inappropriate focus on police and prosecutorial functions in the interest of security. The faulty logic of this emphasis is, however, readily apparent, since neither police nor prosecutors can successfully ensure security without working hand in glove with well-functioning courts and prisons. The failure of international missions in this area of reform stands as a clear example of the much-acclaimed need for a "holistic" approach to rule of law promotion.[19]

Law Development

Even if infrastructure can be repaired and competent and impartial judges and prosecutors appointed, it goes without saying that no judicial system can function in the absence of an appropriate legal framework. After the conflict, the establishment of a new constitution provides a legal framework that will, to some extent, address foundational questions regarding the nature of the political regime, and the determination of fundamental values, such as human rights. However, more specific challenges relating to the establishment of security will typically remain.

Once again, a number of relevant cases illustrate these foundational questions. Where the conflict has been associated with the abuses of an authoritarian regime or

a dictatorship, the law will often have been the object of neglect.[20] In other cases, successive political regimes may have established conflicting legal regimes, resulting in post-conflict confusion as to which body of law applies. Furthermore, the question of "applicable law" may be complicated by cultural factors.[21] In any of these scenarios, the law in place will, in many respects, violate international human rights norms. The international missions in East Timor and Kosovo attempted to resolve this latter issue by simply establishing the principle that all laws in effect immediately prior to the effective date of the mission will remain in effect as long as they do not violate international norms.[22] This approach failed because it implicitly required a review of local law, which ultimately proved to be too long and too cumbersome to be effective. In hindsight, it has become clear that the success of post-conflict missions depends upon a readily available legal framework, which deals with the areas of the law that are essential for establishing security.

In recent years, the United States Institute of Peace has engaged in a project to develop model legal codes to help address these problems. The USIP Project has produced four such codes—a Code of Criminal Procedure, a Penal Code, a Police Act, and a Detention Act. These codes have been developed through a process of broad consultation with local and international actors in many parts of the world who have been actively involved in the rehabilitation of the rule of law post conflict.[23] They contain all the basic provisions minimally required for the establishment of security without violating human rights. Although they could serve for "off the shelf use" in an urgent post-conflict setting, they have been specifically designed as tools for reforming existing local law in order to meet the challenges outlined above.[24]

Democratic Policing

As noted above, the international community has devoted a great deal of attention and effort to the policing function in post-conflict societies, often at the expense of required reform in other parts of the justice sector. This emphasis is to some extent understandable, as the police function is the one most obviously associated with establishing security, and it is axiomatic that no reform efforts will move forward in the absence of security. The international community has now achieved a fairly long history of police reform in many different countries, and many international agencies have expended considerable energy and resources on this activity. Starting with Namibia in 1989, missions with a police component have occurred in El Salvador, Cambodia, Haiti, Bosnia, Kosovo, East Timor, Rwanda, Croatia, Georgia, Abkhazia, Burundi, Sierra Leone, Guatemala, Angola, Liberia, the Democratic Republic of the Congo, Afghanistan, and Iraq. These missions have been led by various agencies such as the United Nations Development Program (UNDP), the UN Department of Peace Keeping Operations (DPKO), the Office of Security and Cooperation in Europe (OSCE), and the United States Department of Justice's Investigative Training Assistance Program (ICITAP).[25]

Although it is problematic to neglect reform in other areas of the justice sector, the emphasis on security, so often associated with the policing function, is justified. In the early stage of international missions, the scene is often ripe for renewed conflict or, perhaps more commonly, the onset of lawlessness and chaos created by the power vacuum typically accompanying the overthrow of the former regime. The recent history of Iraq serves as a poignant example. It is now beyond question that security is the priority in this context. Nevertheless, establishing and maintaining security is a challenge, when, as is often the case, the police are either non-existent, in total disarray, or so closely associated with the abuses of the former regime as not to be trusted to protect the population. In addition, the deployment of international civilian police forces takes time, and for this reason, it has been common for international peacekeeping forces to fill the gap in the maintenance of order. The deployment of military forces at this stage of the mission is essential. Yet, it is not without its problems *vis-a-vis* police development, for it often sets the stage for a confusion of roles between the civilian police and the military as the mission progresses. This is a problem that has received too little attention; it must be the object of study and research in the future.

Be that as it may, once the military has been able to establish security, international civilian police forces have been deployed to assist in the development of the law enforcement function. The role of international civilian police forces has evolved over time. In the past, their activities have been defined and limited by what has been referred to in UN circles as the "SMART concept:" supporting, monitoring, advising, reporting, and training local police. However, with the increasing complexity and security challenge that arise with the increased involvement of the international community, the role of international civilian police has evolved from the SMART concept to full-fledged executive policing, such as in East Timor and Kosovo.[26] Executive policing has meant that international police forces engage directly in law enforcement, sometimes in the place of local police, at least in the early stages of the mission. With this relatively new development has come the need to improve the international community's performance in this domain. This has been enormously challenging since the UN civilian police (CIVPOL) have been consistently composed of police units from member states who come from vastly different police cultures with equally different police practices. The challenge inherent in this state of affairs is complicated by the fact that up until now, there has been no uniform international pre-deployment training of these forces. This responsibility has been left to individual member states. The UNDPKO is currently working on reform in this area.[27]

In any event, as international missions evolve so does the role of the international police. Increasingly, they devote their effort and attention to building a competent and reliable local police force. The goal has been to prepare local forces for their engagement in what has come to be called "democratic policing." The term refers to the transformation of the local force from one which abusively serves an

authoritarian political regime, to one that serves and protects the people and respects human rights.[28]

The role that the international community plays, and the activities which it undertakes in pursuit of this goal, will depend largely on the context of policing that previously existed. In cases where the army served as the repressive arm of the regime in the function of law enforcement, there may not be a remaining police force per se. In other cases, the police might have been corrupted through their relation with the powers-that-be and will thus be inept and unreliable.

Consequently, the local police force will require significant reform, and will often need to be rebuilt almost from scratch. This reality recalls one of the methodological axioms which should guide all rule-of-law promotion activities; in this context in particular, experience has shown that police forces must be built from the "bottom up." Police, no less than any of the other actors in the justice sector, will resist reforms that are imposed from the outside.[29] Succesful police reform has typically been guided by local authorities who devise the reform strategy and coordinate international assistance. In addition, civil society should ideally be involved in the process. If members of civil society are involved in, and educated on, the issues associated with reform, they can be the force within society that will assure the sustainability of the reform once the international community has left.[30]

Internationals have put the emphasis on getting the job done, sometimes at the expense of local capacity building.

The issue of vetting also arises in regards to police reform. However, the need for it here is perhaps more compelling as it is essential that the people see the new force as clearly distinct from the abusive forces of the past. This aspect of police reform, therefore, entails a delicate balance, since the need for human resources may be such that, as one author has put it, "suitable former fighters cannot be wasted or safely excluded."[31] Here, as in other areas of rule of law promotion, approaches will differ significantly from one mission to the other, depending upon the context. In Haiti, for example, the previous FAH'd forces had been so notorious that, in the early nineties, locals and internationals decided to work together in building a force from scratch.[32] On the other hand, in Iraq, the need for human resources has required the integration of at least some who served as police officers under Saddam Hussein.

Regardless, of whether the force is entirely reconstituted or integrated with former officers and new recruits, however, the need for training is uniform. With the relatively long history of the international community's involvement in local police reform, the training of police has been quite well developed. The training organized in recent years by UNMIK at the Kosovo Police Service School serves as an example. There, three broad themes guide the program. First, cadets receive instruction in basic police skills, such as "police patrol, criminal investigation, interview techniques, report writing, traffic control, gathering forensic evidence,

relevant law, defensive tactics, the use of firearms, first aid, and the skills related to the special needs of police in Kosovo."[33] Second, they receive training in supervision and management, and thirdly, the training program includes a "train the trainers" approach which is designed to ensure the sustainability of the reform.[34]

The second prong of this particular training program evokes one of the most challenging aspects of police reform—institutional development. While it has been estimated that basic training of the police should take between six to twelve months in order to be effective, it has become clear that rebuilding the police as an institution will take much longer.[35] Rebuilding the police as an institution takes time because it typically involves changing the police culture from one which has acted as the abusive arm of an authoritarian regime, to one which serves and protects the population. It also involves building a force whose management, and rank and file, accept the respect of human rights as part of its mission.[36]

Once again, there is no easy recipe for bringing about this kind of cultural change. However, the establishment of sound and reliable accountability mechanisms has proven to be essential to the overall police reform effort, and there is no doubt that this element can contribute to the required cultural transformation. One authority has said, "creating effective disciplinary systems within the police should be a first-order priority."[37] Typically, an office of the Inspector General within the force serves to insure internal accountability,[38] but it has become clear that external accountability is desirable as well. This is usually accomplished through the development of civil society organizations, which assume a watch dog function. Accountability must also include a mechanism for individuals to file complaints when they feel that they have been victims of police abuse. In addition, both the government and civil society must engage in civic education to inform the society of the accountability of the police, and make them aware of their access to these mechanisms.[39]

In spite of the progress achieved in many aspects of police reform, success in this realm continues to be a significant challenge; the need to integrate this area of reform with all of the other activities of rule of law promotion makes it all the more so.

Accountability/Fighting Impunity

Most conflicts include the commission of atrocities or abuses of human rights; in the case of authoritarian regimes, these crimes have often been committed with impunity. Recently, the science of achieving justice and establishing accountability for these crimes has emerged as a new field, called transitional justice. Former Secretary-General Kofi Annan defined this new field as involving the study of

> *the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all), and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.*[40]

Typically, in post-conflict societies, there has been a tendency to place emphasis on the retributive aspect of accountability in the pursuit of post-conflict justice, particularly in the early post-conflict stage. In any given situation, a number of choices should serve as appropriate institutional responses to achieve accountability through prosecution.

Since the tribunals of Nuremberg and Tokyo, in the aftermath of World War II, the international community has asserted jurisdiction over certain international crimes. Since July 1, 2002, the date of the entry into force of the Rome Statute of the International Criminal Court (ICC), the ICC may be an option, in cases where crimes against humanity, genocide, and war crimes have been committed.[41] It is much too early in the history of the Court to fully analyze its pros and cons as a mechanism for the prosecution of post-conflict atrocities. However, it would seem logical that much of what has been learned was gained from the experience of the ad hoc international criminal tribunals post Nuremberg. Following the example of Nuremberg and Tokyo, tribunals have been created to establish accountability for atrocities committed in war, involving the break-up of the former Yugoslavia and the genocide in Rwanda. Perhaps the first thing to note in analyzing the experience of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) is that those courts have focused on the prosecution of only a few of the most important criminal cases. It follows that prosecution before the ICC will similarly involve only a few of the "big fish" who are accused of committing international crimes in association with any conflict, and this observation has been borne out in the cases thus far before the Court.

Consequently, it has become clear that international prosecution is not sufficient to fully achieve justice and accountability post-conflict since many, many more individuals than the limited capacity of the court is equipped to prosecute will have typically been involved in the commission of the relevant crimes. It thus becomes obvious that other mechanisms will be required for the prosecution of the "mid-level managers," and of the rank and file. In some recent post-conflict areas, an entirely new type of tribunal has been created to meet this need. International and local actors have worked together in Bosnia, Cambodia, Kosovo, Sierra Leone and East Timor to create new "hybrid" tribunals, which involve both local and international judges and prosecutors. Typically, they operate under the auspices of the international community, and they are established in the countries where the atrocities have been committed.[42]

This latter point has proven to be significant. The international tribunals have been insufficient not only because of the relatively few cases which they have handled, but also because their proceedings have been conducted very far away from the daily lives of those affected by the conflict. It is now clear that justice requires an alternative with greater relevance to the local population. The hybrid tribunals are an appropriate alternative, as they offer prosecution in a context which is less costly and more relevant to the local population. In addition, since they do have an international dimension, they have typically involved the much needed marshalling of

international resources and expertise in the prosecution of these highly specialized international crimes.[43]

Be that as it may, even in those situations where both international and hybrid tribunals have prosecuted international crimes associated with a particular conflict, domestic tribunals invariably will be burdened with the prosecution of these and other crimes associated with the conflict long after it is over. Transitional justice efforts therefore must focus not only on the more visible international and hybrid mechanisms, they must also include significant assistance designed to strengthen the local justice sector and equip it for the prosecution of these specialized crimes. There has thus far been an unfortunate emphasis in this new and emerging field on the international mechanisms at the expense of the local. In the future, many of the lessons learned in the promotion of the rule of law in domestic systems, which have been discussed in this study, will also, therefore, be relevant to the strengthening of the domestic tribunals for this purpose.

While international and local actors may have tured their back on local customary law in the past, some in the present are beginning to see its potential.

However, with the emergence of this new field of transitional justice, it has become clear that the healing and reconciliation associated with broader and less retributive notions of justice will require mechanisms other than prosecution. Truth commissions, sometimes referred to as "Truth and Reconciliation Commissions," are the most well known institutional response to this need. TRC's have been the subject of a great deal of study and analysis. They offer some advantages over other mechanisms of transitional justice.[44]

In some cases, they have, in the process of unearthing the truth, engaged in naming and shaming those who were involved in the commission of atrocities. In this way, they have been able to establish at least a certain kind of accountability for not only the "big fish" but for all of those who were involved. In addition, and this has proven to be one of the most important functions of TRC's, they offer victims the opportunity to come forward and tell their story, and for them, this can be an extremely important aspect of justice. In fact, it is important to note that one of the most salient features of TRC's is that they are victim centered. This is an important factor, which serves not only to establish a sense of justice for the victims, but also paves the way for reconciliation in the long term.[45] Finally, in some cases they have been used to create an official record of what actually happened during the conflict.

As in the case of other institutions in the justice sector, many questions arise in connection with the establishment of TRC's. There is, for example, the question as to whether the commission should be composed exclusively of internationals, locals, or whether a combination of the two will be most appropriate.[46] In addition, important decisions will need to be made as to its mandate. Since the mandate of the commission typically involves an attempt at getting at the "truth," or at the various

views of the truth held by the society, it is necessary to decide when in the history of the conflict this truth-seeking effort should begin. This is a key decision, as it will sometimes be necessary to dig deep into the past in an attempt to achieve reconciliation.[47]

One very important question that arises is whether those witnesses who appear before the commission to recount their version of the truth ought to be given amnesty in exchange for their testimony. This was the procedure followed by South Africa's very famous Truth and Reconciliation Commission. In that case, it proved effective as a way of getting at the overriding need to know the truth of what happened in the apartheid era. However, most countries that have since engaged in truth-seeking through a TRC have excluded amnesty, viewing it as impunity.[48]

In addition, local and international actors who devise strategies for transitional justice should remain mindful that the TRC may not always be the appropriate truth-seeking mechanism in the aftermath of conflict. Where wounds are too fresh, and the perceived need for retributive justice too compelling, other truth-seeking modalities may need to be sought. In this respect, in some countries, such as those of the former Yugoslavia, civil society has played a significant role in documenting victims' stories and creating theatrical productions that depict the shared experience of victimhood of parties on different sides of the conflict. Where the time is not ripe for a TRC, these and other creative measures may be called for in the search for truth, justice, and reconciliation.[49]

Finally, the awarding of reparations to those who have been victims of human rights abuses is perhaps the farthest reaching mechanism of transitional justice. Its potential for fostering reconciliation is obvious, as it will serve to acknowledge the harm that all victims have suffered, and seek to make them whole at the same time. The availability of reparations will, of course, depend on the resources available for that purpose. In addition, it may not always be easy to decide upon an appropriate formula to determine the amount of reparations to be distributed to each individual victim. However, one lesson has emerged from experience. The distribution of lump sums has the potential of being perceived by the victim as an unseemly pay-off, whereas the life long distribution of reparations recognizes the continuing loss, particularly for those whose loved ones have perished in the conflict.[50]

Fighting Corruption

Much has been learned in recent years about how post-conflict environments can be insidious breeding grounds for corrupt practices which, having taken root, could prove to be the downfall of the entire reconstruction enterprise. Where justice and security are lacking in the aftermath of conflict, crime rushes in to fill the vacuum. Black and grey markets often emerge, undermining security and negating the rule of law.[51]

The literature analyzing the fight against corruption in post-conflict situations does not boast of numerous success stories.[52] However, one lesson is particularly

poignant. The humanitarian assistance of the international community may itself be a significant source of corruption involving internationals and locals alike. In the face of this reality, there has been a worrisome tendency on the part of the international community to turn a blind eye on corrupt practices, sometimes taking the view that corruption can, in certain circumstances, serve to bring together opposing factions.[53] Authorities who have observed this phenomenon point out that a cost benefit analysis does not support the logic behind the assumption implicit in the practice.[54] In the long term, corrupt practices will inevitably do more harm than good, and they will usually serve as a mechanism for exclusion of various sectors of the population, denying them the kind of equality that is the hallmark of the rule of law.

Consequently, some who have studied the problem recommend some measures to reduce the potential for corruption associated with international assistance. First, they recommend that all international assistance should include accountability mechanisms on both the international and local levels. Second, they suggest that awarding smaller contracts to locals on a decentralized basis could serve to diminish the potential for corruption, especially where local NGO's are called upon to serve a watch dog function.[55] Beyond these basic measures, the international community still has a lot to learn about how to fight the insidious effects of corruption in this context.

The Use of Local Customary Practices

Finally, perhaps the newest strategy for the promotion of the rule of law, which both international and local practitioners have just begun to consider, is the use of local customary practices. The topic is very controversial. Those who have in the past opposed this strategy have pointed to the undeniable fact that local customary law frequently involves the abuse of human rights, often through discrimination against women and children. On the other hand, those who are beginning to consider its use point to the fact that, in many post-conflict societies, local custom enjoys an infinitely higher degree of legitimacy in the eyes of the local population than the fledgling formal system. In places like Afghanistan and East Timor, for example, various tribes and ethnic groups within these societies have utilized their local custom to resolve disputes and prevent conflict for centuries. In those countries, there is no denying the fact that the local population is much more inclined to follow the rulings of their local elders than those of a distant, recently created, formal court whose workings are foreign to them.[56]

Consequently, while international and local actors may have turned their back on local customary law in the past, some in the present are beginning to see its potential. When they consider the enormous challenges associated with establishing post-conflict justice and accountability for even the most serious types of crimes, they cannot fail to appreciate the potential that local custom offers for dealing with minor crimes and other lesser matters. In East Timor, for example, given the resources, human and otherwise, that were required for the prosecution of international crimes,

the UNTAET mission was able to do little to build the capacity of the domestic system to deal with other cases. As a result, some international actors within the mission began to use local custom by default, particularly in the area of minor crimes.[57] Since that time, others have begun to consider its use as a reliable mechanism for the resolution of land conflicts in East Timor and elsewhere.[58] This latter point is significant because authorities have come to recognize the failure of formal systems in resolving land conflicts in post-conflict countries. Since land is, for many, often central to conflict, it has become clear that rule of law practitioners can no longer turn their back on local custom.

At the same time, it is interesting to note that in East Timor, women in particular have come to realize the benefit of the formal system for dealing with domestic violence. Two recent studies have shown that the majority of East Timorese believe that cases involving sexual violence ought to be handled by the formal system, and some women are choosing the formal system over the informal in cases involving domestic violence.[59] This phenomenon suggests that there may be ways of carving out a workable coexistence between formal law and local custom that can take advantage of the practical benefit of local custom while offering meaningful protection of human rights in the formal system.

Nevertheless, these discrete examples of practice in East Timor only suggest solutions for the future and, once again, a great deal of research remains to be done before it can be determined whether and how formal and informal justice systems can be used in tandem in the promotion of post-conflict security and rule of law.

Conclusion

In a world where gross human rights atrocities in places as diverse as Darfur and Iraq increasingly shock the conscience of people everywhere, the science of bringing justice and rebuilding the rule of law in the aftermath of conflict is becoming increasingly important. Kofi Annan has stated: "Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives."[60] The lessons of the past, outlined in this study, must inform the future. Local and international actors will, therefore, need to continue to learn how to work together in a spirit of collaboration and mutual respect. Only then will there be hope that the world community can meet this formidable challenge.

Notes

1 United Nations, *Report of the Panel on UN Peace Operations* (the Brahimi Report), A/55/305-S/2000/809, August 21, 2000, pp. 39–40, 47, 79–83, 126; William G. O'Neill, *Kosovo: An Unfinished Peace* (Boulder, CO: Lynne Reinner, 2002), 76.
2 United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary General*, S/2004/616, August 23, 2004, 4.
3 Louis Aucoin, "The Role of International Experts in Constitution-Making: Myth and Reality," *Georgetown Journal of International Affairs* 5, no. 1 (Winter/ Spring 2004): 94.
4 Vivien Hart, *Democratic Constitution Making*, Special Report No. 107. (United States Institute of Peace, July 2003), 2. Available at: http://www.usip.org/pubs/specialreports/sr107.html (accessed February 2, 2007).
5 Ibid., 3.
6 Ibid., 3–4.

7 Ibid., 7.
8 Aucoin, "The Role of International Experts in Constitution-Making," 94.
9 *United Nations Peacebuilding: Recommendations on the Establishment of the Rule of Law From the Field* (Harvard University, The Project on Justice in Times of Transition (May 2003), 5. Available at: http://www.pjtt.org/Final%20set%20of%20Recommendations%20from%20UN%20Program.doc (accessed February 2, 2007).
10 Jane Stromseth, et.al., *Can Might Make Right? Building the Rule of Law After Military Interventions*. (New York: Cambridge University Press, 2006), 218–219.
11 See Michael Hartmann, *International Judges and Prosecutors in Kosovo: A New Model for Peacekeeping*, Special Report No. 112. (United States Institute of Peace, October 2003), 13. Available at: http://www.usip.org/pubs/specialreports/sr112.html (accessed February 2, 2007).where the author makes the point that a majority of international judges was necessary to sit in panels judging sensitive cases in Kosovo—cases involving ethnic violence, crimes against humanity, and war crimes.
12 See "East Timor Report." *A Review of Peace Operations: A Case for Change*. (London: The International Policy Institute, King's College), pp. 241. Available at: http://ipi.sspp.kcl.ac.uk/rep006/toc.html (accessed February 2, 2007) and Michael Hartmann, *International Judges and Prosecutors in Kosovo*, 13.
13 Hartmann, *International Judges and Prosecutors in Kosovo*, 13.
14 David Cohen, *Indifference and Accountability: The United Nations and the Politics of International Justice in East Timor*. East-West Center Special Reports, No. 9. (Honolulu: East-West Center, 2006), 91–106.
15 Herman Schwarz, "Lustration in Eastern Europe," *Parker School of East European Law* 1, no. 2 (1994), 141–171, excerpted in Neil Kritz, ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Volume I: General Considerations (Washington, DC: United States Institute of Peace Press, 1995): 459-489.
16 Kritz, *Transitional Justice*, 475.
17 Ibid., 471.
18 Stromseth, et. al., *Can Might Make Right?*, 232.
19 Ibid., 217.
20 Vivienne O'Connor and Colette Rausch, "Creating the Rule of Law Amidst Chaos: The Relevance and Applicability of Model Codes," in *Civil War and the Rule of Law: Security, Development, Human Rights*, eds. Agnes Hurwitz and Reyko Huang, (Boulder , CO : Lynne Rienner, forthcoming 2007).
21 O'Neill, *Kosovo: An Unfinished Peace*, 79-81.
22 Hansjorg Strohmeyer, "Collapse and Reconstruction of a Judicial System: The United Nations Mission in Kosovo and East Timor," *American Journal of International Law* 95, no. 1 (Jan 2001): 58.
23 O'Connor and Rausch, "Creating the Rule of Law Amidst Chaos," 12.
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26 Robert Perito, *Where is the Lone Ranger When We Need Him?* (Washington, DC: United States Institute of Peace Press, 2004), 87–90.
27 For example, see the annex of the UN Security Council Special Report No. 5, *Twenty Days in August: The Security Council Sets Massive New Challenges for UN Peacekeeping*, September 8, 2006. Available at: http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.2056585/k.A1E/Special_Research_Report_No_5_8_September_2006.htm (accessed February 24, 2007).
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30 Janice M Stromsen and Joseph Trincellito, *Building the Haitian National Police: A Retrospective and Prospective View*, Haiti Papers, No. 6 (Trinity College, April 2003), 2–3.
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32 Stromsem and Trencillito, *Building the Haitian National Police*, 10.
33 Ibid. page 88–89
34 Ibid., page 88.
35 Ibid., 93.
36 Ibid., 94.
37 Stromseth, et. al., *Can Might Make Right?*, 213.
38 Stromsem and Trincellito, *Building the Haitian National Police*, 10.
39 William O'Neill, "Police Reform in Post Conflict Societies," 7.

40 United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies*, 4.
41 The ICC has jurisdiction over these crimes when they are committed by a State Party (or a state recoginizing the Court's jurisdiction) or within the territory of a State party. Additionally, the Security Council may refer situations to the ICC, regardless of where they occur. Most controversially, the Prosecutor also has the independent authority to investigate situations where crimes within ICC jurisdiction may have been committed. Currently, the Court has four cases before it. Three of them involve the alleged commission of these international crimes in the Central African Republic, Uganda, and the Democratic Republic of the Congo. These cases were referred to the Court by States Parties. The fourth case, referred by the Security Council, involves the alleged commission of atrocities in the Darfur region of Sudan. Further information regarding cases before the International Criminal Court are available at the Court's website, http://www.icc-cpi.int/cases.html.
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49 Louis Aucoin and Eileen Babbitt, "UNDP Assessment Survey: Transitional Justice in Bosnia-Hersegovina, Croatia, Kosovo, Serbia and Montenegro," 62–72 and 103.
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55 Ibid., 29.
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On the Very Idea of Transitional Justice

by Jens David Ohlin

The phrase "transitional justice" has had an amazingly successful career at an early age.[1] Popularized as an academic concept in the early 1990s in the aftermath of apartheid's collapse in South Africa, the phrase quickly gained traction in a variety of global contexts, including Rwanda, Yugoslavia, Cambodia, and Sierra Leone.[2] A sizeable literature has been generated around it, so much so that one might even call it a sub-discipline with inter-disciplinary qualities.[3] Nonetheless, the concept remains an enigma. It defines the contours of an entire field of intellectual inquiry, yet at the same time it hides more than it illuminates. No one is exactly sure what it means.

One reason might be its combination of two very different kinds of words in a single phrase. "Justice" is perhaps the greatest of moral values, with a history that extends back to the moment man started criticizing the conduct of his fellow man. It is meant to evoke a universal, normative goal. "Transitional," on the other hand, defines a particular situation, an exceptional and limited moment that stands in contrast to the universal goal. So the second term limits and qualifies the first in some important way, but how is totally unclear.

Is transitional justice some other *kind* of justice, fundamentally different from justice during non-transitional moments? Or is it simply *ordinary* justice, a familiar end-state that remains elusive because a society has been ripped apart by genocide or some other ethnic conflict?[4] If it is the latter, the field is about how to achieve, in a very pragmatic way, the usual goals of justice in difficult times. If it is the former, the field fundamentally re-conceives our understanding of justice in the face of radical social violence.[5] One is largely an exercise in social science, the other an exercise in moral philosophy. The current field of transitional justice straddles this distinction, and does so, I shall argue, in a somewhat uncomfortable way. Although the concept now dominates international affairs as an umbrella under which these problems are investigated, it remains fundamentally misunderstood. Specifically, the term "transitional justice" betrays a deep tension between two approaches to justice that goes to the heart of the burgeoning program of international criminal justice.

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Two Conceptions of Transitional Justice

Transitional justice can be interpreted in two different ways. In the first, transitional justice is just ordinary justice where the material circumstances make it difficult to achieve. What is meant by ordinary justice? Simply that the usual goals and rules of justice apply: to hold violators responsible for their actions and punish them accordingly, after a rigorous process of determining their guilt before a neutral decision maker.[6] This view of justice implies many things; it implies, for example, that there can be no peace without justice for past abuses—that at least some form of punishment is required to restore balance to the moral order of a community. But this view of justice also implies many defendant-centered protections: that due process of law is respected (both in procedure and substance), that criminal defendants are punished according to public and prospective laws, and that procedural protections for defendants are a precondition of meaningful justice. These are the universal background conditions of ordinary justice, and apply in any sophisticated legal order committed to the rule of law.

Is transitional justice some other *kind* of justice, fundamentally different from justice during non-transitional moments? Or is it simply *ordinary* justice, a familiar end-state that remains elusive because a society has been ripped apart?

A view of transitional justice as ordinary justice requires that the basic rules of justice apply in all situations, including extraordinary moments after genocide, war, and ethnic conflict. Though all of the regular rules of justice apply, implementing them is a difficult policy matter to be investigated by theorists of transitional justice. All sorts of policy matters might be considered here, such as what kind of tribunal to constitute,[7] how to integrate warring ethnic powers into a coherent cosmopolitan whole,[8] and how to minimize future conflicts from flaring up again.[9] Yet these are all pragmatic questions and do not implicate the most basic foundations of our conception of justice.[10] The work of transitional justice, in this view, does not require revising the basic principles of justice; rather, it is a more modest inquiry into the appropriate institutional arrangements to achieve peace.

This is to be contrasted with transitional justice as a special kind of justice, where the regular rules of justice are supplanted by novel rules justified by the extraordinary nature of the moral fissure. This conception focuses on the goal of rebuilding broken communities—an imperative so important for both morality and law that the basic principles of justice are subject to revision.[11] In this conception, then, the difficulties inherent within a broken society are more than just pragmatic considerations that make peace difficult to achieve. Rather, they serve as *reasons* for tinkering with the basic principles of justice.[12] This view opens up a conceptual space within which new rules of justice are required, consistent with the demands of the time.

There is a logical appeal to this view of transitional justice. If one believes that basic principles of justice are abstract entities, residing as Platonic forms waiting for human theorists to pluck them from the ether, then it can be a little confusing to think of them as subject to revision when circumstances dictate. It would appear to violate our intuition that justice, whatever it is, is eternal and for the ages. However, if we view morality, with Hume, as stemming from basic background conditions of society, it would make sense that new rules are needed in societies so broken that they do not have the same background conditions.[13] In modern societies, where law and government retain power, we live our lives within a socio-economic order with institutional avenues of redress when things go wrong. But in the midst of genocide and its aftermath, institutions disappear and participants are thrown into a chaotic hell that can only be described as a state of nature. This is why both Hobbes and Locke argued that more primitive laws applied in the state of nature and the rich program of rules known as the rule of law only come into force when the state of nature is replaced by a social contract, and hence, civilization.[14] In the face of genocide, societies collapse back into a state of nature, quite literally and horrifically, and it is no wonder that a conceptual space opens up where different rules of justice might apply.[15] This is the world of Hobbes and Locke.

One sees this view of transitional justice as special justice most often in questions of legal procedure. Normal justice requires a whole set of procedural protections for defendants. The right to counsel, the right to remain silent, the right to confront witnesses and evidence are all constitutive of due process and the notion of a fair trial; without these procedural protections, a justice system would be arbitrary and capricious and could not rightly be described as acting under the rule of law. Nevertheless, these procedural protections are sometimes suspended during moments of radical social violence through the establishment of alternate institutions of justice—the rationale being that standard rules of justice are either too burdensome given the circumstances, or unwarranted. The key to transitional justice is that justice be served for the victims, one might say, and that the normal safeguards of procedural justice are developed within the context of regular criminal behavior, not mass atrocity. One might have made this argument, for example, in Rwanda, where there was an initial attempt to conduct "regular" trials for *genocidaires*.[16] This program was quickly abandoned after officials imprisoned tens of thousands of defendants, but had no lawyers or resources to bring them to trial. The result was community-based *gacaca* courts that operated far below traditional legal standards of due process. This struck some skeptics as unjust, but to proponents it seemed necessary to achieve "justice" for the community and the victims, even if due process had to fall by the wayside.[17] In this case, the basic principles of justice were subject to revision. Ordinary justice usually abhors such brazen utilitarian balancing of rights.

This example suggests a basic distinction between our two models of transitional justice. Transitional justice as special justice is particularly focused on collective action—that of both victims and perpetrators. Mass atrocities are usually committed by one group against another; the paradigmatic case of genocide is one

ethnic group (not just a psychotic individual) that seeks the annihilation of another group.[18] In addition to any individual moral and legal culpability, the *groups* stand against each other in a particular relationship as victim and perpetrator. This raises a host of moral as well as geopolitical problems, not the least of which is the threat of regional instability as victimized ethnic groups respond with reprisals against their oppressors.[19] It is precisely these inter-group conflicts that transitional justice seeks to resolve by making sure that the victim-group gets justice and the moral balance of power is restored. This focus on the collective as the primary goal of special justice allows the interests of individuals to be sidetracked, not as entirely irrelevant perhaps, but as dwarfed by the larger problems of collective strife.[20] The proponent of special justice might therefore defend the repeal of individual procedural protections and respond to any complaints as being beside the point. What we are doing here, he might say, is repairing societies—a Herculean task if ever there was one—and this is our warrant for rewriting the basic principles of justice.

In contrast, transitional justice as ordinary justice is less concerned with the actions of collectives, mostly because the collective is only relevant when the crime in question is genocidal in nature. In times of relative peace, ordinary justice is concerned with the lives of individuals and their interactions with each other, when ordinary justice can train its gaze on making sure that each individual receives what justice demands. It is for this reason that the protections of the criminal trial are so central in ordinary justice. Of course, there are individual victims who matter as well. It is a calculus of individual victim and individual perpetrator—individuals both. In ordinary justice, no group-level considerations warrant special exceptions to generally recognized principles of justice.

None of this is meant to suggest that the two conceptions of transitional justice—as ordinary justice and as special justice—are mutually exclusive. One might find elements of both in many places. Indeed, as I shall argue in the third section, both conceptions are present at the very foundation of the new institutions of international criminal justice. But before pursuing this line of thought, it is important to evaluate arguments about transitional justice, identify where they go wrong, and suggest how they might be reformulated to address these concerns.

Specious Arguments About Transitional Justice

The conception of transitional justice as special justice is particularly susceptible to specious arguments. As suggested in the previous section, special justice encourages revision of the ordinary principles of justice in service of the laudable goal of restoring collective peace and security. Although this might be warranted in some circumstances, I will suggest here that the basic structure of this argument is dangerous and might spawn unfortunate conclusions. The problem stems from a willingness to make local exceptions to the basic rules of justice rather than seeking wholesale changes that apply in all circumstances. I consider two major questions. The first is whether the death penalty is an appropriate avenue of legal punishment for the greatest of all crimes—genocide. The second is whether the unprecedented

nature of World War II was reason enough to depart from the principle of legality, or *nullum crimen sine lege*, during the prosecution of Nazi war criminals. What unifies both is that each is susceptible to the dangers of viewing transitional justice as special justice.

The Death Penalty for Genocide

In 2005, I published an article in the *American Journal of International Law* arguing that, although a general norm of customary international law may be emerging that prohibits the death penalty, this norm should not apply to cases of genocide.[21] Part of the argument stemmed from traditional customary law analysis.[22] Simply put, few nations crippled by genocide have refrained from the death penalty because of a perceived duty under international law. Indeed, several countries resorted to the death penalty as a response to genocide and war crimes, including Rwanda after its genocide, the US and its Allies at Nuremberg, and Israel after it captured Eichmann.[23] In cases where the death penalty was prohibited—at the Yugoslavian tribunal, for example—it was because European abolitionist countries on the Security Council used the threat of their veto power to keep capital punishment off the table.[24]

If the death penalty is available for a regular case of murder, how is it just, one might ask, for a perpetrator of genocide to live out the remainder of his life detained in the Hague or some other Western European prison?

Dramatic events have unfolded since the original article was published. Saddam Hussein was brought to the gallows in a macabre moment captured both by official newsreel and unofficial cell-phone camera. People around the world were shocked by images of Hussein with a noose around his neck and were horrified by the religious and political taunts during the final moments of what should have been a dignified and solemn end to a sober legal process. Although there is much to be criticized in an execution carried out in such fashion, we must carefully note that the criminal trial that preceded it lacked the safeguards and sophistication of a well-developed legal system. It would be an exaggeration to call it a kangaroo court or a show trial; it would be more accurate to call it a well-intentioned effort from a nation whose legal system remained underdeveloped for the simple reason that Hussein himself never allowed one to flourish. Had the trial been conducted with legal rigor, and the execution conducted with the necessary gravitas, the outcome might have been more legitimate.[25] As it stands, the execution seemed more like sectarian violence than national reconciliation, and ought to be criticized on that basis. However, these criticisms do not implicate the basic structure of my original argument: although many nations have abolished the death penalty, few nations actually victimized by genocide willingly forego executions for genocidal criminals.

The structure of my original argument can easily be misinterpreted. A central element of the argument is that context is relevant and that societies ripped apart by

genocide must rebuild themselves, lest they fall back into ethnic violence that could destabilize an entire region. This need to rebuild societies and restore regional order is paramount for international law, whose prime objective, codified in the UN Charter, is the maintenance of international peace and security.[26] Within this context, victims of genocide must feel that perpetrators will be adequately punished for their crimes. Light punishments run the risk of being viewed as illegitimate by the victim population, especially in a nation that retains the death penalty in its domestic penal system for regular crimes.[27] If the death penalty is available for a regular case of murder, how is it just, they might ask, for a perpetrator of genocide to live out the remainder of his life detained in the Hague or some other Western European prison?[28]

The moral argument for allowing the death penalty for crimes of genocide denies that there is such a thing as an absolute right to life in all circumstances, which cannot be violated.

If a criminal justice system is viewed as illegitimate in the wake of genocide, the consequence is more than just a scholarly anxiety. Victims are persuaded to lay down their arms and forgo reprisals on the assumption that justice can be accomplished in the courtroom, through the rule of law, with individual accountability for specific criminal actions. To the extent that victims lose faith in this process, they will take their arms and engage in violent, self-help initiatives. Indeed, it is precisely this fear that gives the international community the right, the duty, and the jurisdiction to intervene in such cases and create a process of international criminal justice.[29] When the Security Council authorized the creation of the ICTY and the ICTR, it did so explicitly by invoking its Chapter VII authority to restore collective peace and security, and upon a factual finding that a criminal tribunal was necessary for this end.[30]

One can already see the danger of this argument; it would seem as if its structure implies that transitional justice requires the death penalty for genocide, even though it may be impermissible in other contexts, as the project of transitional justice might otherwise collapse. Since some victims demand capital punishment for genocide—feeling, legitimately, as if a twenty-year sentence would be inadequate for a genocidal conspirator responsible for the death of thousands of civilians—then the basic rules of justice must be altered within the context of transitional justice. This is an exercise in exceptionalism par excellence. Under this view, we make an exception to the basic rules of justice—rewrite them for the occasion, as it were—because transitional justice has its own needs, its own arguments, and its own internal logic.

This is, of course, the very kind of argument we must remain vigilant against and it would be a pity if my argument about the death penalty were misunderstood

in this fashion. How best to interpret the argument, then, so that it does not run afoul of this problem? How do we understand the death penalty without resorting to some brand of exceptionalism about justice? This objection fails to distinguish the moral argument from the legal argument. Any analysis that confuses the two will undoubtedly warp both; and the result will be confusion about transitional justice and the role it plays in any generalized theory of justice.

The legal argument about the death penalty's permissibility in cases of genocide appeals to transitional justice because the whole legal basis for UN involvement in transitional justice is a threat to international peace and security. Indeed, as we have mentioned before, the Security Council is unable to take any action under its Chapter VII authority unless it finds that such action is required to restore collective peace and security.[31] This was precisely what the Security Council found when it authorized the creation of the ICTY and the ICTR—that an international tribunal was a necessary precondition for restoring regional stability and convincing victim groups to forgo reprisal attacks, put down their arms, and litigate grievances about past abuses in court. For example, the end of the Balkan wars left many Kosovo Albanians angry and itching for revenge against ethnic Serbs. Similarly, the end of the Rwandan genocide left the Tutsi population in control of the government but poised for reprisals against former members of the Hutu Power movement who fled to neighboring countries. In both instances, the risk of ongoing regional war was very real.

The demands of transitional justice are therefore relevant to the legal argument. Since international legal institutions such as the United Nations and the Security Council only gain entry into the situation when there are larger implications for collective security, it makes sense to frame the debate in terms that are relevant for transitional justice. This was precisely the point of my argument in 2005: to suggest that international tribunals that fail to recognize the death penalty for crimes of genocide might frustrate the very goals they were originally constituted to achieve, i.e., collective security.[32] The point is to place the retentionist argument in terms cognizable by international law and relevant for collective peace and security, arguably the most important goal of international law. In this sense, then, the demands of transitional justice are certainly relevant for the legal argument. This implies a view of transitional justice as special justice, as a unique moment in geopolitical history—hardly surprising given that international law's obsession with collective peace and security is all about these unique moments and how to weather them with the least violence.

This legal argument must be separated from the moral argument, which is logically distinct. The moral argument for allowing the death penalty for crimes of genocide denies that there is such a thing as an absolute right to life in all circumstances, which cannot be violated.[33] At first glance it might appear that the moral argument is an exercise in precisely the kind of exceptionalism that I decried as part of transitional justice as special justice. If we are claiming that the death penalty's permissibility should be viewed differently in cases of genocide, it would

appear that we are carving out a special logical space and using the facts of transitional justice as our warrant for doing so.

But the moral argument does *not* suggest that there is an absolute right to life in ordinary times and that the unique demands of transitional justice justify abrogation of that right in service of greater utilitarian ends. This would be a disastrous moral argument. Rather, the moral argument appeals to rights forfeiture, or the idea that the genocidal criminal has forfeited his right to life by virtue of his actions.[34] This consideration, when combined with the knowledge that simple prison terms may be insufficient retributive punishment for the attempted annihilation of an entire race or ethnicity, suggests the complicated conclusion that the death penalty for genocide is entirely consistent with a generally recognized right to life. We are not in the business of offering exceptions to this universal right. This would be to concede too much. Rather, the retentionist is denying the right's *universality* in the first place, on the assumption that there are many instances where the right does not apply; and chief among them is the genocidal criminal who has conspired to wipe out an entire race.

The absolute novelty of the Nazi conspiracy, combined with the shocking efficacy with which it was carried out, meant that the international community had not criminalized this behavior because *they had never seen it before*.

Can the legal and the moral be separated so easily? Is not the legal argument, at its heart, also a moral one? In other words, what is the point of the legal argument unless it is meant to justify—both legally *and* morally—the use of the death penalty in cases of genocide? The answer here is that the legal argument—which appeals to transitional justice as special justice—is merely meant to frame the question in terms familiar to international law, instead of pure human rights law as abolitionists would have it.[35] One might think of it as similar to a foundational, *jurisdictional* question. In other words, the subject of genocide is a concern for international lawyers because it implicates questions of collective peace and security. And although collective peace and security could not resolve, by itself, all questions about the law of genocide (how it is defined, how it is prosecuted, etc.), it does nonetheless inform how the law of genocide should be approached and why international law should encourage a resolution that is considered just by local standards.

Within the space opened up by international law, the moral argument can complete its work. Many activities are permissible by the standards of international law, but whether they are advisable according to an all-things-considered moral judgment is a different matter. It is precisely within this area that one would want to prevent an argument that justifies unscrupulous conduct by appealing to the demands of transitional justice. This would amount to utilitarian balancing of the most egregious kind. Appealing to transitional justice at the level of international law,

as was the case with our argument about the death penalty, is not only permissible, but inevitable, and entirely consistent with the basic goals of the international legal order.

The Nuremberg Legality Problem

Consider a second example where one might find the dangerous results of an appeal to transitional justice as special justice. The most trenchant criticism of the Nuremberg trials appealed to the principle of legality, or *nullum crimen sine lege*. The Nazi defendants were charged with aggression, crimes against humanity, and war crimes, but there were few sources of law from which prosecutors could establish that these crimes were already part of international law. While it is true that the Kellogg-Briand Pact outlawed aggressive war, there was absolutely nothing in the very brief treaty that mentioned criminal liability for individuals for aggression, as opposed to state responsibility for the conduct.[36] Similar problems remained for the charge of crimes against humanity.

For sixty years, a vigorous, highly theoretical debate about these problems has lingered. The discussion continues because of the trial's overall importance for Germany's war guilt, but perhaps more importantly because of Nuremberg's status as the basic precedent upon which modern international criminal law is founded. In the aftermath of World War II, there were only two logical possibilities. The first is to deny that the prosecutions violated the principle of *nullum crimen sine lege*, and argue that the defendants were charged with crimes that were already well established in international law. This took a fair amount of creative lawyering and strategic scholarship.[37] Certainly this was the strategy of the judges at the International Military Tribunal, for they could never admit that their guilty verdicts violated one of the most fundamental principles of criminal law.[38] The judges went to great lengths to demonstrate, in whatever tortured way they could, that there was nothing novel in the convictions and that every crime was pre-existing in international law. There could be no retroactive punishment.

The other logical possibility is to bite the bullet and admit that the prosecutions violated the principle of legality, but also maintain that in this situation it was justified. In many ways this is the more intellectually responsible position because it avoids the difficult contortions involved in finding individual criminal liability for aggression and crimes against humanity before 1945.[39] Variations on this position have been formulated and expressed by Kelsen and Cassese.[40] In this case, although *nullum crimen sine lege* is a basic principle of justice, the Allies were permitted to make exceptions to this principle because of the extraordinary nature of the circumstances. To refuse to prosecute on account of a commitment to *nullum crimen sine lege* would hardly have satisfied Jewish victims of the Holocaust. This is clearly an example of what I have called exceptionalism based on an appeal to transitional justice as special justice.

Of course, the position is no doubt motivated by the fact that there were few meaningful alternatives; what is often lost in these discussions is a concrete alternative to the Nuremberg trials. In a sense, there were really only three options.

The Allies could let Nazi leaders go free, the Allies could execute them on the battlefield (as Churchill had assumed would be the case),[41] or the Allies could put them on trial with full knowledge that the prosecutions would not entirely conform to the legality principle. Of course, the first option had to be rejected. Simply letting the Nazis go free, to live out the rest of their lives in hiding in Argentina, or some other distant country, would not have been an appropriate response to the horrors of the Nazi regime. And although summary executions were certainly possible—Churchill's position did have historical precedent, after all—it was much more preferable to grant them at least most of the protections of due process and fairness that would result from submitting their fate to a judicial decision maker.

As one can see, there are two possible versions of this argument. The first, naïve version, as I shall call it, simply says that the principle of legality was violated and that the needs of transitional justice justified it as an exception to the general rule. This suggests a broader implication, i.e., that the rules of justice are up for grabs in times of transitional justice. As I have said before, this is precisely the kind of poor argument that must be avoided. The second version of the argument—the nuanced version, as I shall call it—rejects this calculus and appeals instead to *Realpolitik*. The basic rules of justice are not subject to revision based on the demands of transitional justice. All we can do is attempt to comply with as many of the universal rules of justice as possible. And to the extent that circumstances prevent our total compliance with the basic rules—including the principle of legality—we should make note of it and move on. In this case, the absolute novelty of the Nazi conspiracy, combined with the shocking efficacy with which it was carried out, meant that the international community had not criminalized this behavior because *they had never seen it before.*[42] This does not create exceptions to the basic rules of justice, but simply encourages us to recognize when our international institutions fail to fully live up to them.

The Foundations of International Criminal Justice

The inevitable question is whether we can eliminate the conception of transitional justice as special justice—banish it, as it were—and replace it entirely with the conception of transitional justice as ordinary justice. This would seem to be the natural conclusion, if I am right that transitional justice as special justice can promote specious reasoning. Our best course of action would be to revise our understanding of transitional justice and limit it to its ordinary justice variety; but I argue in this section that this revision is unlikely to succeed. I am a pessimist in this regard because the tension between the two conceptions of transitional justice goes to the very heart of international criminal justice; it is the inherent paradox upon which the entire field is structured.

As discussed above, transitional justice as ordinary justice is particularly concerned with the fate of individuals, while transitional justice as special justice adds a distinct concern with the fate of collectives—ensuring that victim groups and their aggressors peacefully co-exist, and opening up a special logical space to make this happen. Ordinary justice, on the other hand, concentrates less on the collective

aspect, content instead to ensure that individuals get what they deserve. The tension exists at the very foundation of international criminal justice, which is at once individual and collective. At the individual level, we are dealing with a system of criminal law whose only concern is making sure that guilty individuals—and only the guilty—are punished for their wrongdoing. The entire system of criminal law is designed to achieve this end. We investigate crimes, prosecute wrongdoers, and convene trials under the rules of evidence to make sure defendants are truly guilty and the innocent go free. Most importantly, a society engages in these prosecutions for the simple reason that wrongdoing must be punished. Justice demands it. This is the internal logic of criminal law and it is inescapable. In criminal law, we do not pick and choose between cases based on social considerations. What matters is whether the law has been violated. All true criminal courts are convened for this purpose.

Genocide and crimes against humanity are by their nature special, and some element of special justice must be marshaled against them.

But international criminal law is also based on geopolitical considerations. As noted above, the Security Council authorized the creation of the ICTY and ICTR based on its Chapter VII authority to restore collective peace and security. The Security Council would therefore have had no legal authority to unilaterally set up a binding institution of criminal adjudication for individuals, *but for* the presence of the larger geopolitical considerations. The ICTY and ICTR were not created by voluntary treaty commitments—this would have been entirely ineffective. Rather, the Security Council created the ad hoc tribunals on its own initiative, imposed it on the member states of the United Nations (some of whom were recalcitrant),[43] and made it binding as a matter of international law by invoking Chapter VII of the UN Charter.

One would think that the new International Criminal Court would be immune from such considerations, since it was created by voluntary treaty commitments through the Rome Statute. No state was forced to sign the treaty, and many have declined to do so. However, the ICC is required to take cases referred to the prosecutor by the Security Council when the Council deems a criminal investigation necessary for the maintenance of the international peace and security.[44] The Council issued such a directive last year when it invoked its Chapter VII authority and referred the Darfur situation to the court.[45] The referral preempted the prosecutor's discretion in the matter and directed him to conduct an investigation and commence prosecutions for any wrongdoing.[46]

This process of Security Council referrals raises numerous procedural questions for the operation of the new ICC. In order to have legal jurisdiction over a case, the court must find, as a matter of law, that the criminal matters in question are sufficiently grave as to be of importance to the international community.[47] If another state objects and wants to prosecute the defendants in a national court, the

ICC must determine whether the national prosecutions would be sincere, honest, and effective.[48] But if the Security Council has required the referral to the ICC on the basis of a Chapter VII finding that the situation implicates matters of collective peace and security, is the ICC empowered to decide this question for itself, or must it accept the Security Council's finding without any further discussion? No one really knows. The Security Council is the highest law-making authority in the UN system of international law, but what role its pronouncements should have in criminal matters is entirely uncertain, because the Security Council, and international law in general, has never before been so involved in the project of criminalizing and punishing individual behavior. This process, begun in earnest at Nuremberg, has now blossomed into a central focus of the international legal order; but not without raising some serious concerns.

We achieve group justice by subjecting these unspeakable crimes, perpetrated by the most horrendous of maligned hearts, to the most banal and pedestrian processes of our legal system.

The ICC, as I have argued elsewhere, is really, then, two courts in one.[49] When commencing an investigation after a referral from a state party to the Rome Statute, the prosecutor has independent authority to base his prosecutorial decisions on pure criminal law considerations. What is the wrongdoing here? Who should be put on trial? What crime should they be charged with? Is this the appropriate legal forum in which to conduct the prosecution? But when required to take on a case after a Security Council referral, the ICC stops looking like a traditional criminal court. Of course, it is still a criminal court in that it judges and punishes individual conduct, but it is more than a criminal court if it is required to take cases when collective peace and security demands it. One might think of this process as a hijacking of criminal law by the international legal system to achieve the twin aims of international law: trans-national peace and collective security. In such cases, the ICC looks less like a pure criminal court and more like an organ of the United Nations, adjudicating individual conduct only because it will promote some greater goal at the collective level. One might call it a "security" court instead of a criminal court.[50]

None of this is meant to suggest that the process of Security Council referrals is somehow regrettable or objectionable. Indeed, the Security Council should have the authority to make binding referrals to the ICC in the wake of genocide or war crimes. The underlying purpose in setting up the ICC was to create a successor court to the ICTY and ICTR, which were truly ad hoc in nature. Their jurisdictions were confined by date and geography, and their mandate will eventually expire.[51] In their place, the more general ICC will continue its work, prosecuting war crimes and genocide wherever they may happen, with an institutional bureaucracy already in place and ready to spring into action as circumstances require.

The tension between special and ordinary justice at the ICC is not limited to cases of Security Council referrals. Indeed, the two conceptions of transitional justice come face to face in all aspects of the court's operation. On the one hand, the ICC is operating as a traditional criminal court, concerned solely with the guilt or innocence of the accused; nothing else matters. The trial must be conducted in accordance with the basic principles of justice well known to all sophisticated systems of criminal law. Although the substantive crimes being prosecuted are horrific as compared with national penal systems—genocide instead of isolated cases of murder, crimes against humanity instead of isolated cases of rape—this cannot justify abrogation from the fundamental principles of criminal adjudication, because these principles derive from the basic principles of justice. This is transitional justice as ordinary justice.

However, the mere fact that the choice of cases is so dependent on geopolitical considerations indicates that the ICC is jurisdictionally defined by transitional justice as special justice. Although international criminal justice is pursued—or at least ought to be pursued—with the same fidelity to the basic principles of justice as domestic criminal law, it is nonetheless a different process, in a different location, with different personalities. It is more than just a logical space with its own legal precedents; it is a literal space, outside the boundaries of national law, designed to deal with crimes that are inherently international[52] in character: genocide, war crimes, crimes against humanity, and aggression.[53] These are not just ordinary crimes. They are extraordinary, requiring a sophisticated legal culture through which they are defined and analyzed to determine standards of guilt, which defenses apply, and the elements of each offense. This is the kind of transitional justice as special justice that is entirely appropriate—and inescapable.

One sees this tension at the level of the substantive offenses. Genocide and crimes against humanity are by their nature special, and some element of special justice must be marshaled against them. They are by definition collective in nature. The paradigm of genocide is the attempt by one ethnic group to destroy the other, to annihilate them by forcing them from their homes and killing them. Genocide is not simply the attempt by a single individual to kill another human being while being motivated by racial animus. This is a hate crime, but it is not genocide.

Genocide must be backed up by a group plan, policy, or desire to wage existential war on another ethnicity. This conception is borne out by history. During the Holocaust, the Germans wanted to annihilate the Jews. Of course, one might argue that it was only the Nazi leadership—or even just Hitler—that wanted to destroy the Jews. But this reading of history is entirely insensitive to the fact that the crime was not just racial in its definition of the victims, it was also racial in its definition of the *perpetrators*. The Germans saw themselves as a superior Aryan race that would wipe out the inferior Jewish people. One need not subscribe to Goldhagen's controversial thesis that ordinary Germans supported the Holocaust to understand this key point about the collective nature of the Holocaust.[54]

Similarly, the Rwandan and Yugoslavian genocides of the most recent decade were pursued by one group against another. The Hutu, as a group, desired the destruction of the Tutsi, while the Serbians were motivated by a grand desire to expel their enemies and create an ethnically homogenous Greater Serbia. To deny this collective characteristic of the genocide is to engage in the most wishful of thinking. There has been a tendency, since the Enlightenment, to interpret all action at the level of individuals as rational agents, and to deny the ties that bind us together as unfortunate holdovers of the Romantic era.[55] But the history of the twentieth century suggests that group ties are not only central to our daily lives in a national culture, but also, regrettably, a contributing cause of genocide.

At the level of international criminal law there is some confusion on this point. Several scholars have suggested that a defendant is guilty of genocide when he or she commits a murder with the individual intent to destroy another ethnic group, regardless of whether this murder is committed as part of a larger group plan. The wording of the Rome Statute lends support to this position.[56] Under this view, the lone homicidal racist who kills one member of another race in the United States would be guilty of genocide as long as he wants to destroy an entire race. It does not matter, on this view, that there is no one else who shares the same genocidal plan. While such an event would undoubtedly be horrible—and criminal—it does not fall under our classic understanding of the term genocide. The crime of genocide is irreducibly collective.[57]

Nonetheless, our modern system of international criminal justice can do nothing to punish an entire ethnic group. Although some institutions of international law are dedicated to adjudicating the actions of states and attributing state responsibility where necessary (think of the ICJ), ad hoc and permanent international criminal tribunals are limited to adjudicating the conduct of individuals. Only individuals can stand trial before the ICC and only individuals have served jail sentences handed down by the ICTY and ICTR. This is the essential project of criminal law. To suggest otherwise, to claim that criminal trials should adjudicate the actions of large groups, offends every Enlightenment principle we have about criminal law. We do not punish individuals based on blood guilt.[58] Although the actions of the collectives to which they belong may bring upon them collective shame and guilt, the actions of the group do not impose criminal liability on its members (in the absence of specific, individual, culpable conduct). Therefore, this constraint about criminal law is entirely necessary.

This presents a puzzle for transitional justice. The whole point of holding trials in the wake of genocide is to repair the breach between warring ethnic groups. We saw this in the jurisdictional analysis of the ad hoc tribunals and the new ICC; these international criminal institutions gain their very legitimacy from the need to repair these group conflicts. They carry the hope that ethnic groups victimized by genocide can receive the justice they were denied on the battlefield, in the camps, or in the ovens. This is special justice if ever there was. But how do we achieve this group justice? We achieve it by plucking individuals from the chaos, holding out their

actions as worthy of public condemnation, and warranting individual criminal punishment. We achieve this justice by subjecting these unspeakable crimes, perpetrated by the most horrendous of maligned hearts, to the most banal and pedestrian processes of our legal system: rules of evidence, procedure, penal statutes, and precedent. This is not an attempt to redress the balance between ethnic groups, it is the technical and bureaucratic handling of the individual. This is ordinary justice of the most ordinary kind. The two sides of transitional justice come face to face in the ashes of genocide.

Notes

[1] See Louis Bickford, "Transitional Justice," in 3 *The Encyclopedia of Genocide and Crimes Against Humanity* 1045–1047 (New York: Macmillan, 2004) (noting that the term's origin is unclear but was only popularized in academic literature in 1992).
[2] See, e.g., Neil Kritz (ed), *Transitional Justice: How Emerging Democracies Reckon With Former Regimes* (1992).
[3] See, e.g., Ruti Teitel, *Transitional Justice* (Oxford: OUP, 2002).
[4] See, e.g., Eric Posner & Adrian Vermeule, "Transitional Justice as Ordinary Justice," 117 *Harvard Law Review* 761, 763–64 (2004) (arguing that transitional justice is not qualitatively different from domestic justice because the latter includes its own series of transitions).
[5] See Teitel, *Transitional Justice.*
[6] My conception of ordinary justice differs somewhat from that offered by Posner and Vermeule, "Transitional Justice as Ordinary Justice," 768–69; who view both domestic and post-genocidal justice systems as being inherently transitional in some sense. Their argument comes down to the proposition that although post-genocidal justice systems present certain difficulties, they are merely the same difficulties found in domestic criminal systems, although perhaps writ large, and that theorists are inclined to exaggerate the degree to which domestic legal systems are paragons of neutrality and fairness.
[7] For example, there were vigorous discussions, in both academic and political circles, after the collapse of apartheid over what kind of tribunal was most appropriate. The Truth and Reconciliation Commission model was devised to promote community healing and reparation by giving perpetrators an incentive to fully disclose their participation in apartheid without fearing lengthy imprisonment. This calculation was explicitly driven by socio-political concerns. This model was adopted in other countries with some modifications. See William Schabas & Shane Darcy (eds), *Truth Commissions and Courts: The Tension Between Criminal Justice and the Search for Truth* (2004).
[8] This is obviously the most difficult aim of transitional justice. Although all programs are designed with this in mind, it is difficult to achieve it in reality. Lingering ethnic hostilities remain in Yugoslavia between ethnic Serbs and ethnic Albanians. Likewise, although the Tutsi succeeded in taking control of Rwanda and ending the genocide, they have not succeeded in building an ethnically cohesive society with Hutus, many of whom fled the country. Nonetheless, this was the goal. See, e.g., Organic Law No. 08/96, Aug. 30, 1996, Organization of Prosecutions for Offences Constituting the Crime of Genocide or Crimes Against Humanity Committed Since 1 October 1990 (noting that prosecution of past crimes was necessary for purposes of reconciliation); Payam Akhavan, "The International Criminal Tribunal For Rwanda: The Politics and Pragmatics of Punishment," 90 *American Journal of International Law* 501, 505 (1996) (discussing "post-conflict peacebuilding" as rationale for creating the ICTR); UN Doc. S/PV.3453, at 15 (1994) (Security Council comments from Rwandan representative that national reconciliation required criminal prosecutions demonstrating an end to impunity).
[9] Reprisal attacks continue between Serbs and Albanians in Yugoslavia. Similarly, Hutu forces who fled Rwanda after the Tutsi gained power have continued to arm themselves and threaten military attacks.
[10] One might debate what the rules of justice are (and what provides their foundation), but this is a logically distinct issue from whether the rules of justice are universal or require amendments in special circumstances.
[11] See Teitel, *Transitional Justice,* 6 (arguing that "[w]hat is deemed just is contingent and informed by prior injustice" and that "[r]esponses to repressive rule inform the meaning of adherence to the rule of law"). Posner and Vermeule, "Transitional Justice as Ordinary Justice," 791 ("The case for retroactive justice need not rest (solely) on a morally disreputable passion").
[12] Of course, theorists using this style of argumentation do not usually advertise their arguments with this language. It would be rhetorically disadvantageous to refer to one's suggestion as "tinkering" with the basic rules of justice. But nonetheless this is precisely the end-result of such arguments. Teitel refers to her account as constructivist because she claims that our notion of the rule of law is socially constructed. See

Teitel, *Transitional Justice,* 19.
[13] The idea that the rules of morality might have emerged differently if we lived in a social order with different background conditions goes back at least to Hume, if not further. See David Hume, *An Enquiry Concerning the Principles of Morals* (Hackett) (noting that rules of justice emerge in a society that suffers from, inter alia, a scarcity of resources that must therefore be regulated).
[14] For Hobbes, the only applicable law in the state of nature was natural law, or lex naturalis, the most basic principles of law that do not depend on the establishment of a social contract. See Thomas Hobbes, *Leviathan* (1660) (citing as the first law of nature the right of man to use his power for preservation and self-defense). It was the very skeletal nature of the jus naturale that makes the state of nature nasty, brutish, and short. A similar account of natural law is provided by John Locke in his *Two Treatises of Government* (1690), though for Locke the state of nature was not inevitably a state of war. For Locke, the fact that natural rights are so difficult to vindicate in the state of nature (one might not be strong enough to exercise one's right to self-defense against an attack) requires the establishment of the social contract and government.
[15] In essence, genocidal conflict involves the collapse of inter-group arrangements and the return to an international state of nature. The idea of viewing the relationship between states as being analogous to the relationship of individuals in the state of nature, requiring therefore a social contract, has a long tradition. See generally John Rawls, *The Law of Peoples* (1999) (suggesting two-tiered social contract where individuals contract together to form nation-states who then bargain for a second contract to form international arrangements); cf. Charles Beitz, *Political Theory and International Relations* (1979); Thomas Pogge, "An Egalitarian Law of Peoples," 23 *Philosophy and Public Affairs*, 195 (1994) (criticizing Rawlsian international original position).
[16] Rwandan officials originally planned extensive trials with Western standards of due process, but quickly realized that they had neither the resources nor the time to try the roughly 100,000 defendants in custody. They resorted instead to community-based gacaca courts. For a discussion of the functioning of these courts, see Mark A. Drumbl, "Rule of Law Amid Lawlessness: Counseling the Accused in Rwanda's Domestic Genocide Trials," 29 *Columbia Human Rights Law Review* 545, 548 (1998) (discussing erratic nature of the prosecutions); L. Danielle Tully, "Human Rights Compliance and the Gacaca Jurisdictions in Rwanda," 26 *B.C. International & Comparative Law Review* 385, 402 (2003) (arguing that the genocide's devastation made traditional trials impossible). This is not surprising given that the genocide was carried out not by advanced technology but rather by machete attacks conducted by thousands of perpetrators.
[17] Tully, "Human Rights Compliance and the Gacaca Jurisdictions in Rwanda," 395–400 (arguing that *gacaca* courts, though flawed, were the last best chance to deal with the genocide).
[18] On the collective nature of these crimes, see generally George P. Fletcher, "The Storrs Lectures: Liberals and Romantics at War: The Problem of Collective Guilt," 111 *Yale Law Journal* 1499 (2002); Claus Kress, "The Darfur Report and Genocidal Intent," 3 *Journal of International Criminal Justice* 562 (2005).
[19] See Jens David Ohlin, "Applying the Death Penalty to Crimes of Genocide," 99 *American Journal of International Law* 747, 763–764 (2005) (arguing that the Rwandan public was willing to forego reprisals only insofar as they believed that the justice system would deal with the *genocidaires*).
[20] See Teitel, *Transitional Justice,* 66 (suggesting that "the role of criminal justice in transitional times… goes beyond the concerns ordinarily internal to criminal justice").
[21] See Jens David Ohlin, "Applying the Death Penalty to Crimes of Genocide," 99 *American Journal of International Law* 747, 761 (2005).
[22] Customary international law goes beyond codified treaties or international agreements and is created by the reciprocal practice of states acting according to a perceived legal duty.
[23] Eichmann received the only capital sentence handed down in an Israeli Court. Although it was supported by the general public, there was some debate in intellectual circles. The philosopher Martin Buber objected, as did Karl Jaspers, who suggested that Eichmann should be detained until such time as a competent international tribunal could be convened. See Hannah Arendt, *Eichmann in Jerusalem* 251 (1963); Karl Jaspers, "Who Should Have Tried Eichmann?" (interview by François Bondy, trans. A. Cassese), *Journal of International Criminal Justice* (forthcoming) (arguing that Israel had no authority or jurisdiction to prosecute Eichmann just because the victims of the Holocaust were Jews).
[24] See Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, UN Doc. S/25704, at 28 (1993) (recommending that the ICTY Statute exclude the death penalty). The United States was also aware that the death penalty issue was a non-starter on the Security Council because of European objections. See Virginia Morris & Michael P. Scharf, *The International Criminal Tribunal For Rwanda* 583 (1998) (quoting Madeleine Albright).
[25] It is unfortunate that the execution proceeded before Hussein's trial for genocide against the Kurds was complete. (The death sentence was carried out after he was found guilty of crimes against humanity for the killing of 147 people in Dujail.) This robbed the legal community of a significant precedent that would have expanded the jurisprudence of genocide.

[26] The duty to preserve international peace and security is not simply limited to one provision of the Charter, but is rather pervades the entire document. See UN Charter, pmbl., Art. 1, Art. 39, Art. 42, Art. 43, Art. 52, Art. 54.
[27] The Rwandan delegate to the United Nations complained bitterly about the structure of the ICTR, calling it "ineffective" and noting that it seemed designed to appease the conscience of the international community rather than produce justice for Rwandans. UN Doc. S/PV.3453, at 14 (1994). See also José Alvarez, "Crimes of States/Crimes of Hate: Lessons from Rwanda," 24 *Yale Journal of International Law* 365, 409 (1999) (asking how the ICTR achieved "justice" when its effect was to grant the planners of the genocide lower sentences then they would have received in domestic courts authorized to impose the death penalty).
[28] Defendants convicted by the ICTY are housed in prisons by European and Scandinavian states that volunteer the use of their facilities for the completion of international criminal sentences. Many of these jurisdictions have far more liberal attitudes about rehabilitation than Americans, who are generally comfortable with the difficult lifestyle inflicted on American prisoners and are somewhat confused to learn that European prisoners live in relative comfort when compared to their American counterparts.
[29] See *Prosecutor v. Tadic*, Decision on Jurisdiction, No. IT-94-1 (Aug. 10, 1995) (upholding jurisdiction of the ICTY on the grounds that the Security Council was authorized by the Charter to take any actions necessary to restore collective peace and security, including the creation of ad hoc criminal tribunals).
[30] Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 995, annex, pmbl., 33 I.L.M. 1602 (Nov. 8, 1994); Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, annex, pmbl., 32 I.L.M. 1203 (May 25, 1993).
[31] William A. Schabas, *The Abolition of the Death Penalty in International Law* (2002).
[32] The tribunals have only been partially effective in this regard. Ethnic unrest still lingers in Yugoslavia, the status of Kosovo is uncertain, Sarajevo never returned to its cosmopolitan past, and Rwanda still teeters on the verge of ethnic violence with neighbor countries where Hutu extremists sought refuge after the genocide. For a discussion of the Rwandan situation, see, generally, Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (2003).
[33] Some countries have enshrined an absolute right to life, either in these terms or as a commitment to "human dignity." *Compare* Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948) (right to life, liberty, and security of person), *with* European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221 (Nov. 4, 1950) (providing for exceptions to the right to life, including penal sentences handed down by a lawfully constituted court). See also Schabas, *The Abolition of the Death Penalty in International Law* (viewing death penalty as violating a universal right to life).
[34] On the notion of rights forfeiture, see, generally, Stephen Kershnar, *Desert, Retribution, and Torture* 125 (2001).
[35] See Schabas, *The Abolition of the Death Penalty in International Law* (expressing retentionist position in terms of international human rights law).
[36] See General Treaty for the Renunciation of War, art. 1 (Aug. 27, 1928) (outlawing war "as an instrument of national policy in their relations with one another").
[37] See, generally, Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (Boston: Little Brown & Co., 1992).
[38] See Judgment, International Military Tribunal at Nuremberg (Sept. 30–Oct. 1, 1946). Although the court noted that the maxim "had no application to the present facts," the court nonetheless insisted that German officials must have known that Germany had signed treaties renouncing aggressive war and that they were therefore "acting in defiance of international law."
[39] See Judgment, International Military Tribunal at Nuremberg (appealing to the laws of war contained in the Hague Convention). The court admitted that the Hague Convention included no mention of individual criminal liability or trials but noted that military tribunals had traditionally prosecuted such offenses as violations against the laws of war.
[40] See, e.g., Hans Kelsen, "Collective and Individual Responsibility in International Law with Particular Regard to the Punishment of War Criminals," 31 *California Law Review* 530 (1943). Cf. Antonio Cassese, *International Criminal Law* (New York: Oxford University Press, 2003) (concluding that international tribunals must be given wider latitude with the nullum crimen principle than domestic courts).
[41] See Peter Maguire, *Law and War: An American Story* (New York: Columbia University Press, 2000), 90–91.
[42] See Robert H. Jackson, Opening Address for the United States, International Military Tribunal at Nuremberg (Nov. 21, 1945) ("The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.").
[43] Serbian nationalists in Yugoslavia were, for obvious reasons, opposed to the creation of a tribunal designed primarily to prosecute members of their ethnic own community. Rwanda, as a rotating member of the Security Council, voted against the creation of the ICTR because the tribunal's statute did not allow for

the death penalty. See supra note 25.
[44] See Rome Statute, art. 13(b).
[45] The Security Council's directive was contained in S.C. Res. 1593 (March 31, 2005). See also Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General (2005) (recommending referral to ICC prosecutor after finding evidence in Darfur suggesting war crimes and crimes against humanity).
[46] To the dismay of some, no prosecutions have yet occurred. See generally, Antonio Cassese, "Is the ICC Still Having Teething Problems?" 4 *Journal of International Criminal Justice* 434 (2006) (critiquing "overly cautious attitude of the Prosecutor").
[47] Rome Statute, art. 1 (the court "shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern").
[48] Rome Statue, art. 17.
[49] See George P. Fletcher & Jens David Ohlin, "The ICC—Two Courts in One?" 4 *Journal of International Criminal Justice* 428 (2006).
[50] Fletcher and Ohlin, "The ICC—Two Courts in One?,"431.
[51] The completion strategy for the ad hoc tribunals is a subject of much debate. See Carla Del Ponte, Address to UN Security Council (June 30, 2004) (arguing that the ICTY can only complete its work when it prosecutes high-profile defendants still at large and the domestic legal systems of the former Yugoslavia are equipped to handle their own prosecutions).
[52] These crimes are not limited to international armed conflicts but also apply to internal armed conflicts. Nonetheless they are always of concern to the international community.
[53] Aggression is perhaps the most international and collective of crimes because it involves the violation of a state's territorial integrity by another state. Although the crime was prosecuted at Nuremberg, it was not included in either the ICTY or ICTR Statutes and cannot be prosecuted at the ICC until state parties to the Rome Statute agree to a definition of aggression. See Rome Statute for an International Criminal Court, Article 5(2). Agreement on a definition is unlikely in the foreseeable future.
[54] See Daniel Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (London: Abacus, 1997).
[55] On this point, see George P. Fletcher, *Romantics at War: Glory and Guilt in the Age of Terrorism* (Princeton, New Jersey: Princeton University Press, 2002).
[56] See Rome Statute, art. 6 (requiring for a charge of genocide that the defendant have an intent to destroy another ethnic group but saying nothing about a collective plan on behalf of the aggressors).
[57] See Fletcher and Ohlin, "Reclaiming Fundamental Principles of Law in the Darfur Case," 3

Reconstruction and Reconciliation: What's Economics Got to Do With It?

by Christopher J. Coyne

Reconstruction and reconciliation are perhaps the most pressing issues of our time. The ongoing conflicts in the Middle East, as well as the many problems generated by weak, failed, and conflict-torn states in other parts of the world, are examples of situations where these topics are relevant. Reconstruction entails rebuilding, and in some cases constructing, both formal and informal institutions in weak, failed, and postwar countries. More specifically, the reconstruction process involves the restoration of physical infrastructure and facilities, minimal social services, and structural reform in the political, economic, social, and security sectors. The end goal is the establishment of liberal democratic institutions, or at least the foundations of such institutions. A liberal democracy refers to political institutions which recognizes, respects, and enforces individual and civil rights, the rule of law, and private property.[1] Typically the reconstruction process involves some array of indigenous citizens and elites as well as exogenous actors, whether they are military occupiers or international policymakers.

Reconciliation can be seen as a key aspect of the broader reconstruction process and involves individuals coming to terms with past human and civil rights abuses, oppression, and violations of the rule of law and private property. Any shift from an illiberal to a liberal regime requires some form of reconciliation between enemies. The past violations of human, civil, and property rights by certain individuals must be addressed, but when doing so, a balance of retribution and reconciliation should be established. In the absence of such an ethic of forgiveness and reconciliation, the transition toward a liberal order will be incomplete.

As the historical record indicates, policies that aim to advance reconstruction and reconciliation efforts are among the most difficult to implement.[2] For the most part, research regarding the issues of reconstruction and reconciliation have been limited to the disciplines of history, political science, and public policy. My primary aim in this paper is to explore the contribution that the economic way of thinking can make to this existing literature. Specifically, I examine the economic concepts of incentives, constraints, opportunity cost, institutional path dependency, and gains

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from trade in the context of reconstruction and reconciliation. In order to make this connection, I extend the "lessons learned" from the economics profession's experience with transition economies and with the provision of monetary aid to developing countries. Additionally, I examine the economic theory of trade as one mechanism for achieving sustainable change. I believe that incorporating the economic way of thinking into the analysis of the reconstruction and reconciliation process will contribute substantially to the ongoing debate regarding the ability of governments to effectively export sustainable liberal democracy via foreign intervention.

The array of actors involved in reconstruction and reconciliation—occupiers, policymakers, indigenous citizens etc.—each have specific goals and constraints that will influence the overall success or failure of the broader effort.

When one looks at the fundamental nature of the reconstruction and reconciliation process, it becomes evident that economic issues are of central importance. That is, reconstruction and reconciliation require the creation of rules and can therefore be considered problems of political economy. A central emphasis of political economy is "the reason of rules."[3] The underlying logic is that rules provide the parameters within which individuals can carry out private activities while simultaneously establishing the scope and strength of political institutions and the activities of political agents within those institutions. For example, a key part of constructing liberal institutions is the creation of constitutional rules and binding checks and balances that are credible and sustainable. Likewise, reconciliation requires the creation of formal (codified laws) and informal (norms) rules to deal with past injustices without bankrupting the future potential of a society.

Viewed from the perspective of political economy, the reconstruction and reconciliation process can be seen as an issue of incentive compatibility. Incentives are a central concept in economics and refer to factors that influence the direction of human behavior. A core assumption of the economic way of thinking is that people behave purposefully and therefore respond to incentives. By way of example, consider the profit/loss mechanism in a market economy: the lure of profit is a positive incentive for entrepreneurs to satiate consumer wants; the possibility of a loss is a negative incentive against failing to do so.

Within the context of incentives, those directing the reconstruction and reconciliation process must establish the "rules of the game" such that there is a positive incentive for citizens to utilize, respect, and invest in liberal democratic institutions—political, economic and social—over the long run. Further, to the extent that this process involves external occupiers or policymakers, they must ensure that incentives are in place for the populace of the reconstructed country to

follow those rules once occupiers exit. In other words, occupiers must not just establish rules at "the point of a gun," but instead ensure that those rules are durable and sustainable after the occupation ends. Absent such incentives, the reconstructed country will backslide.

As such, the economic way of thinking can assist in understanding if formal and informal rules provide the necessary incentives for members of the populace to engage in activities that support a self-sustaining, liberal order. In other words, economics provides the means of adjudicating between the factors and mechanisms that generate the incentive to cooperate, versus to fight. In what follows, I explore how the economic way of thinking can contribute to our understanding of the process of reconstruction and reconciliation.

Economic Insights on the Reconstruction Process

In addition to their focus on the role of incentives, economists also focus on the role of constraints. In assuming that individuals act purposefully, economists emphasize that individuals have specific goals that they seek to achieve. The economic way of thinking indicates that the opportunities to pursue these goals are constrained by a number of factors including time, income, imperfect knowledge and information, and informal and formal rules. Given their goals and constraints, individuals pursue their desired objectives using the best options available to them at the time of action. The array of actors involved in reconstruction and reconciliation—occupiers, policymakers, indigenous citizens etc.—each have specific goals and constraints that will influence the overall success or failure of the broader effort. Let us consider some specific insights from economics as they relate to these constraints.

Insights from the Transition Experience

A wealth of relevant knowledge exists in the economics literature regarding the transition experience of former communist countries. Similar to the process of reconstruction, a central policy issue following the fall of communism was the transition from often illiberal communist regimes to liberal democratic ones. Fundamental changes in the political, economic, and social spheres were required to achieve these outcomes.

According to the economist Peter Murrell, the early economic reforms proposed for transition countries suffered from two major issues.[4] The first issue was that reforms often neglected the nuances of the existing society and existing "rules of the game." This issue highlights the importance of context. Prior to the collapse of communism, a social system had evolved with a unique set of customs, norms, and rules which provided an incentive for certain types of behaviors. Oftentimes, these rules operated outside the formal rules in the black market.

The second issue plaguing reforms in transitioning countries was that the reforms failed to consider whether the behavior associated with capitalist systems was the result of historical development or the result of present-day incentives.

Historical experience matters. The social system that evolved under communism could not be discarded or shifted overnight. This indicates that social structures that had developed in the communist period carried over to the transition period and served as a binding constraint on the effectiveness of transition reforms and policies. For instance, in the case of the Soviet Union, reformers knew the general characteristics of formal liberal institutions—checks and balances, rule of law and the protection of human, civil, and property rights—but were unable to generate effective change because they could not provide the informal complementary institutions (i.e., the underlying experiences, belief systems, and organizational forms) necessary for widespread acceptance and adoption of the new order.[5]

A related issue that affected economic reform during the transition period, which is equally important for reconstruction efforts, was the problem of credible commitment.[6] For new institutions to be successfully adopted, a significant number of individuals must be confident that they are credible and legitimate. In other words, they must be confident that reconstructed institutions will be sustainable *after* the reconstruction process ends and foreign occupiers exit. The issue is one of shifting the institutional trajectory from often illiberal regimes to one that credibly supports liberal ends.

The main problem stemming from this issue of plausible commitment is that the necessary legitimacy cannot be established quickly. In short, why should citizens who were formally repressed now believe that a reconstructed government will treat them differently? Moreover, social scientists and policymakers have a poor understanding of how to design rules and institutions that are viewed as legitimate and binding by the individuals who must accept and invest in them. This is evident when one considers that historical attempts by the US to establish liberal democratic institutions abroad have produced more failures than successes.[7]

These insights from the transition experience apply beyond purely economic reforms and have important implications for reconstruction and reconciliation efforts. Formal Western style institutions require the existence of informal complementary institutions to serve as a foundation. Complementary institutions encompass informal norms and values such as trust and the related art of association, conventions, beliefs, and organizational forms which allow formal institutions to operate in the desired manner.

In order to understand the importance of complementary institutions, consider the following from Nobel Laureate economist F.A. Hayek who noted the importance of underlying beliefs and dispositions, "which in more fortunate countries have made constitutions work which did not explicitly state all that they presupposed, or which did not even exist in written form."[8] Hayek's point is that a constitution is a codification of the underlying beliefs, traditions, and habits of a society and, hence, successful instruments of liberal democracies if those underlying beliefs were part of the cultural endowment in the first place. When aligned, formal and informal institutions will operate effectively, but any disjuncture between the two will result in the failure of formal institutions to operate in the desired manner. Unfortunately, policymakers and social scientists lack the knowledge of how to effectively construct

these complementary institutions where they do not already exist. Stated differently, an understanding of how to construct or impose the underlying values and belief systems required for the desired operation of formal liberal institutions does not exist.

When aligned, formal and informal institutions will operate effectively, but any disjuncture between the two will result in the failure of formal institutions to operate in the desired manner.

In modern economics literature, the recognition of the importance of past experiences manifests itself in the concept of path dependency—the way in which institutions and beliefs developed in past periods constrain choices in the current period. In other words, past experiences will facilitate or constrain the transformation of situations of conflict into situations of cooperation in current and future periods. Nobel Laureate economist Douglass North, who is a key contributor to the path dependency literature, has emphasized that formal rules and institutions are indeed important, but they must be complemented and reinforced by informal rules and institutions in order to operate in the desired manner.[9]

The recognition of the importance of both formal and complementary informal institutions has important implications for reconstruction efforts. Policymakers and social scientists often focus on the "controllable variables" in reconstruction efforts such as troop levels, monetary aid, the timing of elections, and exit strategies.[10] While these are clearly important variables, the focus on informal institutions indicates that reconstruction is not merely a technical issue.[11] The exact level of controllable variables employed in different reconstruction and reconciliation efforts will have drastically different outcomes because of the constraints of historical experiences and the existing endowment of skills, knowledge, beliefs etc. in the country being reconstructed. In other words, the presence of existing rules and endowments of informal knowledge and experiences will serve as hard constraints on the effectiveness of controllable variables.

To further highlight this point, consider an analogy employed by the economist Luigi Zingales. Zingales likens the situations in post-World War II Japan and Germany, typically considered examples of America's ability to reconstruct countries along liberal lines, to a firm whose plant had been destroyed by fire.[12] Both Japan and Germany were developed and industrialized before entering World War II and, therefore, the "plant" (i.e., country) was operating at a relatively high level of productivity. While the "fire" (i.e., war) destroyed the physical plant, the skills and knowledge that generated the pre-fire level of productivity were still in place. Stated differently, the fundamental skills, knowledge, and organizational forms that had evolved prior to the fire were carried over to the reconstructed plant, allowing the firms (i.e., Japan and Germany) to eventually achieve their prior levels of productivity.

While the resources to invest in rebuilding the plant are indeed important to achieving success, it is the underlying endowment of skills and knowledge that allow the firm to be productive in the first place. Without these complementary institutions (i.e., the skills and knowledge of how to organize production activities and run the plant), the plant would be nothing but an underutilized or empty building. In the context of reconstruction, countries lacking complementary institutions to serve as a foundation for formally reconstructed institutions will fail to become sustainable liberal democracies.

This insight goes a long way in explaining the drastically different outcomes across reconstruction efforts. The main issue for policymakers is that the fundamental skills, norms, and knowledge, or "culture," is deeply embedded in a society and cannot be easily manipulated through policy. Along these lines, Francis Fukuyama contends that democratic consolidation must take place on four levels—Ideology, Institutions, Civil Society, and Culture. Culture is the "deepest" level and therefore is "safely beyond the reach of institutional solutions, and hence of public policy."[13] The cultural constraint on policy indicates that those who wish to export liberal democratic institutions to other countries must consider mechanisms for first establishing the necessary complementary institutions that will allow formal institutions to "stick" and sustain over time. As it turns out, the economic way of thinking offers one potential mechanism which I will discuss in a later section.

Insights from the Development Experience

Monetary aid is a central part of most, if not all, reconstruction efforts. Research in the area of development economics and, specifically, research regarding the effectiveness of monetary aid in developing countries, is yet another area where the economic way of thinking can contribute to the process of reconstruction and reconciliation. From an economic standpoint, it is not just the total amount of aid that is important, but also how effectively aid is allocated and utilized. Economics can assist in identifying whether the incentives are in place for aid recipients to utilize aid effectively.

In his detailed analysis of foreign aid, the economist William Easterly emphasizes the dual issues of incentives and delivery mechanisms. First, statesmen and policymakers in the country receiving aid must have the incentive to utilize and disburse aid funds effectively.[14] Easterly demonstrates that oftentimes the incentive structure created by the provision of foreign aid directs officials and policymakers toward unproductive activities that generate perverse outcomes and cause more harm than good.

Even if the correct incentives are in place, many underdeveloped, weak and failed states lack the delivery mechanisms to allocate aid effectively.[15] For instance, feedback loops that provide information of accountability and the effective allocation of resources are typically absent or lacking in scope. As such, even if the right incentives are in place, getting the aid to those who need it most presents an additional problem.

Country	Approximate year of onset of state failure	Time under IMF programs in preceding 10 years (%)
Afghanistan	1977	46
Angola	1981	0
Burundi	1995	62
Liberia	1986	70
Sierra Leone	1990	59
Somalia	1991	74
Sudan	1986	58
Zaire	1991	73
Average		55
Average for developing countries 1970-90		20

TABLE 1: ALL EIGHT CASES OF STATE COLLAPSE WORLDWIDE AS OF 1990 AND PRIOR IMF PROGRAMS[16]

Mainly due to the issues raised by Easterly, one should not expect monetary aid in itself to be a catalyst for sustainable political, economic, and social change in illiberal states. Indeed, the evidence seems to indicate that monetary aid is largely ineffective in overcoming the major problems in weak and failed states. A brief review of the performance of aid in those countries that experienced complete state failure seems to support the claim regarding the ineffectiveness of aid in generating sustainable change.

As Table 1 illustrates, engaging in programs of the International Monetary Fund (IMF) for an extended period of time correlates with a greater risk of complete state collapse. Of course, this says nothing about causation, and the magnitude of the effect of IMF programs relative to state collapse is unclear. Nonetheless, it is safe to conclude that the general problems of incentives and the lack of information related to the dispersal of aid played some role in the ineffectiveness of the IMF programs. As this data indicates, there is no reason to believe that monetary aid is a suitable mechanism for generating widespread sustainable change toward liberal democratic institutions. Instead, spending significant time in an IMF program is associated with a higher likelihood of complete state collapse.[17]

Within this context, another important insight from economics is that policymakers must be careful not to fall prey to the "nirvana fallacy." In its simplest form, the nirvana fallacy indicates that it is incorrect to hold the view that the "grass is greener on the other side" by assuming that government intervention is preferable to the status quo. In the context of reconstruction, a nirvana fallacy occurs when it

is assumed that, in the face of a weak, failed, or illiberal government, external policymakers or occupiers can provide a better outcome relative to what would exist in the absence of those efforts.[18] This is not to say that the provision of aid can never have beneficial effects, but neither can it be assumed that they *will* yield beneficial outcomes.

Consider also that there are many historical cases where monetary aid has been given to illiberal regimes generating the unintended consequence of strengthening those very regimes, as well as increasing dependence on aid. Somalia is one example. Prior to the collapse of Siad Barre's regime in 1991, foreign aid accounted for 70 percent of Somalia's budget, which allowed the regime to continue to function and repress a large part of the Somali population.[19] In addition to propping up the brutal Barre regime, the aid created what James Buchanan, a Nobel Laureate economist, called the "Samaritan's Dilemma." In providing assistance, the "Samaritan" who provides the aid shifts the incentives facing those receiving aid, and in doing so, provides a disincentive to save and invest while providing a positive incentive to become dependent on aid.[20] In the case of Somalia, while the intention of those providing aid may have been to better the situation of Somali citizens, the aid had the negative, unintended consequence of creating a dependency that actually made the shift toward self-sustaining liberal institutions that much more difficult in later years.

For example, the expectation of aid is at least partially responsible for the conflict that has occurred in the capital city of Mogadishu. As Karin von Hippel notes,

> *Many Somalis erroneously believe that a restored central government, based in Mogadishu, will once again cause the foreign aid floodgates to open at similar levels to those prior to state collapse. Mogadishu therefore remains the most hotly contested piece of real estate in the country[…].*[21]

This expectation that control of Mogadishu will also yield foreign aid, as it did in the past, has increased the payoff to engaging in conflict to gain control of the capital city. Similar logic extends beyond the case of Somalia to aid provided to other weak and failing states. The important point is that the tools of economics are critical in understanding the incentives created by efforts—whether military occupation, aid, or some mix of the two—to reconstruct foreign countries. Neglecting the insights provided by the economic way of thinking is likely to produce wrongheaded policies, which will often generate perverse outcomes.

Economic Insights on the Reconciliation Process

The economic way of thinking can also assist both policymakers and social scientists in understanding the process of reconciliation. In many cases the success of reconstruction efforts requires the development of an ethic of forgiveness that provides the incentive for citizens to move forward and make the necessary investment in liberal democratic institutions. For instance, as noted earlier, the issue

of credible commitment is central in any reconstruction. The problem of transitional justice magnifies this problem. In many illiberal societies, citizens were repressed and suffered grave injustices. As such, citizens will tend not to trust the new government based on historical experiences with repression.

Within this context, rules must develop that simultaneously signal a break from the past *and* a credible commitment that those rules will be followed in the future. For obvious reasons, achieving this task is one of the most difficult policy achievements. The tools of economics can assist in identifying some of the central issues involved in developing an ethic of reconciliation that is effective and credible.

The tools of economics are critical in understanding the incentives created by efforts—whether military occupation, aid, or some mix of the two—to reconstruct foreign countries.

For instance, a key issue in the process of reconciliation is determining how much justice to pursue. At one extreme, the decision not to pursue any level of justice will fail to generate a sufficient break from the past, and those who have suffered past injustices and harms may refuse to participate in the new order. In such an instance, reconstructed institutions will lack legitimacy because they will be associated with the former illiberal regime. On the other hand, pursuing total justice can bankrupt the future of a society. Investing an abundance of resources in transitional justice can erode the ability of the system of exchange and production to serve as a basis for peaceful social interaction and cooperation in the future.

At a minimum, the economic way of thinking highlights that there is an opportunity cost to investing resources in the pursuit of justice and reconciliation. The notion of opportunity cost is used by economists in reference to the next best alternative opportunity that is forgone by pursuing some activity. In the context of reconciliation, resources allocated to the pursuit of justice cannot be allocated to other activities. A society that allocates a substantial amount of resources to rectifying past injustices trades off the use of those same resources for other activities that may allow a society to move on. To be clear, this is not to say that justice should not be pursued at all, but rather to recognize the inherent trade-off involved.

To further understand how the pursuit of justice and reconciliation can bankrupt the future of a society, consider the issue of determining just retribution. Principles of restitution often stress that in the face of criminal destruction or confiscation of property, the victim should be made whole through compensation for the full value of the property. However, serious problems come to the forefront with the passage of time, because just compensation will require some form of time discounting. For instance, the economist Tyler Cowen has pointed out how the attempt to right past injustices by a restitution principle, using basic compounding techniques, can quickly lead to financial claims that consume a significant portion of

the output of an economy.[22] In order to understand this point, consider the following example provided by Cowen,

> *Consider the loss of a billion dollars worth of resources in the past. At a one percent rate of compounding, for a loss suffered one hundred years ago, positive compounding suggests a reward of 2.7 billion dollars rather than one billion. For a loss suffered two hundred years ago, compounding increases the reward to 7.3 billion dollars. At a three percent rate of compounding, the awards jump to 19.2 billion dollars and 369.4 billion dollars respectively. At a five percent rate of compounding, the sums raise to 131.5 and 17.3 trillion dollars.*[23]

As this example illustrates, when positive compounding is employed to determine retribution for victims, and the decedents of victims, the result can be a significant claim on current and future output. Restitution can bankrupt a society because these high levels of retribution prevent a society from realizing the gains from production and exchange that would have occurred absent the need to pay retribution. Stated differently, high levels of restitution can potentially slow, or altogether prevent, a society from breaking from the past and moving forward. Of course the magnitude of restitution depends on how far in the past the wrong occurred, as well as the rate of compounding used in the calculation.

Finding an acceptable solution to this issue requires knowledge of history, philosophy, and political theory; however, the tools of economics are also of utmost importance in considering different proposals for retribution. Specifically, economics can assist in identifying the relevant tradeoffs and costs associated with different options for seeking justice and retribution. As discussed, depending on the relevant time frame and rate of compounding, the costs of carrying out justice and retribution may quickly outweigh the associated benefits. Economics alone cannot solve this issue, but the economic way of thinking is one important input for determining a recipe for reconciliation around an ethic conducive to sustainable liberal democratic institutions.

Economic Insights on Mechanisms of Sustainable Change

As previously stated, complementary institutions are necessary foundations for formal institutions. Absent the required complementary norms, belief systems and organizational forms, formal institutions will be dysfunctional and fail to operate in the desired manner. A central issue facing policymakers and social scientists is how to export these complementary institutions where they do not already exist. The economic analysis of international trade can contribute to finding a solution.

Economists rarely disagree regarding the economic benefits of free trade. As the economists David Dollar and Aart Kraay write,

> *Openness to international trade accelerates development: this is one of the most widely held beliefs in the economics profession, one of the few things on which Nobel prize winners on both the left and the right agree.*[24]

Indeed, the economic impact of free trade on wealth is significant. William Cline estimates that worldwide free trade could help 500 million people escape poverty while simultaneously injecting $200 billion annually into developing nations.[25] This indicates that the US can utilize its global economic status and trade policy to influence development and change abroad.[26] Moreover, it is important to realize that the benefits of trade extend beyond purely economic ones.

In addition to the economic benefits of free trade, economists have also emphasized cultural benefits. For instance, Tyler Cowen analyzes the impact of globalization on culture and concludes that free trade not only makes societies better off in terms of increases in wealth, but also in terms of the array of cultural products available to consumers.[27] Cowen's core argument is that cross-cultural trade has the dual effect of allowing cultures to simultaneously maintain and develop certain aspects of their unique identities, while partially merging with other cultures and becoming similar in other aspects. In other words, the impact of globalization on culture is not an all-or-nothing proposition, whereby a culture must either remain isolated or be destroyed. Instead, while globalization admittedly destroys certain aspects of culture, it simultaneously allows other aspects of culture to grow and flourish.

To illuminate this point, Cowen cites the restaurant market. On the one hand, chain restaurants (i.e., McDonald's) continue to increase their overall market share in the global marketplace, which tends to make cultures more homogenous. However, the overall increase in dining has simultaneously increased the number of ethnic and niche restaurants that are able to remain profitable in the broader restaurant market, which has made the options available in the overall restaurant market more diverse and heterogeneous.[28] While one can find a McDonald's restaurant in many places around the world, many ethnic and niche restaurants are available as well. Cowen's reasoning can be extended across cultural products and includes not just physical goods and services, but also intangible things such as values, ideas, and other informal, complementary institutions. As in the restaurant market, cross-cultural trade has the dual effect of making intangibles more similar and homogenous in some respects, while causing intangibles to be more diverse and heterogeneous in others.

It is important to note that the material gains from exchange and the intangibles produced by cross-cultural trade are not necessarily mutually exclusive. For instance, the economist Benjamin Friedman has recently explored the implications of economic growth or stagnation for the moral character of a country. He concludes:

> *Economic growth—meaning a rise in standard of living for the clear majority of citizens—more often than not fosters greater opportunity, tolerance of diversity, social mobility, commitment to fairness, and dedication to democracy.* [29]

In short, increases in material wealth provide individuals with the ability to pursue other, often intangible, ends, and influences other, often non-economic, aspects of society.

To return to the central dilemma of how to export the required complementary institutions where they do not already exist, it is my contention that a commitment to free trade on the part of the US can be viewed as one mechanism of change to establish the foundation for formal, liberal institutions. Societies tend to become more similar, at least in their awareness of others outside their borders, as they become aware of and integrate the ideas, values, organizational forms, and practices of others. A commitment to free trade is not a panacea, but it is one important tool for spreading the awareness of formal and informal Western institutions.

Although much more can be done, US policymakers have realized the benefits from free trade as they relate to economic development and social change. For instance, in May 2003, President Bush announced an initiative to establish a free trade area between the US and Middle East over the next decade. In their simplest form, free trade agreements (FTAs) attempt to eliminate barriers to trade—quotas, tariffs, etc.—between parties in the agreement. The specific dynamics of each FTA varies depending on how it is written and what goods, services, and barriers it covers. However, while the specifics vary, FTAs typically phase out barriers to trade while establishing some basic agreement on standards regarding a variety of issues, such as labor and the environment. Since 2003, steps have been taken to meet President Bush's FTA goal through the negotiation and signing of Free Trade Agreements with Bahrain and Morocco. Furthermore, negotiations with Oman regarding an FTA were concluded in September 2005. Therefore, the growth of FTA frequency shows that they are believed to serve economic development and social change.

Similar to the emphasis on free trade through FTAs, unilateral reductions in barriers to US markets also have some precedent. In May 2003, senators Max Baucus and John McCain introduced the Middle East Trade and Engagement Act to create a trade preference program for countries in the Middle East. The proposed bill would have allowed the president to implement unilateral reductions in barriers to US markets for countries in the Middle East that met certain requirements. While the proposed bill was never enacted into law, the proposal indicates that the use of trade policy as a tool for generating change has some foundation in current practice.

Similarly, under the Generalized System of Preferences (GSP) program instituted in 1976, the US provides preferential duty-free treatment for several thousand products, from over a hundred designated countries and territories. The underlying logic of the GSP program is that lesser developed countries benefit from free access to US markets. In other words, the GSP program illustrates that policymakers recognize the benefits of free trade with lesser-developed countries. The economic and cultural benefits from free trade become clear only through economic analysis, again highlighting the importance of economics in understanding how to generate sustainable social change.

Conclusion

I have discussed only a few insights from the economic way of thinking that are directly applicable to reconstruction and reconciliation. Policymakers and social

scientists involved in these efforts have a large number of tools at their disposal. It is my contention that the economic way of thinking has been largely neglected and should be added to this toolkit. Basic economic concepts such as incentives, constraints, opportunity cost, institutional path dependency, time discounting, and gains from trade can provide important insights into the process of reconstruction and reconciliation. In sum, the key insights of the economic way of thinking on the topics of reconstruction and reconciliation are as follows:

1. *Policymakers and social scientists suffer from a knowledge problem*—While the general characteristics of liberal democracies are well known, policymakers and social scientists lack the knowledge of how to construct these liberal institutions where they do not already exist. This is evidenced by the fact that the historical record of US reconstruction efforts shows more failures than successes. Where failure has occurred, it is not necessarily due to a clear end-goal, but instead to a lack of knowledge of how to achieve the desired end.
2. *Context matters*—Focus is often placed on the controllable variables (i.e., troop levels, timing of elections, monetary aid, planning and exit strategy, etc.) involved in the reconstruction process. While important, the effectiveness of these variables is constrained by uncontrollable variables such as historical experiences and culture. These uncontrollable variables serve as a constraint on the effectiveness of variables that can be controlled, and limit what can be achieved.
3. *Incentives and allocation mechanisms matter*—While monetary aid is an important aspect of the broader reconstruction process, it will be ineffective in the absence of the proper incentives and feedback mechanisms. Recipients of aid must have the incentive to use aid to improve their position and become self-sustaining instead of becoming dependent on continued aid. Further, there must be feedback loops, including mechanisms of accountability for ensuring that aid is utilized effectively. Typically the countries most in need of aid are also those most lacking regarding incentives and allocation mechanisms. Policymakers lack an effective solution to these issues.
4. *Reconciliation must take place with an eye toward the future*—The emergence of an ethic of forgiveness and reconciliation is often critical for the long-term sustainability of a society where past harms and abuses have taken place. However, when considering the calculation of restitution, it is critical to recognize the associated trade-offs. At some point, the payment of restitution consumes such a significant portion of current and future output that it will bankrupt the society in question.
5. *A commitment to free trade is an alternative means of political, economic and social change*—Sustainable change toward liberal democracy requires certain complementary institutions to serve as a foundation. Efforts to impose liberal democratic institutions via military occupation suffer from the knowledge problem of how to construct these complementary institutions

where they do not already exist. A commitment to free trade provides an alternative and is a means of engaging in economic and cultural exchange with trading partners around the world. Free exchange allows for the imitation of both formal and informal institutions, providing the potential for social change through peaceful interaction.

Economics alone may not be able to provide an answer to all the questions and issues associated with reconstruction and reconciliation. However, the economic way of thinking can complement other tools and contribute substantially to our understanding of not only the different outcomes of past reconstruction efforts, but also the limitations of our knowledge of how to establish liberal democratic institutions where they do not already exist.

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Fixing Failing States: The New Security Agenda

by Pauline H. Baker

Weak and failing states rank among the world's greatest threats to international peace and security today. While major threats to world peace used to come mainly from ideological, military, or economic competition among competing states, in modern times lethal threats are growing within states from communal tensions among rival factions, extremists groups with radical political agendas, and faltering regimes clinging to power and asserting militaristic ambitions. These are the driving forces of a growing world disorder.[1]

Recent events highlight this paradigm shift in the strategic environment. North Korea is a failing state with an inward-looking regime and a negative view of the world. Its own insecurities, including its fear of a US invasion, are motivating it to pursue nuclear capabilities that have increased its isolation further and exacerbated tensions.[2] Lebanon is a weak state that successfully cast off fifteen years of Syrian military occupation, but was unable to assert its sovereignty and fill the vacuum left behind. Hezbollah used that opportunity to assert itself as a "state within a state," with dual power bases in the government and in the south, where its autonomous security forces launched a devastating war with Israel in July 2006. Then there is Sudan, a country with the highest risk of internal violence that has stonewalled effective international action to stop the continuing humanitarian crisis in Darfur, described by the US State Department as genocide.[3] Internal weaknesses within these states have increased the threat of nuclear proliferation, precipitated an interstate war, and worsened an ongoing humanitarian crisis, respectively.

Though the origins of state weakness go back decades, the curtain was raised on the era of failing states—if one can call it that—by the tragedy of September 11, 2001. One year after the biggest terrorist attack on the US in history, the 2002 US National Security Strategy stated that America is threatened more by failing states than it is by conquering states, overturning decades of US national security thinking. Overnight, we went from looking at security through a "big power" lens to seeing it from a "small power" lens. Much of the rest of the world has come to see security challenges from that perspective as well.

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Terrorism brought the message home. However, other threats, such as secession, religious extremism, organized crime, money laundering, drug trafficking, and pandemics, also are linked to failing states. While negative forces can emerge in strong states as well as in weak ones, the frequency of the occurrences, the environment that facilitates their growth and the inability of many governments to respond make such threats more difficult to contain in weak states than in strong ones. The persistent violence in Iraq and in Afghanistan after the Baathist and Taliban regimes were militarily overthrown by US-led coalition forces are also a function of state weakness. Deadly terrorist attacks have taken place in many countries worldwide: Kenya, Tanzania, Indonesia, Egypt, England, Spain, India, Philippines, Lebanon, Israel, Algeria, and others. Restive minorities are pressing for autonomy and resources in protracted armed conflicts, such as Nigeria's Niger Delta. Elections in transition states have resulted in militant movements, such as Hamas and Hezbollah, coming to power, or hard line leaders being installed. This includes Venezuela's President Hugo Chavez, who accused US President George Bush of being a devil from a UN podium, and Iran's President Mahmoud Ahmadinejad, who denies the Holocaust took place and calls for the destruction of Israel. Animosity from these two states is significant. They both have large oil reserves and promote revolutionary change. Iran is emerging as the strongest power in the Persian Gulf, expanding its influence in the region, and developing a nuclear program in defiance of the UN.

Though the origins of state weakness go back decades, the curtain was raised on the era of failing states—if one can call it that—by the tragedy of September 11, 2001.

Not all weak and failing states are linked to security threats. Some analysts have warned against over-generalizing, calling for further research identifying which states are linked to specific threats.[4] Clearly, tracing the lineage of such threats to their source would be useful, but as a group, fragile states remain vulnerable to exploitation by a wide range of outside groups, predatory elites, and internal warlords, all of which may descend on ungoverned spaces for a variety of purposes and at various times.

To understand the full dimension and scope of the problem, the Fund for Peace and Foreign Policy magazine collaborated to create the first annual Failed States Index.[5] The Index revealed that roughly two billion people live in misgoverned or insecure states. Approximately two thirds of the states in the world have a critical (high), in danger (likely) or borderline (moderate) risk of violence. The great majority of them are not currently failed states, but they exhibit serious attributes of risk along a continuum. Even strong and stable states can contain "pockets of failure." Dysfunctionalities were exposed, for example, in the US by its failure to respond adequately to citizens affected by Hurricane Katrina in 2005, an institutional breakdown that stunned the world. France was rocked by violent riots in isolated and

alienated communities that were cut off from the mainstream of society, exposing a fault line in the polity that had been ignored for years.

Conflict risk is a function of the pressures on a state combined with the institutional preparedness of that state to respond to such challenges. Some states are able to contain and repair internal crises quickly; others are chronically unable to cope with such pressures. Consider the ways countries have addressed election crises, for example. Cote d'Ivoire, once considered among the most prosperous and stable countries in Africa, descended into civil conflict following a rigged election and a coup d'etat in 2000. It remains a divided land, cut in half by an unresolved civil war.

In contrast, the 2006 Mexican presidential election prompted street protests and possible violence, but parliament and the courts kept the country from crossing that threshold. India's 2004 parliamentary election resulted in a victory by the National Congress Party of Sonia Gandhi, the Italian-born widow of assassinated Prime Minister Rajiv Gandhi. Popular protests against her taking power prompted her to step aside for Manmohan Singh, a respected economist, to prevent the unrest that her tenure was likely to spark. The 2000 US presidential election, though highly controversial, never threatened violence and was settled in the courts. The variety of responses to the same kind of high-stakes crises shows the variation in strong versus weak states, with the latter coming much closer to open violence.

Perceptions of the Problem

What are the root causes of weak and failing states? They are, in large part, a legacy of unresolved historical inequities, including colonial rule, corrupt elites, and the role of the superpowers, which propped up unpopular leaders during the Cold War in quest of alliances and influence. Containment may have been successful in its goal of keeping communism in check until it collapsed, but it had a negative impact on large swaths of the world population whose needs were neglected throughout the half-century of Cold War competition. Deep-seated grievances based on poverty and neglect accumulated, leading to a profound sense of humiliation, xenophobia, and opposition to Western foreign policy, which frequently reinforced, or was seen to reinforce, local inequities.

Without meaningful change, it is not surprising that alienated populations are embracing leaders who advocate violence, revenge, and moral absolutism to achieve a new political order based on communal pride or religious fundamentalism. With the end of the Cold War, the information revolution and globalization facilitated the movement of extremists, who filled the political void in weak states. In this sense, the struggle to fix failing states will be a "long war" — not in the military sense of the term, but rather in the sense that it will need to address basic societal issues. If we are to resolve the root causes of terrorism, we must also address the historical conditions that gave rise to extremism. This means reviving decaying institutions, meeting basic human needs, understanding the long-standing grievances that give rise to humiliation and anger, and addressing local inequities and social injustice.

Some observers have argued that the problem of weak and failing states is not all that serious. Not long ago, efforts to quell such conflicts, once termed "teacup wars," were derisively dismissed as "social work" that diverted troops and national resources away from emerging peer competitors and rogue states.[6] The military also initially shunned such missions, calling them "military operations other than war."[7] One school of thought, paradoxically endorsed by figures from both the far Left and the far Right, argues that small wars are not the central issue and that the real threat to peace comes from the imperial ambitions of both the US and China, each fighting for supremacy. At bottom, this is a simplistic interpretation that trivializes reality. Even if hegemony was the central foreign policy goal of these two nations, they are both constrained by threats from weaker states. The US is bogged down in two wars in Iraq and Afghanistan, despite the deployment of hundreds of thousands of troops and the investment of over $400 billion for stabilization and reconstruction. It is leading a Global War on Terrorism and an international effort to contain the proliferation of weapons of mass destruction. Washington is also facing mounting international opposition to its foreign policy goals, particularly since the US-led invasion of Iraq in 2003.

China has mounting vulnerabilities as well, as it pursues economic modernization at a break-neck speed and confronts growing dangers of nuclear proliferation in its own neighborhood. It lives in a volatile region that contains several weak and failing states, including North Korea, Pakistan, Nepal, Bangladesh and Burma. North Korea, one of the most closed and controlled societies in the world, and Pakistan, which lacks effective control over roughly half its territory, are particularly dangerous and insecure states that have nuclear capabilities and unstable and/or unpredictable leadership.

Not all weak and failing states are linked to security threats. Some analysts have warned against over-generalizing, calling for further research identifying which states are linked to specific threats.

China also exhibits internal weaknesses. It is one of the most unequal countries in the world, with an average annual growth of 10 percent and 150 million people living on one dollar a day. This contributes to widespread corruption and eroding state legitimacy, especially in the countryside. In 2005, China experienced 87,000 protests from more than 4 million people complaining about arbitrary fees, taxes, land grabs by local officials and deteriorating social services. Some Chinese scholars have pointed out the short time that China has had to build a modern state, dating from the market-oriented reforms announced by Deng Xiaoping in 1992; one scholar described the country as a "teenager" or "adolescent" in this regard.[8] China is also becoming highly dependent on oil supplies from countries with high political risk, exposing Beijing's potential vulnerability to supply interruptions should civil unrest break out. China tends to disregard human rights and internal conflict

conditions in the states it depends upon for oil. Beijing offers large loans and grants to corrupt and unstable governments, a policy that could deepen the host country's political risk by undermining reforms. Eventually, disregarding local concerns may trigger a backlash from Africans, despite the benefits they are currently receiving.

Europe is also struggling with the problem of weak states, especially in Southeast Europe. The Balkans erupted into civil conflict a decade ago and continues to seethe with ethnic hostilities. In 1995, NATO conducted its first "out of area" military mission in Bosnia, noting at the time that this was not a precedent for such missions in the future. Yet, in 2006, NATO took full responsibility for stabilizing the entire country of Afghanistan to contain the reemergence of the Taliban. Other regional and sub-regional organizations are likewise taking a larger role, though they differ widely on the desirability and legitimacy of humanitarian intervention.[9]

With the end of the Cold War, the information revolution and globalization facilitated the movement of extremists, who filled the political void in weak states.

Significantly, the African Union (AU), whose members have traditionally been staunchly opposed to outside interference in the internal affairs of sovereign states, has moved in a new direction. In its charter, the AU authorized humanitarian intervention under certain conditions and it deployed a military mission of 7,000 troops in Darfur, Sudan, the first large-scale mission of this type.[10] The African Union force has not succeeded in stopping the violence due to its limited mandate, poor funding, and insufficient equipment, but its presence is deemed preferable to having no international presence at all and efforts have been made to convert it into a UN force.[11] At the time of this writing, the African Union is trying to mobilize another peacekeeping force to deploy in Somalia under a UN mandate to replace departing Ethiopian troops, who invaded the country to overthrow the Islamic Courts.

While not as effective as hoped, the deployment of AU forces is a sign of the growing acceptance of the principle of a "responsibility to protect," which was adopted by the United Nations in 2006.[12] Security Council Resolution 1674 states that the international community has a responsibility to protect civilians in armed conflict if their government cannot, or does not, do so itself. In addition to the adoption of this principle, the UN is once again fielding a record number of peacekeepers, from Lebanon to the Democratic Republic of the Congo (DRC). In August 2006, the Security Council adopted resolutions that are likely to increase UN peacekeeping levels by approximately 50 percent and could increase the overall cost of such operations from the projected 2006—2007 $4.7 billion level to $8 billion.[13]

Not every humanitarian emergency or failing state needs an international military response. Precipitous military responses without prior peaceful efforts at conflict resolution could make matters much worse. Diplomacy, economic tools, and

cultural exchanges play equally important roles in preventing and mitigating conflict. Policymakers have been understandably cautious about peace enforcement missions and armed humanitarian interventions, in which good intensions can turn bad, as happened in Somalia in 1993. Yet overly cautious responses can be equally devastating, as was illustrated when the international community failed to intervene in the 1994 genocide in Rwanda. It went on for four months, killing 800,000 people. Once again, massacres are occurring in Darfur, with timid responses from the international community.

History, thus, has made a U-turn. In the 20th century, the dominant threat to world peace came from powerful states; today they come from weak states. Aggressors of the 20th century conquered territories; today's aggressors are mostly interested in shaping international attitudes toward their political causes.[14] Clashes in the past occurred between large state armies, using conventional military equipment, backed up with the threat of weapons of mass destruction. Most wars today are fought within states, with non-state militias playing a primary role. Their weapons of choice are improvised explosive devices, small arms, suicide bombings, and other attacks on civilians using unconventional means, such as converting commercial aircraft into missiles. Groups committed to catastrophic violence have already threatened the nightmare scenario: the use of nuclear, chemical, and biological weapons of mass destruction. As the *New York Times* opined, "we live in an age in which fighting on the ground to rescue failed states and isolate terrorists has become the Pentagon's most urgent and vital military mission."[15] Increasingly, it is becoming the primary mission of other agencies of government, and a major concern of international organizations and alliances as well.

WHAT ARE WEAK AND FAILING STATES AND HOW DO WE RECOGNIZE THEM?

While there is no universal definition of a weak and failing state, most scholars agree that they have common attributes. These include loss of physical control over territory, lack of a monopoly on the use of force, declining legitimacy to make authoritative decisions for the majority of the community, an inability to provide security or social services to its people, and, frequently, a lack of capacity to act as a full member of the international community. The terms "failed," "failing," or "collapsed" states are controversial, but they have become the most commonly used terms. Some agencies and think tanks use other terms, such as "fragile states" or "low income countries under stress." However, these terms might suggest that state weakness is confined to poor countries (it is not) and that all low-income countries are weak, fragile or failing (they are not).

How can the seriousness of those vulnerabilities be determined? The Fund for Peace has developed an approach, called the Conflict Assessment System Tool (CAST) to accomplish this. It conducts a careful assessment of twelve conflict indicators or drivers (pressures on the states) coupled with an evaluation of five key

state institutions necessary to manage those pressures (police, military, civil service, system of justice, and executive/legislative leadership).[16] In this way, the level of "sustainable security"—defined as the ability of a state to resolve its internal problems peacefully without an external military or sustainable presence — is determined. In the Failed States Index, which is based on CAST, all the pressures on states are assessed by the same indicators and institutional criteria to ensure that risk levels, wherever they may appear, are not biased in favor of one class of states over others.

Since 2001, the FFP has been refining a computerized version of CAST that processes over 12,000 international, regional and national media sources in print, electronic and broadcast form. This includes news outlets, government reports, think tank studies, commercial information, statistical sources, polling results and any other relevant public source information. Using Boolean phrases for content analysis, CAST scores the indicators based on data that are scanned, sorted, and indexed according to the indicators and their measures. The final scores are internally checked and reviewed by experts.

This method exposes a popular misperception about weak and failing states. It is often thought that "strong states" are those with large populations, considerable military assets, and an advanced economy, the traditional indices for gauging relative power internationally. However, these factors do not always reveal how strong a state is internally. Observers often confuse "strong states" with "strongman states." Stability in strongman states rests on one person or group of leaders, such as Kim Jong Il in North Korea or Saddam Hussein in Iraq. In reality, while they can be dangerous, such states are only as stable as their leadership. In 2003, Iraq was said to have the fourth largest army in the world and weapons of mass destruction; in reality, it was already a failing state due to a decade of sanctions, mismanagement, and oppression. The army did not put up a stiff resistance to the 2003 US-led invasion, and other Iraqi institutions also imploded immediately after Saddam was overthrown.[17]

In contrast, strong states have governing institutions that are legitimate, representative, and competent. They enable these states to weather internal political, economic, and social crises without resorting to violence or needing a foreign military or administrative presence.

Findings from the Failed States Index (FSI)

What did we find from our recent research on the Failed States Index and other investigations?

- The problem of weak and failing states is far more extensive than previously thought. Roughly two billion people live in insecure states, which have a borderline to moderate or critical risk of civil violence.[18]
- Most organizations and scholars estimate twenty-five to fifty states have moderate to high risk of political violence. The Index identified at least sixty that raise significant concern.

- Africa has the largest number of weak and failing states.
- Other states with borderline to high risk are located in Asia, Eastern Europe, Latin America, and the Middle East. The territorial expanse stretches from Moscow to Mexico City and is not limited to the Muslim world.[19]
- Large states (with populations of fifty million or more) are increasingly vulnerable, from Indonesia to the Democratic Republic of the Congo (DRC). This raises the possibility of significant spillover effects from refugees, economic linkages, ethnic affinity, and resource exploitation. In some areas, such as the Horn of Africa, there are clusters of failed states that are spiraling into failed regions.
- Large defense budgets do not correlate with the risk of failure. Comparing the Index rankings to state spending on the military, weak states have various magnitudes of defense spending. Nor is the opposite true: military expenditures do not necessarily correlate with stability. Five of the world's top military spenders (as a percentage of the Gross Domestic Product) are conflict vulnerable states: Eritrea, Angola, Saudi Arabia, Yemen, and Bahrain.
- The risk of failure does not necessarily match comparable media coverage. Events in the most at-risk states, such as Cote d'Ivoire, Somalia, and DRC were barely noted in the international press.
- Countries with the greatest risk of failure do not necessarily receive the largest amount of aid. Foreign aid per capita compared to the FSI revealed that high-risk countries get minimum aid, except for those in which there has been military intervention. Among those, Bosnia got the most while Cote d'Ivoire got the least.
- The top drivers of violence included demographic pressures (especially a youth bulge and natural disasters), economic inequality (not merely poverty), criminalization and de-legitimization of the state (most often based on corruption, coups, and rigged elections), and a legacy of vengeance-seeking group grievance (from religious and ethnic divisions).
- Corruption correlates highly with instability. Eight of the ten most stable countries also appeared among the ten least corrupt countries in Transparency International's perception of corruption scores.[20] Chile, one of the most stable countries in Latin America, is recognized as among the least corrupt in the region.
- As many as fifty million people in at-risk states voted in elections in 2005, but that did not translate automatically into stability. Results were mixed. The 2004 elections in Indonesia improved that nation's indicators in 2005, and Liberia reached a milestone with the 2005 election of Ellen Johnson-Sirleaf, following years of brutal war. In both countries, elections strengthened legitimization of the state. However, a number of states also misused elections to exacerbate ethnic conflict and reinforce authoritarian rule, including Ethiopia, Iran, Tajikistan, Uganda, Uzbekistan, and Zimbabwe, the latter exhibiting a sharp and constant downward spiral.

Fixing Failing States

How can failing states be fixed? This is a central question of our time. Until recently, most "solutions" were based on stopgap measures and short-term responses revolving around inappropriate notions of creating societies that were reflections of those in the West. The problem with this approach is that sustainable security cannot be transplanted easily nor be accomplished as a cookie cutter approach, with uniform activities in all states. It must come from within the society. Unless and until state-building takes root in the indigenous society and with committed local leadership, no amount of external training, reconstruction, constitution-making, or elections will make it stick.

Fixing failing states basically requires a two-track policy: building core state institutions while, at the same time, reducing the conflict drivers. It is a long, costly, and difficult process that requires ample resources, leadership, commitment, patience, and multilateral cooperation. Some states, such as East Timor and Haiti, were once considered successes, only to descend into violence or coups a short time after the premature withdrawal of peacekeeping forces. Backsliding is a constant risk of bad timing, poor funding, and quick exits.

There have been examples of failing states that have successfully pulled themselves back from the brink. The two most notable examples that made the transition to stability are South Africa and India, both taking decades to do it. Most significantly, their transitions were accomplished without external military intervention. Their processes were driven by local forces, not imported from the outside. In the 1970s, India was widely deemed to be heading for a Malthusian catastrophe, with famine, overpopulation, poverty, the caste system, and religious conflict undermining efforts to develop and progress as a unified state. Today, while it contains many unresolved issues, India is thriving. Its problems are real, but they are much less serious than the apocalyptic forecast made years ago. India is the world's largest multiparty democracy with one of the fastest growing economies in the world.

Similarly, in the 1980s, apartheid South Africa had widespread inequality and spreading violence that was driving the country toward a race war. Yet, while it also retains problems, South Africa accomplished a remarkable transition from white domination to black majority rule, with a philosophy of racial reconciliation promoted by Nelson Mandela, the country's first president under a universal franchise. Though burdened with a difficult legacy of inequality, it boasts sound economic policies, a respect for constitutional rule, a free press, and a strong civil society. Neither India nor South Africa is in the "stable" or "most stable" categories in the FSI; however, they dodged the bullet of state failure that could have torn their countries apart.

Many western governments are taking steps to devise new policies, bureaucratic structures, and interagency systems to prevent conflict and to stabilize countries emerging from conflict. The US, UK, Canada, Germany, France, the Netherlands,

and Scandinavian countries, as well as multilateral organizations, have issued new directives and set up new agencies to develop better early warning, preventive actions, and interagency management systems for stability and reconstruction activities. The US military is experimenting with new metrics for measuring progress, or lack thereof, in such operations. Scholars, think tanks, and aid agencies are doing the same.

The UN established a Peace Building Commission to coordinate the efforts of donor countries, international financial institutions, and troop contributing countries. Governments and military organizations are investing in better predictive frameworks and systems of post-conflict reconstruction. The US military has made stability and reconstruction operations (SRO) a core mission and the White House issued National Security Presidential Directive (NSPD)-44 to mandate the US State Department as the lead agency in coordinating, planning, and implementing SRO assistance in states in transition from conflict or civil strife. The directive states that the US "should work with other countries and organizations to anticipate state failure, avoid it whenever possible, and respond quickly and effectively when necessary and appropriate...."[21]

A Rand Corporation study by James Dobbins offered "a rough hierarchy of nation-building functions" that provides an overall guide to peacemakers.[22] This hierarchy does not need to be sequential and, when resources permit, may be pursued simultaneously. However, higher-priority needs, Dobbins notes, should be adequately funded before lower-priority ones, "in recognition of the fact that if first order objectives are not met, money spent on second order objectives will be wasted."[23] His hierarchy of six functions is:

- Security: peacekeeping, law enforcement, rule of law, and security-sector reform
- Humanitarian and relief efforts: refugee return, containment of potential communicable diseases, and large-scale famine, other acute health concerns
- Governance: resuming public services and restoring public administration
- Economic stabilization: stable currency, legal and regulatory framework for resumption of local and international commerce
- Democratization: building political parties, free press, civil society, and a legal and constitutional framework for elections
- Development and infrastructure: fostering economic growth, poverty reduction, and infrastructure improvements

These fundamentals are important. In Iraq, the US pursued this sequence in reverse, starting with infrastructure and democratization. While the sequence does not have to be rigid, the higher order priorities should come first—security and the rule of law, humanitarian needs, governance, and economic stabilization. Nearly every state-building experience has confirmed the wisdom of that hierarchy, and where it has been ignored, the mission has usually failed.

Even under the best of circumstances, and the fullness of resources, state-building is a long, costly, and risky process with no guarantees of success. However

difficult and complex it might be, we have no choice but to meet the challenge. Building secure and competent states is vital to the US national interest. The US and its allies face the possibility of failing states reemerging in Afghanistan and Iraq, with the return of the Taliban and Al Qaeda. The possibility of failing states endangering national and global security exists from North Korea to Lebanon.

And the danger does not reside within weak states alone. An additional concern is threat convergence — the linkage between weapons of mass destruction, terrorism, and weak and failing states — which could open up new pathways to proliferation. North Korea, for example, presents a dual threat as a country with its own nuclear development that could endanger the US and its allies, and as a potential seller of nuclear technology to a non-state terrorist group committed to catastrophic violence. When one contemplates the number of countries with potential rogue scientists, residual arsenals that are not well secured, and multiple anti-western groups operating in ungoverned or misgoverned territories, the full scope of the danger becomes clear. As many as fifty states have enriched uranium or the capability to make or acquire enriched uranium that could accelerate proliferation. Whether the problem is approached from a humanitarian perspective or a strategic perspective, fixing failing states will be the new national security agenda of the early 21st century.

Notes

[1] Communal rivalries refer to conflicts based on competing ethnic, clan, racial, religious, linguistic, geographical, or class differences that create a sense of collective belonging or group identity that defines the social location of group members in competition with "other" competing communities.

[2] North Korea ranked among the top 20 states at risk of violent internal conflict in the Failed States Index of 2005 and 2006. See "The Failed State Index," *Foreign Policy*, July/August 2005, 56-65 and "The Failed State Index," *Foreign Policy*, May/June 2006, 50-54.

[3] Sudan refused to allow a UN peacekeeping mission to replace the ill-equipped and undermanned African Union peacekeeping force that also lacks that mandate to stop the killing in Darfur. Khartoum stated that it would consider any country's pledge to participate in a UN force as a "hostile act" and a "prelude to an invasion." The Sudanese government threatened an al-Queda and Sudanese attack on non-African forces if they land. As many as 450,000 people have died and 2 million displaced in what has been described as the worst violence in Africa in more than a decade. See "Sudan Escalates Stand Against UN Mission for Darfur," *Washington Post*, October 6, 2006.

[4] Stewart Patrick, "Weak States and Global Threats: Fact or Fiction?," *Washington Quarterly*, Spring 2006.

[5] The annual Failed States Index, which began in 2005. Available at: www.fundforpeace.org and www.foreignpolicymagazine.com (Accessed Februay 1, 2007).

[6] Michael Mandelbaum, "A Perfect Failure: NATO's War Against Yugoslavia," *Foreign Affairs*, September/October 1999. For a vigorous rejoinder, see James B. Steinberg, "A Perfect Polemic; Blind to Reality on Kosovo," *Foreign Affairs*, November/December 1999. Also, Justin Logan and Christopher Preble, "Failed States and Flawed Logic: The Case Against a Standing Nation-Building Office," *Policy Analysis*, January 11, 2006, CATO Institute.

[7] That term is no longer in vogue, but it shows how stability and reconstruction operations, as they are now called, were viewed in the decade of the 1990s. They can be found at www.fundforpeace.org.

[8] Comments made at a Beijing conference hosted by the Chinese Academy of Social Sciences on trilateral cooperation September 22-24, 2006.

[9] See Jason Ladnier, "Neighbors on Alert," Fund for Peace, 2003, and Patricia Taft with Jason Ladnier, "Realizing 'Never Again': Regional Capacities to Protect Civilians in Violent Conflicts," Fund for Peace, 2006. Available at: http://www.fundforpeace.org/publications/reports (Accessed January 21, 2007).

[10] The African Union previously deployed a smaller mission in Burundi to protect leaders in the transitional government. This was not considered to be a traditional peacekeeping mission, however, as it was more a bodyguard function for the political elites during the transition period.

[11] Susan Rice, Anthony Lake and Congressman Donald Payne called for a more muscular military response

in Darfur. See "We Saved Europeans. Why Not Africans?," *Washington Post*, October 2, 2006.
[12] For a dissenting view, see Erick Posner, "The Humanitarian War Myth," *New York Times*, October 1, 2006.
13 Peter Gantz, US Budget Requirements for UN Peacekeeping 2006. Available at:
http://www.effectivepeacekeeping.org/docs/pep/bn-unpk-fundreq-dec06-combined.pdf (accessed February 14, 2006).
[14] The notable exception is, of course, the Palestinian movement. Other conflicts also raise territorial concerns, such as the Serbian quest for control of Kosovo or border disputes arising from colonial days. For the most part, however, the conflicts circle around identity, resource, and religious issues.
[15] "America's Army on Edge," *The New York Times*, October 1, 2006.
[16] These concepts are taken from the FFP methodology known as CAST (the Conflict Assessment System Tool) and the Failed States Index.
[17] For more information see Fund for Peace reports on "Iraq as a Failed State."Available at:
www.fundforpeace.org (Accessed February 1, 2007).
[18] Save the Children calculated that, of the 115 million primary-aged children worldwide that are not in school, at least 43 million–one in three–live in fragile states affected by armed conflict. Available at:
www.reliefweb.int/rw/RWB.NSF/db900SID/KHII-6TL3RG? (Accessed February 1, 2007).
[19] The FFP has scores for 148 states published on its interactive website. Available at:
http://fundforpeace.org/programs/fsi/fsindex2006.php?column=11& (Accessed on February 1, 2007).
[20] Available at:
http://www.transparency.org/news_room/latest_news/press_releases/2006/en_2006_11_06_cpi_2006
(Accessed on February 1, 2007).
[21] National Security Presidential Directive, NSPD-44.
[22] For another framework, see Jock Covey, et al., Eds., *The Quest for Viable Peace: International Intervention and Strategies for Conflict Transformation*, (Washington, DC: United States Institute of Peace, 2005). In much of the literature, the terms "nation-building and "state-building" are used interchangeably.
[23] James Dobbins, "Preparing for Nation-Building," *Survival*, Autumn 2006.

Rethinking "Nation-Building:" The Contradictions of the Neo-Wilsonian Approach to Democracy Promotion

by Roberto Belloni

International intervention in weak states is the post–Cold War response to fragmentation and conflict. International operations have been deployed across much of the world, from Afghanistan to Bosnia, Cambodia, Kosovo, East Timor, Iraq, and Somalia, to cite just a few of the most prominent cases. These operations have taken place in different circumstances, with some of them justified in the name of the War on Terror, and others more broadly conducted in view of implementing recently achieved peace agreements. All of these operations face similar constraints and dilemmas. The context in which international intervention takes place is one of extreme political, economic, and social instability. Years of war destroy physical and economic infrastructure, provoke massive human displacement, and leave the population traumatized. Moreover, rarely does war end with a clear victory for one of the parties involved. Instead, conflicts frequently terminate with the signing of a peace agreement, which reflects a difficult and unstable compromise. Perhaps unsurprisingly, half of the countries emerging from conflict revert to violence within five years. Even when a return to violence is averted, these countries remain politically, economically, and socially volatile. Accordingly to one estimate, at present around seventy current or potential conflicts exist across the world.[1]

This situation calls for both a theoretically informed understanding of the goals, possibilities, and limits of international intervention in support of peace processes as well as country-specific knowledge to tailor such intervention so as to maximize its effectiveness. Unfortunately, even the basic vocabulary used to describe international involvement is contested and confusing, with analysts using terms such as "peace-building," "nation-building," and "state-building" to describe the same general phenomenon of international intervention in weak states. This paper begins with a brief attempt at conceptual clarification. Second, it explores the limits of the template adopted by international interveners. Wilsonianism, named after the American President who argued that democracy and self-determination are necessary conditions for domestic and international peace and stability, offers a basic

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model for contemporary international missions. While Wilsonianism was generally successful in the aftermath of World War I and World War II, this has not been the case for more recent attempts. Contemporary neo-Wilsonianism focuses on political and economic liberalization as means to build viable democracies. As increasingly highlighted by a new generation of democracy analysts, such a formula is often unsuitable for war-torn countries plagued by scarce domestic resources and continuing competition between groups wishing to control the state. At least in the short term, liberalization dangerously heightens competition among groups, thus increasing the possibility of a relapse into war. Third, this paper investigates the less often noted contradictions of neo-Wilsonianism. Not only do political and economic liberalization risk promoting further conflict, they are also at odds with other important goals of international intervention in weak states; in particular, the attempt to uphold individual and group rights. In addition, the potentially positive impact of international intervention is limited by the need to demonstrate concrete and visible results in a very short time frame. The paper concludes with a brief exploration of the alternatives to the prevailing practice of international intervention, with particular reference to the newly created United Nations Peacebuilding Commission.

In Search of the Unicorn: Building Peace, Nations, or States?

Scholars label international intervention in weak states in at least three different ways: "peace-building," "nation-building," and "state-building." While sometimes these labels reflect the different priorities that intervention seeks to achieve and the research agenda of the investigator, often they signal a conceptual confusion. These terms obscure more than they clarify.

Peacebuilding is the broadest of the three terms. The 1992 report of the then UN Secretary-General Boutros Boutros-Ghali, *An Agenda for Peace,* placed the concept of peacebuilding at the center of the theoretical and practical debate.[2] The end of the Cold War, and rivalry between East and West, removed the main political obstacle that had previously limited the scope and effectiveness of UN operations, and thus allowed Boutros-Ghali to come forward with the promotion of post-conflict peacebuilding as a solution to violence and disintegration. The new environment not only allowed, but also required new and imaginative ways to think about conflicts and their resolution. In Boutros-Ghali's view, peacebuilding involves a wide range of activities, including developing civil society, fostering economic development, protecting human rights, organizing elections, demobilizing soldiers, and reforming the police force. These are just some of the core, short-term tasks that international intervention is supposed to achieve. In the long-term, intervention is expected to build "peace," a slippery concept that is very hard to pin down to a few clear indicators.

Boutros-Ghali hoped that peacebuilding would remove the root, or structural causes of violence. He implicitly endorsed an open-ended, "positive" notion of

peace. The same notion has been discussed in academic debates since the 1970s, but failed to reach the policymaking community. Johan Galtung was the first researcher to distinguish between the concepts of "positive" and "negative" peace.[3] For Galtung, "negative peace" was tantamount to the absence of war, but was not a long-term solution to violence. He maintained that even when the guns fall silent, an unequal distribution of economic, social and political power preserves a condition of latent violence. This type of violence does not involve open warfare but a more subtle situation of exclusion, marginalization and oppression. Yet, instead of defining "positive peace" in truly positive terms, Galtung equated "positive peace" with the absence of structural violence, without describing how such an absence might look. We might live in a condition of "positive peace" and not be aware of it.

Current debates on peacebuilding echo these early discussions.[4] The literature reflects widely divergent notions of peacebuilding, severely limiting the usefulness of the concept.[5] When can it be said that peace is built? What legitimate targets can international interveners set for themselves when intervening in weak states? For how long is their presence required? How can progress in peacebuilding be assessed? Should interveners aim for establishing negative peace (usually by separating the parties to a conflict and monitoring the division line), or should they build some version of positive peace (removing structural violence through the promotion of social justice and the creation of inclusive economic, social and political institutions)? The problem with identifying a clear end-point of intervention (such as a condition of positive peace) advises the adoption of a more modest approach. Although the criteria for "success" in peacebuilding are likely to remain contested, in practice the main goal of intervention in weak states has been to preserve the absence of war, while building legitimate domestic institutions able to manage internal differences peacefully.

Since the end of the Cold War, international intervention has applied the same general template to strengthen weak states.

The conceptual and practical questions raised by peacebuilding have led many scholars to change the very vocabulary of intervention. State-building and nation-building are narrower terms, describing a more limited set of activities focused on building domestic political institutions.[6] Although these terms are often used interchangeably (alimenting a semantic and hardly needed confusion), they should be kept separate. American usage assigns the term "nation" to a variety of phenomena, most of them territorial and political, in contrast to European usage, which employs the word "state" to describe roughly the same concept. But the two terms refer to different phenomena. To put it simply, the "nation" refers to a group perceiving itself as separate and different from other groups because of language, customs, tradition, religion, or race. There is much debate about whether nations have always existed or came into being in their current form in modern times, whether the root of nations

lies primarily in ethnicity or in the generating role of the state and citizenship, and whether nations are "found," or imagined, and constructed.

This debate enthused theorists of nationalism well before nation-building reached the policy agenda, but did not lead to a set of agreed propositions about nations and their evolution. Nonetheless, most participants in this debate would endorse some version of two main ideas: first, group affiliation and identification is as old as history itself, and it is often strengthened by opposition and conflict with outside groups. At the same time, however, the encouraging aspect for nation-builders is that group boundaries change and evolve, possibly turning hostile relationships into peaceful, non-violent ones.[7] However, nations cannot be "built," at least in the short period of time typical of international interventions in weak states. Moreover, grand nation-building schemes often involve a high degree of violence. Successful nation-building requires a group's conquest of the state and the extension of its own culture over other groups and does so by subjugating or assimilating them if necessary. These groups' reaction to nation-building efforts is actually the main explanation for the outbreak and persistence of inter-group violence.[8]

While the term nation refers to a group, the "state" is the bureaucratic apparatus to govern autonomously the territory where the nation resides. The term nation-state makes sense only in those very limited number of cases when the territory where the nation resides corresponds exactly to that of the state. In most cases, however, such a coincidence does not exist, creating the space for nationalism to arise as a political force. As Ernest Gellner famously put it, nationalism is "primarily a political principle, which holds that the political and the national unit should be congruent."[9] Attempts to make the nation and the state coincide can create strong, violent competition among national groups to control the state, or can lead to attempts to leave existing political arrangements and create new institutions. Thus, group competition gives rise to a "stateness problem," whereby institutions become the heart of groups' struggle.[10]

Contemporary neo-Wilsonianism does not take into account the specific nature of identity conflicts and the stateness problem they give rise to.

Even after national groups sign a peace agreement terminating open hostilities, a "stateness problem" continues to plague the post-settlement transition. Peace does not change the views of the former fighting parties, who maintain alternative views about the boundaries of the political community and the rights of citizenship within that community. Group competition prevents the universal acceptance of the state by its population. The lack of social cohesion further undermines the state's ability to formulate and implement policy. The state is rendered unable to provide internal and external security for its citizens, meet their economic and social needs, and often remains subjected to parochial and sectarian interests preventing the development and consolidation of a bureaucratic structure. Social order is not guaranteed through

formalized procedures and the rule of law, but through informal, client-like channels. The absence of an organization with the characteristics of the modern state prevents democratic governance, although it does not preclude the presence of areas of segmented political authority. The persistence of client-like networks often with strong regional roots complicates the post-war building of a viable state, the key task of international intervention.

Neo-Wilsonianism and its Limits

In weak states, democracy and peace can still be achieved and consolidated, but they require both considerable political crafting of democratic institutions and careful international support. Since the end of the Cold War, international intervention has applied the same general template to strengthen weak states. With the victory of Western-style democracy over its main twentieth-century ideological alternative, liberal democracy became the blueprint for "nation-building." Roland Paris has defined this blueprint as "Wilsonianism," named after Woodrow Wilson, the twenty-eighth president of the United States, who argued that liberalism and democratic forms of government were the key to peace and security in both international and domestic politics.[11] Wilsonianism informed the intervention efforts following World War I and World War II, and was re-affirmed at the end of the Cold War. According to Roland Paris, political liberalization involves the promotion of periodic elections, constitutional checks and balances, and respect for civil liberties. In the economic sphere, liberalization involves marketization, which is the development of a viable market economy where private investors, producers and consumers freely pursue their economic self-interest unhindered by government intrusion.[12] All international interventions in weak and failing states, regardless of the underlying reasons for state weakness, have promoted neo-Wilsonian principles to export and consolidate democracy. This is most recently seen in the ill-fated attempt to transform Iraq from an authoritarian country into a viable federal state.[13]

The problem with contemporary neo-Wilsonianism is that it does not take into account the specific nature of identity conflicts and the stateness problem they give rise to.[14] When political and economic liberalization are advanced as key intervention strategies in a context dominated by ethno-national mobilization on the basis of identity, they are unlikely to work. The presence of political and economic corruption, and a political leadership bent on plundering the assets of the state and those of ordinary people, makes quick elections and economic liberalization counter-productive. Moreover, because markets increase competition and inequality, in the short term they can exacerbate conflict instead of alleviating it. Similarly, political liberalization and elections in conditions of ethnic insecurity can result in an ethnic census, instead of an expression of democratic principles. In a society divided along national lines, neo-Wilsonianism has little chance to succeed. Unsurprisingly, in his thorough examination of post–Cold War interventions, Paris finds that their practical impact reveals a disconcerting chasm between expectations and actual outcomes.

By pushing for political and economic liberalization without directly taking into account the particular context of intervention, neo-Wilsonianism assumes that the stateness problem has been addressed or will solve itself during the transition process; a dangerous and untested assumption. By contrast, Wilson himself was keenly aware of the weakness of states composed of national and ethnic groups in competition with each other for the control of central institutions. To solve this problem, Wilson championed the principle of self-determination. The peace conference at Versailles, which ended World War I, strove to match as much as possible the nation with the state by creating ethnically homogeneous nation-states. No other attempt to this degree has been made, before or since, to make the ethnically homogeneous nation-state not simply an ideal but as close as possible to empirical reality. Each state in Central and Eastern Europe was effectively assigned to a dominant ethnic group. Many minorities were expected to move to a state where they would be part of an ethnic majority. Those who remained hoped that their state would respect the minority rights system established at Versailles. In practice, the Treaty of Versailles ratified cleansing by resettlement and identified citizenship with ethnicity, putting minorities in danger of becoming second-class citizens.[15] In sum, the Wilsonian agenda of democracy promotion actively endorsed a state-centered approach which sat uneasily with the defense of group and individual rights.

Contemporary international intervention takes place in weak states, not conquered ones.

This solution to the stateness problem is still advocated by partitionists who believe that only by matching national with political boundaries will stability and democratic development in weak states be ensured.[16] There are many practical and ethical problems with this approach. In particular, there exists the possibility that partition will legitimize wartime ethnic cleansing, put pressure on minorities left behind to leave, and perhaps transform civil strife into a cross-border war. But the main limits remain ethical. Although population transfer was endorsed in the aftermath of World War I (and following the defeat of Nazism at the end of World War II), since then the collective consciousness has evolved. Policies of national homogenization, with their degree of human suffering and personal and societal upheaval, no longer fit the legitimate menu of choices available to policymakers seeking to improve the viability of weak states. Rather than being perceived as a threat, diversity has become a value to preserve even when it implies limiting state sovereignty. While Wilsonianism viewed security through a theoretical framework pertaining to the relations between sovereign states, leaving the internal configuration of states entirely to the control of national governments, an alternative perspective centered instead on the security of individuals and groups has begun to take root. At least at the level of rhetoric, human security and individual & group rights contend with state security in the constitution of order.[17]

In addition to their rhetorical commitment to democracy and human rights, contemporary international missions differ from previous ones in terms of the

context in which they take place. The stateness problem of contemporary weak states makes comparisons with previous experiences unreliable. Although the reconstruction of both Germany and Japan after World War II is sometimes hailed as a possible blueprint for international intervention in the Balkans, Iraq, Afghanistan, and Central Africa,[18] there are important differences between international intervention after World War II and contemporary nation-building efforts. To begin with, Germany and Japan at the end of World War II were conquered states, not weak or failing ones. Neither state had any significant stateness problems. For years prior to foreign occupation, a strong state apparatus and bureaucracy were able to effectively provide public goods to citizens. Moreover, both countries had long histories as a nation, where citizens had recognized loyalty to the state as opposed to a clan or a sub-national group.

By contrast, contemporary international intervention takes place in weak states, not conquered ones. Iraq is an exception, because of the military overthrow of Saddam Hussein and the occupation of the country by hundred of thousands of foreign, mostly American troops. But Iraq remains internally divided along national, religious or ideological lines. In weak states such as Iraq, citizens do not recognize each other as belonging to the same political entity, and the very existence and nature of the state remains in question. In this context, politics is the continuation of war by other means. Divided and/or weak institutions, the absence of a functioning state, the weakness of civil society, and the mass displacement of the population often directly targeted during the war place specific constraints on international actors and shape the nature of the choices they face in their attempts to export neo-Wilsonian ideals.

In sum, neo-Wilsonianism differs from its post–World War I and post–World War II variations in two fundamental ways. First, a normative change has limited the range of options available to international interveners. Population resettlement is no longer seen as a legitimate option for addressing the problems plaguing weak states. On the contrary, those individuals displaced by conflict are often encouraged to return to their pre-war homes soon after the signing of a peace agreement. Second, internal divisions remain to complicate the nation-building process even after the end of the war. These two aspects distinguish neo-Wilsonianism from previous attempts at restoring post-war order. They also combine to explain the limited effectiveness of recent and current attempts at democracy promotion, as the next section will argue.

Conflicting Objectives

Neo-Wilsonianism's fundamental tenet is that political and economic liberalization are the preconditions for stability and peaceful domestic and foreign relationships. To this end, international intervention aims at building a limited state with the monopoly over the means of coercion and the administrative capacity to deliver basic services to citizens, while creating a strong society capable of restraining the state. However, not only can liberalization prior to institutionalization undermine

the viability of the state itself, as discussed above, it also clashes with the human rights norms that have slowly begun to take root since the end of World War II. The influence of human rights (vis-à-vis state rights) encourages the adoption by international interveners of intrusive and assertive strategies aimed at providing security, jobs, and more broadly economic and social opportunities to the population. However, these strategies are at odds with the dominant neo-Wilsonian view of economic and political liberalization, and are rarely embraced and implemented.

International refugee policy is the area where the contradictions of neo-Wilsonianism are clearer. Population resettlement is no longer an option, particularly if it follows a campaign of ethnic cleansing against the civilian population. Although international refugee policy remains quite diverse, reflecting the varying circumstances and reasons for human displacement, since the end of the Cold War the return of refugees to their country of origin has been increasingly affirming itself as a preferred option.[19] To be sure, return and repatriation relieve Western states from granting asylum to individuals escaping war. This is perhaps the main reason why return is pushed by intervening states, rather than more altruistic motives.[20] At the same time, return and repatriation can be compatible with human rights norms, in particular the principle that individuals and groups have a right to return to their country of origin. Moreover, return can contribute to post-war reconstruction in a number of ways. As the United Nations High Commissioner for Refugees has noted, there are four mutually reinforcing ways return contributes to peacebuilding. First, return clearly signals the end of a conflict and the capacity of a state to protect its citizens. Second, it legitimizes the post-settlement political order, by providing validation to subsequent elections and democratic processes. Third, return deprives duplicitous leaders of the possibility of politically and militarily manipulating refugees in order to undermine the newly established peace. Finally, return (particularly that of professionals and skilled workers) contributes decisively to the economic recovery of war-torn societies.[21]

A number of recent peace agreements include provisions for refugees and displaced persons to return to their original homes, rather than simply being repatriated to internal displacement. Peace settlements in Bosnia, Kosovo, Guatemala, Mozambique, Cambodia, Ethiopia, and Eritrea all recognized the right to return home. A right to housing and property restitution is slowly supplanting the age-old idea that displacement from one's own home of origin is a permanent condition.[22] In many cases "home of origin" has been interpreted to mean the physical structure in which one lived before the war. Because physical infrastructure is often under the control of a national group other than the one to which the returnee belongs, return is a difficult process involving individuals who have been defined as ethnic or national minorities.

Despite the Herculean task involved, return has often been a relatively successful process. In Bosnia, for example, where about 2.2 million people were uprooted by a ruthless policy of ethnic cleansing, more than 1 million people have returned home. At the same time, however, the process of return has highlighted an important

contradiction in the international intervention template based on neo-Wilsonian principles. On the one hand, the return and reintegration of refugees and displaced persons is one of the principal benchmarks against which international administration of war-torn territories is measured.[23] As international intervention in Bosnia confirms, considerable resources have been invested in attempting to reverse the homogenizing effects of the war. On the other hand, ensuring the sustainability of return requires highly intrusive social and economic policies that fit uneasily with the broader intervention template rooted in the idea that political and economic liberalization are the indispensable ingredients for successful nation-building.[24] International financial institutions have regularly dismissed programs of affirmative action for minorities as incompatible with market liberalization. As a result, international intervention has reflected a degree of human rights consciousness very different from the post–World War I and II Wilsonian approach, but not enough to ensure the individual and collective enjoyment of those rights. The lack of employment opportunities and the scarcity of social and economic services for returnees seriously hamper the sustainability of returns exemplified in Bosnia and also in other cases.

Because of the brevity of projects, international agencies have little scope to develop significant local partnerships and include local actors in a process of joint planning, implementation, and assessment.

Part of the reason for this failure to ensure the sustainability of return lies in scarce coordination among international agencies. While UNHCR can organize repatriation schemes, it does not possess either the human or the material resources to ensure the sustainability of return.[25] Accordingly, UNHCR defines return as "successful" when the returnee spends one night in his or her house.[26] Because UNHCR is not a development agency, it cannot address the problems associated with post-settlement development and the reintegration of returnees in their former communities. This limitation has led the agency to seek collaboration with the World Bank and other international financial institutions, but these institutions have rarely loosened their economic dogma, leaving returnees trapped in a cycle of poverty and abandonment.

In sum, neo-Wilsonianism based on political and economic liberalization clashes with important human rights aspects, such as the need to return those individuals displaced by war to their homes, and to ensure the sustainability of their livelihoods. However, international financial institutions have resisted tailoring the intervention template to the specific needs of weak states recovering from civil strife. The top-down enforcement of market liberalization has often left these states prey to massive unemployment, slow growth, widespread illegality, and a constant flow of emigration of the young generation. Although refugees increasingly return to their country of origin after the end of the war, many leave soon afterwards in search of economic, social, and educational opportunities.

Shock Therapy: Wilsonianism in a Hurry

One important reason for this sub-optimal outcome is the speed of implementation of neo-Wilsonian precepts. In our post-colonial world there is little support for direct foreign rule of weak states or long-term missions. In Western states, there is a tendency to distraction in regards to foreign crisis, while in the developing world there remains an almost universal suspicion that intervention can be used (and abused) as a political tool of Western states.[27] Because foreign nation-builders are under enormous pressure to declare the mission complete, restore (formal) domestic sovereignty, and fully disengage, their priorities become skewed from long-term planning to the achievement of short-term, visible results.

"Imperialism in a hurry"[28] exposes the contradictions at the heart of international intervention. A formally sovereign and democratic state cannot be managed by international administrators indefinitely, at least not in our post-colonial age. Short-term deadlines, often linked to the holding of national elections, help to justify the exercise of international authority and make such authority more acceptable to both the local people and the electorate of those states contributing military and civilian personnel to peace operations. At the same time, the need for "instant gratification" and a short implementation timeframe explains "projectism," or "project-mania," which is the tendency to treat state-building as a set of discrete interventions incorporated into a project with a relatively clear beginning, implementation and evaluation, usually with a six-month time span, or, at best, one year. "Projectism" leads to at least three important shortcomings.

First, "projectism" causes international intervention to become a top-down enterprise, making it difficult to place the local population at the heart of the post-settlement transition, and leading international interveners to overlook local knowledge, talents, and aspirations in the name of short-term efficiency. Because of the brevity of projects, international agencies have little scope to develop significant local partnerships and include local actors in a process of joint planning, implementation, and assessment. Instead, they make important decisions about the priorities and allocation of international assistance in the initial phases of intervention, when international understanding of local conditions is limited.[29]

Second, in order to achieve immediate results, international agencies are geared toward attempting to manipulate short-term outcomes (by tweaking electoral laws, for example) instead of creating the long-term conditions for peace to take hold indigenously by slowly building the capacity of local institutions. Some critics go as far as arguing that domestic institutional and local capacity is actually being destroyed by international intervention in weak states. According to Francis Fukuyama, despite the rhetoric of "capacity-building," the reality of international intervention shows a kind of "capacity sucking out."[30] Instead of assisting domestic development of governing capabilities, rich and comparatively efficient international agencies crowd out weak-state capacities.

Third, the pressure on international actors to show that intervention "is working" prevents a balanced assessment of how best they can support the post-

settlement transition. Generally, the greater the international role, the more international interveners devote time to selling their achievements and minimizing the appearance of problems, since the recognition of difficulties and drawbacks may be perceived as an admission of failure. Meanwhile, this attitude creates the impression that international intervention is proceeding according to plan and thus alleviating pressure for reform. When delays, obstacles, and drawbacks cannot be ignored any longer, they are blamed on the local actors. While success has a thousand fathers, failure is an orphan. Time and again, lack of progress is blamed on the lack of indigenous democratic traditions and the influence of post-war trauma. For example, in south-eastern Europe it is the "Balkan mentality" (the supposedly combined effects of socialism and war) that explains continuing instability. In the Middle East, Arab culture, Islamic influences, and authoritarian traditions allegedly combine to prevent the spread of democracy. Needless to say, an honest assessment of the choices and strategies of international actors would yield a more accurate diagnosis and possibly better intervention strategies.

Conclusion

Although most policymakers are familiar with these shortcomings, reform remains difficult, and is complicated by the different views and priorities within the donor community. A promising development is the establishment, in late 2005, of a United Nations Peacebuilding Commission. The Commission's creation is a direct response to the limits evidenced by a decade and a half of international missions in war-torn regions. The Commission's key tasks include: improving the coordination of all relevant actors, advising on integrated strategies for peacebuilding and sustainable development, developing best practices, ensuring predictable funding, and extending the period of attention the international community devotes to crisis areas.

The establishment of the Commission has been met with almost universal approval. Addressing the problems of weak states requires a structure of global governance where leading states accept that effective intervention needs time, money, and manpower; all of which are aspects the Commission is meant to provide. Yet, the extent to which the Commission will increase the effectiveness of international intervention remains untested. Several issues provide matters of concern. The terms of cooperation among the various stakeholders remain unclear. The Commission includes members from the Security Council and the Economic and Social Council. In addition, members are elected by the General Assembly to ensure regional representation. Other actors can be involved in country-specific operations to enhance the legitimacy and effectiveness of the operation, including national and trans-national authorities, regional actors and organizations, troop contributors, and major donors to the specific country. However, the role of the national authorities of those countries under consideration remains uncertain, in particular the extent to which their views should shape the Commission's agenda and strategy. Moreover, no particular role is foreseen for humanitarian organizations,

local and international civil society groups, and academic or regional experts. Long-term financial resources have not yet been secured. Sceptics fear that the Commission might constitute a new bureaucracy that will add another layer of inertia to intervention efforts.

While this judgement might be too severe (and so far lacking in empirical evidence), the creation of the Peacebuilding Commission should not prevent the consideration of other options. In south-eastern Europe, accession agreements with the European Union (EU) and eventual EU membership are the obvious alternative to short-term, crisis driven international involvement. The EU accession process can be described as a successful form of "member-state building."[31] Were the EU to extend its accession instruments to the Balkans, this would constitute a major step forward in the spreading of peace, democracy, and stability in the Eastern Mediterranean. However, alternatives also exist for troubled lands in the post-colonial world further a field from Europe. Regional organizations are potentially well placed to improve coordination among donors and provide indispensable knowledge of local political, economic, and social variations. While almost everyone involved in peace operations praises coordination in theory, in practice nobody wants to be "coordinated," that is, lose decision-making power and operational autonomy. Nevertheless, coordination is necessary, particularly to devise suitable intervention strategies that coherently incorporate human rights components in addition to neo-Wilsonian precepts. Finally, technology transfer, debt forgiveness, and increased aid might constitute useful tools to prevent state failure and the return to lawlessness. The complexity of the task and the stakes involved demand nothing less than the careful assessment of all options for international engagement, and the long-term commitment to support the democratic development of weak states.

Notes

[1] See Crisis Watch, constantly monitoring the evolution of conflict areas worldwide, with monthly updates. Available at: http://www.crisisgroup.org/home/index.cfm?id=1200&l=1. More broadly: Stefan Wolff, *Ethnic Conflict: A Global Perspective* (New York: Oxford University Press, 2006).

[2] Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peace-making and Peace-keeping* (New York: United Nations, 1992).

[3] Johan Galtung, "The Approaches to Peace: Peacekeeping, Peacemaking, and Peacebuilding," in *Peace, War, and Defense: Essays in Peace Research*, ed. Johan Galtung (Copenhagen: Christian Ejlers, 1976).

[4] Ho-Won Jeong, *Peacebuilding in Postconflict Societies: Strategy and Process* (Boulder: Lynne Rienner, 2005); Roland Paris, *At War's End: Building Peace After Civil Conflict* (New York: Cambridge University Press, 2004); Philip G. Roeder and Donald Rotchild, eds., *Sustainable Peace: Power and Democracy After Civil Wars* (Ithaca: Cornell University Press, 2005).

5 For an assessment see, Charles T. Call and Susan E. Cook, "On Democracy and Peacebuilding," Global Governance, 9, no. 2 (Spring 2003): 233–247.

[6] The literature is vast and growing. Good studies are Simon Chesterman, *You, the People: The United Nations, Transitional Administration and Statebuilding* (New York: Oxford University Press, 2004); Simon Chesterman, Michael Ignatieff and Ramesh Thakur, ed., *Making States Work: State Failure and the Crisis of Governance* (New York: United Nations University Press, 2005); Michael Ignatieff, *Empire Lite: Nation-Building in Bosnia, Kosovo and Afghanistan* (London: Vintage, 2003); Francis Fukuyama, State Building: Governance and World Order in the Twenty-First Century (Ithaca: Cornell University Press, 2004); Francis Fukuyama, ed, *Nation-Building: Beyond Afghanistan and Iraq* (Baltimore, Johns Hopkins University Press, 2006).

[7] See, for example, Henry Tajfel, *Social Identity and Intergroup Relations* (New York: Cambridge University Press, 1982).

[8] Peter Kreuzer and Mirjam Weiberg, *Framing Violence: Nation- and State-Building: Asian Perspectives* (Frankfurt: Peace Research Institute, 2005). See also James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998).
[9] Ernest Gellner, *Nations and Nationalism*, (Ithaca: Cornell University Press, 1983), 1.
[10] Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*, (Baltimore: Johns Hopkins University Press,1996), 16–37.
[11] Roland Paris, *At War's End: Building Peace After Civil Conflict*, (New York: Cambridge University Press, 2004), 40-42. On Wilson, see Thomas Knock, *To End All Wars: Woodrow Wilson and the Quest for a New World Order* (New York: Oxford University Press, 1995).
[12] Paris, *At War's End: Building Peace After Civil Conflict*, 5.
[13] Larry Diamond, *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq* (New York: Henry Holt and Company, 2005).
[14] David Chandler, "Back to the future? The limits of neo-Wilsonian ideals of exporting democracy," *Review of International Studies* 32, no. 3 (Summer 2006), 475–94; Roland Paris, "Wilson's Ghosts: The Faulty Assumptions of Post-Conflict Peacebuidling," in *Turbulent Peace: The Challenges of Managing International Conflict*, ed., Chester Crocker, Fen Oselr Hampson and Pamela Hall (Washington DC: United States Institute of Peace Press, 2001).
[15] Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing*, (New York: Cambridge University Press, 2004), 66–67.
[16] Chaim Kaufmann has put forward this thesis in a number of articles, most recently in "Saving Iraqis, Saving Iraq," *Foreign Affairs* 85, no. 4 (Summer 2006): 156–160.
[17] Oliver Richmond, *The Transformation of Peace* (New York: Palgrave MacMillan, 2005).
[18] Dobbins, James, *America's Role in Nation-Building: From Germany to Iraq* (Santa Monica: RAND, 2003); Robert Jackson, "International Engagement in War-Torn Countries," *Global Governance* 10, no. 1 (Winter 2004): 21–36.
[19] The evolution of international refugee policy can be traced through the regular publications of the United Nations High Commissioner for Refugees (UNHCR). In particular, *The State of the World's Refugees* .
[20] Thanks to Laurence Cooley for drawing my attention to this point.
[21] United Nations High Commissioner for Refugees, *The State of the World's Refugees:A Humanitarian Agenda* (New York: Oxford University Press, 1997), 159–164.
[22] Scott Leckie, ed., *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (Ardsley: Transnational Publishers, 2003).
[23] Richard Caplan, *International Governance of War-torn Territories: Rule and Reconstruction*, (New York: Oxford University Press, 2005), 68.
[24] Vesna Bojic-Dzelilovic, "From Humanitarianism to Reconstrruction: Towards an Alternative Approach to Economic and Social Recovery from War," in *Global Insecurity: Reconstructing the Global Military Sector*, Vol. III, ed. Mary Kaldor (London: Pinter, 2000).
[25] B. S. Chimni, "Post-Conflict peacebuilding and the Return of Refugees: Concepts, Practices, and Institutions," in *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State*, ed. Edward Newman and Joanne van Selm (New York United Nations University Press, 2003).
[26] Wernon Blatter, UNHCR Head of Mission to Bosnia-Herzegovina, Sarajevo (interview with author, July 2001).
[27] Mohammed Ayoob, "Third World Perspectives on Humanitarian Intervention and International Administration," *Global Governance* 10, no. 1 (Winter 2004): 83–98.
[28] Michael Iganitieff, *Empire Lite: Nation-building in Bosnia, Kosovo and Afghanistan*, 22.
[29] Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve*, (Washington DC: Carnegie Endowment for International Peace, 1999), 264.
[30] Fukuyama, *State Building: Governance and World Order in the Twenty-First Century*, 39.
[31] Gerald Knaus and Marcus Cox, "The 'Helsinki Moment' in Southeastern Europe," *Journal of Democracy* 16, no. 1 (Winter 2005): 39–53.

Where There's a Will, There's a Way? Untangling Ownership and Political Will in Post-Conflict Stability and Reconstruction Operations

by Derick W. Brinkerhoff

How best to assist fragile and post-conflict states to improve conditions for their citizens and to establish the policies, institutions, and governance procedures that will lead to socio-economic development has constituted an enduring set of questions for international assistance agencies. These questions have taken on renewed urgency in today's world where concerns about transnational terrorism, intrastate conflict, and state failure have led to an intersection among the policy, research, and programmatic agendas of the international development, humanitarian, security, and diplomatic communities. The World Bank's list of fragile states grew from seventeen to twenty-six during the years 2003 to 2006, confirming that the problem of addressing the needs of low-income countries affected by poor governance, persistent poverty, and weak economic growth is becoming ever more difficult and complex.[1]

While definitions of fragile states vary, all concur that state fragility is directly related to capacity deficits. Fragile states have governments that are incapable of assuring basic security for their citizens, fail to provide basic services and economic opportunities, and are unable to garner sufficient legitimacy to maintain citizens' confidence and trust. When these capacity deficits are large enough, states move toward failure, collapse, crisis, and conflict. In post-conflict countries, the recovery process—often supported by international donor assistance—involves rebuilding capacity and filling deficits, though backsliding is an ever-present risk. As Collier et al. note, countries that have experienced violent conflict face a 40 percent risk of renewed violence within five years.[2]

Post-conflict capacity building, however, does not take place solely as a function of outside intervention and assistance. Capacity development is fundamentally an endogenous process that engages not just the abilities and skills, but the motivation, support, and aspirations of people within a country.[3] The labels assigned to the latter

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are ownership and/or political will. Today's consensus states that successful development and post-conflict reconstruction assistance is country-led and country-owned.[4] Yet, particularly for the international community, it is problematic to accurately identify ownership and political will, and to differentiate these two volitional components from capacity questions. This brief essay addresses this problem and explores several issues that need to be considered in order for members of the international community to determine to what extent their country partners embrace new policies and programs as "theirs," and to distinguish between when their country partners *can* or *cannot* take certain actions from when they *will* or *will not*.

A fundamental question concerns what we mean by these terms. The essence of ownership and political will has to do with people. It might seem obvious to note that ownership and will involve actors. Yet, part of the conceptual and analytical difficulties with the terminology associated with these concepts is the tendency to aggregate political will to higher levels, e.g., national ownership and country commitment. This aggregation provides a handy way to ascertain whether government officials appear to be doing what donors want them to do; however, it suffers from (a) reifying whole countries and governments into unitary actors, and (b) leaving vague and unspecified exactly who is willing to do what. Ownership and will involve the commitment of actors to pursue particular objectives, undertake actions in support of those objectives, and sustain them and the costs they may incur over time. Killick emphasizes these features in his definition of ownership:

> *Government ownership is at its strongest when the political leadership and its advisers, with broad support among agencies of state and civil society, decide of their own volition that policy changes are desirable, choose what these changes should be and when they should be introduced, and where these changes become built into the parameters of policy and administration, which are generally accepted as desirable.* [5]

Ownership and will are intimately connected to whose objectives are being pursued, who values their attainment, and whose resources are expended to reach them. This connection brings to the fore the interactions between members of the international community offering assistance and country decision makers.

Issue 1: Donor-Country Relations

In the context of international assistance, the nature of the donor–country relationship is an important factor in generating ownership for policy changes. This relationship, and the degree of ownership that it creates, are key contributors to aid effectiveness, as a vast literature attests.[6]

For example, the problems associated with donor-imposed objectives are well documented in the experiences of the World Bank and the International Monetary Fund with structural adjustment. The literature on this topic is replete with examples of reforms that senior government officials agreed to as the price of getting assistance, although they had little or no intention of following through on the conditionalities in those loan packages.[7] These officials were nominally in agreement with the reform objectives, but clearly did not own the reforms.

These analyses and reflections have led, on the international agency side, to calls for—and in some cases, actions to promote—donor harmonization and alignment with country policies and practices; on the country side, it has led to promoting country-led and/or community-driven development.[8] The aid effectiveness working group of the Organization for Economic Cooperation and Development's Development Assistance Committee (DAC) puts ownership at the top of its results pyramid, supported by harmonization and alignment.[9]

Capacity development is fundamentally an endogenous process that engages not just the abilities and skills, but the motivation, support, and aspirations of people within a country.

In post-conflict settings, the donor–country relationship can be particularly problematic. On the side of external actors, their differing objectives, interests, and roles clearly have an impact. For example, the military focuses on conflict containment, security, and peacekeeping, while the bilateral development agencies combine political, relief, and development objectives. International NGOs often have a mix of objectives—relief, human rights, justice, and development, and the multilateral lenders focus mainly on financing reconstruction and a return to economically productive activity. In any given post-conflict situation, whose objectives prevail or which combination of goals is pursued, how the various actors are aligned and/or how they compete, and what level of resources and power they bring are critical to shaping the reconstruction package that external actors encourage domestic actors to own and exercise political will to implement.[10]

Societal actors also have their own objectives, interests, and roles within particular fragile/post-conflict states. A key feature of many conflict/post-conflict situations is that not all country actors are equally interested in the cessation of conflict and violence. These so-called "conflict entrepreneurs" and "spoilers" have a strong interest in prolonging crisis and instability, for a mix of economic and political reasons. The negotiations to end conflict and reestablish security create incentives that influence subsequent reconstruction efforts. Country actors strike deals precisely to gain an upper hand with regard to the anticipated international support that follows conflict, hoping for legitimated authority in the process and a role in future governance. These deals may exclude or disfavor other groups whose commitment, capacity, and resources will be needed for reconstruction.[11]

As a result, ownership and political will for activities such as demobilization and disarmament, reconciliation and restorative justice, democratic governance, decentralization, and economic reconstruction will vary across actors. Lister and Wilder, for instance, note the gap in commitment to reforms between central- and local-level actors in Afghanistan.[12] Agreements made by national authorities with international donors do not necessarily engage the political will of sub-national actors.

Issue 2: Measurement

Measuring ownership and political will faces three interrelated challenges: (a) "observability," (b) distinguishing between will and capacity, and (c) subjectivity and bias in perceptions of ownership. "Observability" problems arise because ownership and will cannot be directly observed and must be inferred from other factors; these problems are shared by the concept of capacity. These measurement difficulties lead, in both cases (ownership/will and capacity), to *post hoc* assessments that attribute disappointing outcomes from the donor's point of view, due to their insufficiency. A related issue is the problem of measuring ownership/will separately from capacity.

Anderson et al., for example, propose sets of indicators that differentiate between capacity and what they call willingness for poverty reduction.[13] For both capacity and willingness, in recognition of the impossibility of direct observation, they employ a set of outcome indicators related to pro-poor public expenditure, immunization rates, and so on.

Post-conflict situations often exhibit sociopolitical dynamics that result in weak ownership and will, along with limited capacity. Variations in both will and capacity exist at multiple levels in a country, as the Afghanistan example just mentioned illustrates. These variations can be manifested across countries as well, and these two concepts have been used to develop what has come to be a frequently-cited typology of states:[14]

- Strong capacity, strong political will: good performers
- Limited capacity, strong political will: weak but willing states
- Strong capacity, weak political will: strong but unresponsive states
- Weak capacity, weak political will: states at risk or failed states.

Further complicating the entanglement of ownership, political will, and capacity is that, depending upon the reforms agreed to by domestic actors, they may need capacities that are new or in short supply to follow through on their commitments. Collins and Higgins note that ownership calls for an additional set of capacities beyond those needed for discrete donor-funded project implementation.[15] Governments need the capacity to interact with citizens to identify needs, set priorities, and design programs to address those needs. These activities put a premium on budgeting and planning skills, as well as on coordination and decision-making—heavy demands on weak governments in post-conflict situations. Morrissey and Verschoor point out that domestic decision makers' assessments of their capacity to implement reforms will influence their *a priori* willingness to make commitments.[16] Thus, what outsiders may deem to be a lack of ownership or political will could in fact relate more to the insufficient capacity of the state.

Another measurement issue that flows from unpacking ownership in terms of the array of actors involved is its relative nature. Ownership is not usefully conceived of as a binary variable (yes, it is there, or no, it is not). Rather, ownership and political will lend themselves to assessments of a relative degree of presence/absence, either for specific actors, across categories of actors, or some other cut at aggregation.

Making such assessments confronts the challenge of subjective perception. For

example, asking informants directly about ownership (however defined in an interview or a questionnaire) is likely to elicit subjective responses based on individual perceptions. One approach to dealing with the subjectivity problem would be to ask questions about the distinguishing components associated with ownership (see Issue 3 below) without labelling them as such. Another potentially interesting approach, which could be combined with the first, would be to ask respondents what ownership might look like to them—the answers could be used to help identify particular biases and could contribute to clarifying the concept.

The bias issue can be especially problematic in situations where outsiders have limited independent knowledge or understanding of internal dynamics. For example, in post-war Iraq, technical advisors in the Coalition Provisional Authority believed their Iraqi counterparts in central ministries who told them that funds allocated to provincial and municipal service delivery units would be wasted due to lack of political will and weak administrative capacity. However, advisors of the Local Governance Program, who worked in the provinces and cities outside of Baghdad, had a different perspective based on their interactions with local officials and citizens groups.[17] With high levels of insecurity, it can be extremely difficult for outsiders to interact with a sufficient number of residents to collect information and triangulate on disparate or conflicting views.

Issue 3: Sorting Out Ownership Components and Linkages

As Killick's definition suggests and my previous research confirms, ownership is also connected to relationships and social dynamics among actors within the country, the characteristics of the changes undertaken, and their degree of acceptability. Some international agencies consider the designation of the national government to take the lead in post-conflict reconstruction programs as an operational proxy for ownership. Yet such programs, by their nature, are products of external intervention, and thus, in terms of Killick's definition, they pose a significant challenge to the development of ownership. To generate useful guidance, analytic frameworks to describe and assess ownership need to expand to incorporate more elements than management responsibility.

A Model of Ownership

A fundamental task is to disaggregate ownership into some meaningful components. Building on my earlier work—which analyzed political will for anti-corruption activities and policy reform—and corroborated by analyses of pro-poor policy design and implementation,[18] ownership can be broken down into six components:

1. *Government initiative*: This component concerns the source of the impetus for a particular policy or program choice. As noted above, ownership is questionable when the initiative for change comes totally from external actors. Some degree of initiative from domestic decision makers must exist in order to talk meaningfully of ownership and political will.

2. *Choice of policy/program based on balanced consideration and analysis of options,*

anticipated outcomes, and cost/benefits: When domestic actors choose policies and actions based on their own assessments of the benefits likely to be obtained, the alternatives and options, and the costs to be incurred, then one can credibly speak of independently derived preferences and willingness to act.

3. *Mobilization of stakeholders*: This component concerns the extent to which government actors consult with, engage, and mobilize stakeholders. Do decision makers reach out to members of civil society and the private sector to advocate for the changes envisioned? Are legislators involved? Are there ongoing efforts to build constituencies in favor of the new policies and programs?

4. *Public commitment and allocation of resources*: To the extent that domestic decision makers reveal their policy preferences publicly and assign resources to achieve those announced policy and program goals, these actions contribute to a positive assessment of ownership of, and political will for, change. As various observers have noted, when poor countries commit to changes that are funded by donor resources rather than their own, the assessment of ownership can be muddied.

5 *Continuity of effort*: Another component of ownership is the assignment of resources and responsibilities over the long-term to achieve goals. One-shot or episodic efforts signal weak and/or wavering ownership. Post-conflict reconstruction programs, by their very nature, are long-term undertakings.

6. *Learning and adaptation*: Ownership is revealed when domestic actors establish a process for tracking policy/program progress, and actively manage implementation by adapting to emerging circumstances over time. However, learning can also apply to domestic decision makers observing policies, practices, and programs from other countries and selectively adopting them for their own use. In this case, "tailoring and adapting to local conditions confers ownership of the policy content."[19]

Strong ratings on each of these six components add up to the most powerful case for ownership. Variations in ratings on the components permit the kind of detailed, relative assessments and situation-specific determinations I discuss above, allowing nuanced considerations of degrees of ownership, from weak to strong. The six components can also be used for intra-state analyses, for example, looking at ownership among central versus local-level actors.

Linkages

Ownership and political will do not exist or develop in a vacuum, but are influenced by the sociopolitical environment that actors operate within. Thus, identification and understanding of the linkages between actors and their environment, in terms of the demands, pressures, and incentives created, are important to capturing a full picture of ownership and political will. Besides the donor-country relations discussed above, the governance structures and processes that connect government officials and civil society are important influences on ownership. Their existence is implicit in Killick's definition of ownership, cited above, and is explicitly addressed in much of the literature on community-led development and empowerment.[20] Domestic decision makers' degree of ownership

for reforms will emerge as a function of a calculus based on demand-side factors as well as the supply side of international aid. A similar supply-and-demand dynamic characterizes the development of capacity to implement the reforms that decision makers commit to.[21]

In post-conflict situations, these demand-driven influences on ownership and political will are often underdeveloped and emergent, given that citizens may not have had opportunities to engage with, or provide input to, public officials regarding their interests and needs beyond clientelist relationships. An important element of donor assistance for post-conflict reconstruction aims precisely to establish and build these new demand-side linkages through the introduction of democratic governance systems.

Issue 4: Placing Ownership in the Post-Conflict State Reconstruction Context

The practical requirements for stabilization operations and post-conflict reconstruction pose challenges for enacting ownership-enhancing, country-led principles. Key drivers that shape stabilization and reconstruction efforts include the exigencies of preparedness, quick deployment and intervention, and coordination among external actors. These also affect prospects for the transition to peace and stability, and longer-term development. For example, the pressures for speed in demobilization and disarmament and restoration of basic services may be at odds with the longer-term considerations of how to integrate state actors as leaders, to the point where they will support and take ownership of reconstruction programs.[22] The gap between the short- and long-term post-conflict objectives tends to be wider in countries that have experienced prolonged periods of breakdown in public institutions, services, and security. Stability and reconstruction operations face trade-offs between national ownership and capacity building and the need to achieve short-term results and to assure financial accountability.[23]

Among these trade-offs is the concern for the legitimacy of a new government, which needs to be able to demonstrate to its citizens that it can provide them with something of value versus short-term capacity and efficiency.[24] When donors step in and bypass governments in favor of managing their own independent programs, and/or contracting with international NGOs and private firms for services, citizens are unlikely to see the post-conflict government as legitimate and worthy of support. Government actors become resentful, and may resist or only passively support externally-driven programs. These dynamics undercut the transfer of ownership from peacekeepers and donor agencies to domestic actors.[25]

When governments have primary responsibility for managing post-conflict assistance, setting aid agendas, and organizing stakeholder consultations, these processes help to build legitimacy, as well as support the effective restoration of services and sustainable reconstruction.[26] These outcomes are all positively associated with ownership, and to achieve them some measure of capacity is needed,

hence the source of a major dilemma for external interveners.

There is the need to identify factors that allow for context specificity and for refining "one size fits all" approaches to post-conflict reconstruction. Capacity-building templates risk oversimplification and tend to discount the impact of situational, historical, and individual leadership factors. One avenue to introduce more nuanced approaches is to undertake assessments of ownership and political will using the model I briefly sketched above. Among the lessons from experience with policy reform is the importance of leaders who can set direction, engender legitimacy for change, and build constituencies (policy champions).[27] Identifying and working with such leaders can be a critical step toward establishing ownership and political will in fragile and post-conflict countries. As noted earlier, sorting the conflict entrepreneurs and spoilers from the "good guys" is rarely straightforward. However, a growing body of literature and experience on capacity-building in fragile and failed states addresses these issues; for example, the work of the multi-donor DAC Working Group on service delivery in fragile states.[28]

Conclusions

The title of this essay encapsulates one of the maxims of external assistance for post-conflict reconstruction. A sustainable transition to peace and societal rebuilding requires that what begins as a process originated by outsiders becomes owned by domestic actors with the political will to carry reconstruction and reforms forward on their initiative. Detecting and reinforcing ownership and political will can be enhanced by (1) understanding how the donor-country relationship affects the interests and motivation of country actors (and not simply national decision makers), (2) sensitivity to measurement problems, and (3) breaking down the components of ownership and their links to environmental factors. The often messy and turbulent dynamics of stability and reconstruction operations, however, pose difficulties for peacekeepers and donors looking to achieve progress rapidly.

The question mark added to the title's maxim about ownership reflects the challenges involved in promoting ownership beyond simply assessing it. International political and diplomatic pressures tend to impose stabilization and reconstruction timetables that call for overly optimistic and ambitious milestones despite the lessons of experience, which tell us that state and societal rebuilding are complex and long-term endeavors. In response to these pressures, numerous temptations arise for donors to take shortcuts, with negative consequences for ownership, sustainable capacity, and legitimacy, as discussed above. Better understanding of the intricacies of ownership and political will, and of their impacts on stabilization and reconstruction operations, can help interveners resist those temptations in the future.

Notes

[1] World Bank, "Which Countries are LICUS?" *The World Bank Group* (October 4, 2006). Available at: www.worldbank.org/ieg/licus/licus06_map.html (accessed October 4, 2006).

[2] Paul Collier et al., *Breaking the Conflict Trap: Civil War and Development Policy* (New York: Oxford University Press, 2003).
[3] Peter Morgan et al., "Study on Capacity, Change and Performance: Interim Report," Discussion Paper No. 59A (Maastricht: European Centre for Development Policy Management, 2005).
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In Need of Self-Reflection: Peacebuilding in Post-War Kosovo from a Systems-Analytical Perspective

by Jens Narten

The purpose of this paper is two-fold. First, it aims to promote an alternative approach to understanding the constitutive elements that have led to the failure of international peacebuilding efforts, and second, in so doing, to allow for the formulation of more in-depth policy recommendations. This approach will be led from a systems-analytical understanding of both local and international actors as being self-referential. This includes closed social systems that rely on their own selective observations of the environment, as well as pre-coded means of internal communication. In this regard, the focus of the research will be on the relationship between international human rights norms and efforts to "civilize" violent conflict in post-war Kosovo, as implemented by the United Nations Interim Administration Mission in Kosovo (UNMIK) and the international military Kosovo Force (KFOR). "Civilize," in this sense, is a process of non-violent resolution of social conflict that exceeds the notion of traditional UN peacebuilding.[1]

Consideration will be given to key aspects of applied civilian policies and military functions, international human rights norms, and standards of peacebuilding, on the one hand, and the observations made by various social groups and international actors, on the other. The paper concludes with findings on institutional self-reflection for international field missions in post-war environments, such as Kosovo, and with practical recommendations on improving the attempts of international organizations to secure and sustain peace after violent conflict.

Immediately following the war in Kosovo, the joint efforts of the United Nations, the Organization for Security and Cooperation in Europe (OSCE), and the European Union, in cooperation with KFOR in Kosovo (led by NATO), were considered a success story. These joint efforts were widely perceived as exemplary cases of international administration and peacekeeping, especially for a conflict with deep-roots, and a strong focus on human rights promotion and protection to maintain a fragile peace. However, this assessment has changed radically since major violence erupted again in Kosovo in March 2004, costing many lives and leading to a renewed large-scale displacement of minorities.[2]

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A Bottom-up Process Top-down: "Civilizing" Conflict and Human Rights

Democratic conflict transformation, in one of its most sustainable forms, can be exemplified by the concept of the "civilizational hexagon," as established by Dieter Senghaas.[3] This approach aims to "civilize" societal conflict in order to prevent the outbreak of violence, and to promote the peaceful development of the society from within. The key elements of this approach are monopoly of force, rule of law, interdependencies & affect control,[4] democratic participation, social justice & equity, and a constructive conflict culture. Taking a closer look at the proposed components of civilized conflict, one realizes the tight thematic connection between these elements and corresponding provisions of international human rights standards; such as the right to security and public order, to equal protection by law and effective remedy, the rights and freedoms of others, as well as the rights to local self-administration, political participation, social security, and peace.[5]

Civil and military intervention in Kosovo was based on the desire to prevent further gross violations of human rights, such as the violations that had taken place under the Milosevic regime. Consequently, one essential aim of both the civil UNMIK and the NATO-led military KFOR mission was to establish their presence on these grounds of legitimacy. At the same time, their peacebuilding activities coincided with classic elements of civilizing conflict. In that regard, UNMIK and KFOR took over from Belgrade all de-facto components of sovereign state authority, in accordance with UN Security Council Resolution 1244 (1999). This takeover included legislative, executive, and judicial powers, with KFOR holding special military responsibility for the establishment of security and public order, based on a bilateral Military Technical Agreement with Belgrade, from June of 1999.

The re-establishment of a functioning judiciary formulated on rule of law principles, such as equal legal protection and effective remedy, became a major field of UNMIK's work, with its own administrative pillars, i.e. designated for justice and police (UNMIK pillars I and II). Along those same lines, OSCE's efforts as UNMIK pillar III concentrated on the general promotion and protection of human rights, with the specific task of institution-building within the rule of law, and development of the judiciary and legal community. In addition, UNMIK's strong focus on fostering local self-government and political decentralization reflects civilizing efforts toward political interdependence under the principle of subsidiarity. Moreover, the OSCE mission acts as the prime protagonist for political participation in democratic elections. It has organized and supervised municipal and central elections in Kosovo since autumn 2000 and, thus, has prepared the people for the enjoyment of democratic electoral rights, and the ability to participate directly or indirectly in the government. Economic reconstruction also fell under the auspices of the EU's presence in Kosovo as UNMIK's pillar IV, and correlates with the provision of social security under the principles of social justice and equal distribution. Finally, and as a joint institutional task of NATO, the UN, OSCE, and

the EU, the promotion of a constructive culture of conflict resolution within the Kosovar society represents a cross-cutting issue, which can best be identified in OSCE's project of so-called reconciliation. This is also evidenced in UNMIK's effort to foster the right to peace, respect the rights and liberties of others, and establish dialogue between the Kosovo Provisional Government and Belgrade.

Based upon an understanding that efforts to civilize conflict and to promote human rights in a sustainable manner need to work from within a society in a bottom-up process, it becomes obvious that the efforts of the UN, OSCE, EU, and NATO failed to realize this necessity, despite their intense division of labor. Instead, they employed a top-down policy in nearly all dimensions of the civilizing process and its related human rights functions. For example, state authorities were only partially transferred over a long period of time, with the Special Representative of UN Secretary General (SRSG) of UNMIK retaining the sole monopoly of force, extensive authority, and legislative veto power over internal and foreign affairs, budget and finance, the judiciary, and the police, etc.[6] This led to an alienation of democratically elected representatives of the Kosovo people from state responsibilities. Also, and parallel to these authorities, all international organizations enjoyed full legal immunity from prosecution for abuse or omission of their duties, thus violating the citizens' right to effective remedy and equal protection by law.[7]

All international organizations involved in Kosovo enjoyed full legal immunity from prosecution for abuse or omission of their duties, thus violating the citizens' right to effective remedy and equal protection by law.

Moreover, UNMIK diluted efforts of local self-government, following the first freely conducted municipal elections in 2000, when they appointed co-ministers with full financial oversight on top of the locally elected ministers. This served to spoil the civilizing effect of interdependency and affect control by setting a bad example of democratic values.[8] In addition, by granting reserved seats for representatives of ethnic minorities in the Kosovo Assembly, UNMIK encouraged the establishment of political parties on the basis of ethnicity and, thus, missed the chance for political party development with the OSCE on the basis of non-ethnic, but programmatic, background. Such development might have led to the establishment of a cross-cutting, party-related, democratic culture throughout Kosovo's society.[9]

Furthermore, while the EU succeeded in contributing significantly to the economic reconstruction of war-torn Kosovo after 1999, the principles of social justice and equity were widely disregarded. This is exemplified by marginalized communities, such as the Roma and Ashkali, falling to the very bottom of the social scale, with many people suffering from malnutrition, homelessness, and poor education.[10] Finally, all international organizations have supported the "Standards-before-Status" idea, a loosely defined policy initiated by UNMIK's Special Representative of the Secretary General, Michael Steiner, which outlined specific

standards with respect to security, human rights provisions, dialogue with the Serbian government, etc. This policy—later renamed into "Standards-and-Status"—was used as a tool of political pressure and countered the demand for early independence by the Provisional Institutions for Self-Government (PISG), the local government dominated by Kosovo-Albanians.[11]

Along with the findings above, both processes provide additional examples of the top-down policy that international organizations employed in Kosovo: attempts to enforce the build-up of a culture of cooperative conflict resolution, and a sustainable peace process based on a linkage policy that is at least partially coercive and lacking in the essential motivation for local ownership. These findings have a direct effect on the differing "observations" made by relevant actors regarding the potential success or failure of international peacebuilding efforts in Kosovo, and will, therefore, provide for a critical analysis of this question.

Simultaneous Observations on International peacebuilding Efforts

An assessment of the intermediate outcome of international peacebuilding efforts of the UN, the OSCE, the EU, and NATO in Kosovo significantly depends on the perspectives of the respective social groups involved in the peace process. This aspect can best be illustrated by examining the main focus of each group with respect to the overall peace process, which also serves as an element of the groups´ lead coding in interpreting the past, present, and future development of this process. A lead code will provide a binary scheme for the reduction of the vast complexity of observable reality into communicable portions, in order to allow for a group's exchange of differentiations and indications of action in its environment that, in turn, will provide the elements of the group's self-constitution as a social entity.[12]

In the case of Kosovo, one can differentiate between four different perspectives of the four key groups involved, with respect to the perceived success or failure of international peacebuilding efforts. The Kosovo-Albanian lead code focuses on peace and security through independent self-determination. In contrast, the Kosovo-Serbian perspective is based on peace and security by means of re-integration into Serbia. Differing from both, the perspective(s) of various marginalized minority groups, such as the Roma-Ashkali-Egyptiani (RAE), Turks, Bosniaks, Gorani, Croats, Cherkessi, etc., focuses on peace and security through alliances with majority groups, which are perceived as determining their future. Finally, the international community approach can be separated into further sub-perspectives, each associated with a different international organization. The military perspective under NATO focuses on peace and security through military deterrence; the civil-administrative perspective under the UN focuses on peace and security through veto-based interim authority; the civil institution-building perspective under the OSCE focuses on peace and security through local capacity building; finally, the civil economic perspective under the EU and its focus on peace and security through economic reconstruction and association with the EU.

Corresponding to this wide spectrum of lead codes of local and international groups, the assessment of success or failure of the international presence in Kosovo varies significantly, and can be described as strictly observation-dependent. These observation-based assessments also serve a self-referential function for the ongoing formation process of each group. The elements of self-reference[13] are exhibited by the key players' overall assessment regarding the Kosovo-wide outbreak of violence in March of 2004, in which nineteen people were killed, approximately 5,000 members of ethnic minority groups expelled from their homes, and hundreds of houses and churches destroyed.

The perception advanced by KFOR and UNMIK of these incidents, as actors responsible for internal security, and maintaining a monopoly of force, was one that advertised the success of international military and police engagement in containing further violence and the restoration of public order and security after the riots.[14] The UNMIK civil administration added that the incident delayed the fulfillment of the "Standards-and-Status" process crucial for the PISG to proceed on the way to independence. The UNMIK branch, responsible for the judiciary action in Kosovo, announced that the perpetrators needed to be prosecuted within the rule of law. Similarly, the overall international community called for due compensation and right of return, in order to maintain the right to effective remedy, equal protection by law, and to preventative affect control in the public sphere.[15] As a consequence, the PISG made available a budget of several million Euros for the reconstruction of destroyed churches and houses. However, they failed to restore a public atmosphere of trust, which would have allowed displaced persons to return.

While the EU succeeded in contributing significantly to the economic reconstruction of war-torn Kosovo after 1999, the principles of social justice and equity were widely disregarded.

During the riots, the difficult process of prosecuting the perpetrators by judicial means limited the overall societal affect control. OSCE's conclusion led to a focus on additional public education programs in the wider institution-building efforts, in order to promote the right to peace, the respect for the rights of others, and to foster a constructive conflict culture. Although the official OSCE rhetoric had spoken of an ongoing reconciliation process long before the March riots, this rhetoric stopped immediately following March 2004. The EU's reaction corresponded with the response of other international organizations. Beyond that, the renewed outbreak of violence marked a setback in the EU's efforts to find foreign investors for Kosovo, as financial investments need social stability. It also endangered Kosovo's integration into the Stabilization and Association Process of the EU, aiming at economic reconstruction in the Balkans, which is important for distributive social justice. The riots contributed to a widespread political boycott by the Serb minority in the parliamentary election in October 2004, and thus hampered overall democratic participation and the enjoyment of political rights.

The perceptions of the local groups in Kosovo with respect to the March incidents turned out to be in direct contrast to the international ones. The Kosovo-Albanian community, through its leading politicians and the PISG structures, rejected the overall responsibility for the riots and argued that the main reason for the social unrest of the Albanian majority population was, *inter alia*, due to the limited transfer of state authority to the PISG, the denial of independence, and the parallel administrative structures in the Serbian enclaves, of which UNMIK had never really achieved full control.[16] The Serbian community in Kosovo countered the argument by saying that the control of security by UNMIK and KFOR was insufficient, and that, in addition, to local civil self-administration of the enclaves' security, protection should be reinstalled by deploying troops of the Serbian army and police back into Kosovo, which would be clearly unacceptable to the Kosovo-Albanian side.[17] Finally, non-Serb and marginalized minority groups found themselves in a situation whereby they felt completely unprotected by either side. Their hopes have resided in a long and effective international security presence in Kosovo to prevent violence against them from both the Serbian and the Albanian side. However, they lack a strong lobby, as well as a tolerant and multiethnic culture in Kosovo. The pressure to form an alliance with one side or the other is strong. All in all, multi-ethnicity as a peace-promoting concept remains little more than strong rhetoric. Though it serves as the founding principle and mandate for the international presence, it has not resonated with the local Kosovar society.

Based on the finding that the observation of the success or failure of international peacebuilding efforts in Kosovo varies significantly with the perceptions of the respective observing social group or system, the following conclusions can be made. An evaluation of the peacebuilding efforts of international organizations in Kosovo requires simultaneous observations between their success and failure. Success, on the one hand, as a result of having contained Kosovo-wide violence in the aftermath of the war in 1998–1999 and the riots in 2004, as well as the creation of functioning democratic institutions; failure, on the other hand, due to the lack of protection for numerous victims of ongoing human rights violations, and the inability to establish a sustainable and peaceful culture of civilized conflict resolution.

Kosovo's Vision of Europe: Building Peace under Multiple Contingencies

As with the different perspectives of the peace process by the various social groups, the question of whether Europe could serve as an integrating vision for all groups in Kosovo, for the purpose of promoting peace and stability, should be answered as an alternative option. To that end, the idea of multiple contingencies, which, in constructivist approaches, describes the status of mutual uncertainty of expectations by all actors of the behavior of other actors, provides a valuable analytical pattern for explanation.[18] The "vision of Europe" in Kosovo is interpreted

differently by each social group. The vision remains mutually contingent on its interpretation, one way or another, and thus leads to a high degree of uncertainty of expectation on both sides of the social fabric. Therefore the "vision of Europe" as a potentially integrating and peacebuilding concept for social groups in Kosovo can easily be diverted into a process in which it loses its collective integrating meaning, rather than developing it. The European Union is seen as the primary actor in future stability and peacebuilding in Kosovo, not only for economic reconstruction, but also as a partial successor organization to UNMIK. The EU is likely to take over selected functions after UNMIK's withdrawal, particularly in the field of police and justice (rule of law).[19]

All in all, multi-ethnicity as a peace-promoting concept remains little more than strong rhetoric, as well as the founding principle for the international presence and its mandate, but it has not resonated with the local Kosovar society.

For local groups in Kosovo, both for Kosovo-Albanians and Kosovo-Serbs, the European vision is perceived first and foremost as the prime option for economic prosperity, based on individual experiences as migrant workers in Western European states.[20] Consequently, the vision of Europe is often perceived as a merely economic factor, rather than the effect of mutual interdependency, or as common democratic values and human rights norms. The idea of a joint Europe as a future political-social vision, based on multi-ethnic and multi-national tolerance, respect, and cooperation, lacks concrete substance for most parts of the Kosovar society. Thus, the civilizing and human rights–promoting potential of the European idea for violence-torn areas, such as Kosovo, remains minimal. Therefore, the present European identity within the Kosovar society continues to be largely economy-driven, whereas larger segments of the Muslim population—which constitutes ninety percent of the overall population—are likely to describe their identity as a culture-bridging, occidental European, with certain oriental traditions.[21] Nevertheless, the participation of Kosovo in the European integration process is an integral element of nearly all political party programs within the Kosovo-Albanian community, and does not at all contradict their culturally bridging identity. In this case, integration occurs as envisaged in the EU's Stabilisation and Association Process, in which Kosovo is integrated in the form of the so-called Tracking Mechanism for Kosovo.[22]

The population in the Serbian enclaves, on the other hand, would more likely favor Kosovo's integration into Europe as part of Serbia's overall integration process. Only as an integral part of Serbia would this option be widely acceptable. Consequently, this potentially integrating and peacebuilding aspect of the European vision continues to be as unacceptable from the Albanian perspective as the Albanian vision of European integration through independence is from the Serb's. Therefore,

an overall vision of Europe is mostly non-existent, or, at least, largely left "empty" as a collective perception for all communities in Kosovo. The ethnicity-based interpretations of this concept weigh too heavily on all sides.

In the light of multiple contingencies generating mutual uncertainty of expectations over the European vision, an ethnicity-based concept of the European vision would pose the problem of further alienating the respective societal factions in Kosovo, in the event that one side or the other asserted their specific ideas and interests. If such a scenario took place, the vision of Europe could actually provide for an increased deterioration of inter-ethnic relations, instead of having an integrative and peacebuilding effect for Kosovo. Such an integrating effect could only be reached by focusing on the impact of a shared interpretation scheme[23] on all sides, by which Europe could be perceived as a common acquis of pluralist democracy and human rights principles; as a society-based culture of civilizing conflict; and as an economic system of mutual benefit and cooperation. As long as contextual uncertainty over the concrete interpretations of the vision of Europe prevails, in the sense of multiple contingencies, starting such an integrating process will hardly be possible.

Findings from Kosovo: Institutional Self-Reflection for Improved peacebuilding

A key element in overcoming this risk, as well as in remedying shortcomings of the international peacebuilding efforts by the UN, OSCE, EU, and NATO in Kosovo, is the concept of institutional self-reflection as a central finding by this paper for international peacebuilding efforts in peacebuilding environments, such as Kosovo. A history of murder, torture, and forceful eviction by state authorities, as well as arbitrary use of force by the police and the judiciary, was evident in the region prior to the international intervention, exemplified by actions of the Milosevic regime. With the deployment of international organizations and the take-over of state authority in Kosovo, systematic human rights violations came to an end. On the other hand, the vacuum of power following the withdrawal of Serbian authorities, and the build-up of an international interim administration, led to another kind of increased conflict complexity. This was marked by the multiplication of actors, and the phenomenon of recursive violence against ethnic minorities in revenge for the previous suffering of the majority population.[24]

A central dilemma of the international peacebuilding presence in Kosovo is exemplified by the paradox of a full international authority in place while new, though milder, forms of human rights violations at the horizontal level (among the citizens without direct state contribution) occurred. The international community expected a reduction in the complexity of conflict relationships with the UN and KFOR takeover of Kosovo. In fact, that complexity increased, and changed in quality. The sheer number of state driven human rights violations decreased in severity, but increased in terms of civil society-based appearance, as neither

international organizations nor the local structures of self-government succeeded in stopping ethnic hatred and revenge, or in promoting a civilized culture of tolerance & peaceful coexistence.

Under international jurisdiction, the UNMIK and KFOR structure was responsible for preventing renewed Kosovo-wide violence as part of its duty to establish public order and security,[25] especially as the PISG lacked full responsibility over key authorities such as the police, the military, and the judiciary. At the same time, all international organizations in Kosovo are broadly protected from prosecution in case of abuse of power or failure to fulfill responsibilities by a comprehensive system of legal immunity.[26] Parallel to that and as seen above, UNMIK holds all areas of state authority (executive, legislative and judicial), while expecting the PISG, in fulfillment of the standards for Kosovo, to take over responsibility in areas of only a partial transfer of power.

In that respect, a stronger self-reflective focus on contradictory elements in their own policy could help UNMIK and KFOR alter these conceptual shortcomings in order to promote a better understanding in civil society for a civilized and tolerant culture of peaceful conflict and horizontal protection of human rights. An essential prerequisite for self-reflection is the ability to observe one's self and others in a more complex and multi-dimensional manner. In that context, the international organizations in Kosovo would be well advised to take into account the differing levels of sense-generating observations on the success or failure of peacebuilding efforts among local social groups, and their respective internal and external attribution.

In the social dimension, UNMIK and KFOR consider themselves merely as external actors, and not as internal contributors to the ongoing conflict scenario in Kosovo. Consequently, they attribute the conflict solely to the two alleged internal conflict parties; Kosovo-Albanians and Kosovo-Serbs, along with affiliated minority groups. With respect to a time dimension, the international community associates the duration of the conflict with its own involvement, which started around the late 1990s and lasting until some time in the very near future, as expressed in the words of the Future Status Talks.

The participation of Kosovo in the European integration process is an integral element of nearly all political party programs within the Kosovo-Albanian community.

In sharp contrast to these social and time-related perceptions of members of the international community, local groups attribute the ongoing conflict to historic narratives starting, for example, with the battle against the Ottomans in 1389, or even in ancient times with the pre-Roman Illyrian settlement in the region.[27] The structuring of opinion-making in this way by the two dominant local groups in Kosovo forces marginalized groups to position themselves clearly between Kosovo-Albanians and Serbs. Any relevant third, fourth, or fifth options continue to be

widely excluded. This phenomenon is illustrated in the ethnic affiliation of the RAE community that often perceives members of the Roma community as pro-Serb and Ashkali and Egyptiani as pro-Albanian. The concept of tolerant multi-ethnicity has lost considerable ground as a result of these kinds of group perceptions, whereas UNMIK has made the mistake of focusing its policy on ethnic categories, instead of trying to overcome them.

The two dominant local groups have also interpreted the significance of recent developments very differently. In Kosovo-Albanian public opinion, the March riots, for example, constituted an almost excusable reaction to the alleged killing of two Albanian teenagers by members of the Serb community. For Serbs, the riots were seen, within the logic of further expulsion from the enclaves, as a form of state-tolerated ethnic cleansing through the majority population. The international community argued that local Kosovo-Albanian politicians, media, and other public opinion-makers carried the responsibility for the violent escalation that occurred during those days.[28] The effect of these perspectives also influenced the UN's review process on the fulfillment of the Kosovo standards prior to a potentially independent status of Kosovo. All quarterly reports of the UN Secretary General have described local efforts towards the fulfillment of the required standards as improving but, as yet, insufficient for completion.[29] This practice, in turn, can easily be perceived as an empty pledge in order to legitimize the non-transferal of central state authority to local structures, or even to arbitrarily prolong an international presence among the local structures of self-government in Kosovo.

Follow-up Recommendations

Based on these key findings, with respect to Kosovo, the following recommendations can be given to international peacebuilders. Peacebuilders should better reflect on their own positions and policies as they contribute to post-war conflict scenarios. There should also be a better review of the wider effects of their presence and peacebuilding efforts, in light of increasingly complex relations and interpretations of conflict dynamics in post-war societies. In that context, tolerating violations of human rights norms that endanger individual persons' lives and property remains unacceptable, and cannot be excused by arguments of prior collective suffering.

Moreover, peacebuilders, such as UNMIK and KFOR, need to accept full responsibility and liability for guaranteeing the right to order and security for as long as they hold full state authority. No one else carries the prime liability for human rights violations other than actors with state authority, especially in a post-war environment under international administration. By claiming that responsibility lies with the bodies of local self-government, and, at the same time, failing to effectively protect or provide remedy for victims of ethnic violence, international organizations should reflect on their own potential complicity in allowing these violations to occur. This is particularly the case if international peacebuilders are both unwilling to take legal responsibility, and unwilling to transfer full authority to local structures that are

made responsible for preventing human rights violations. International actors in such environments also should waive their general immunity and show respect for rule of law principles, such as division of power, equal protection by law, and the right to effective remedy, which is diluted by their own applied policies.

A complete transfer of power to democratically elected structures of local self-government would result in judicially enforceable responsibility, as well as liability of state actors for abuses and omissions of power without general immunity. Local governments, such as the PISG in Kosovo, could then be held accountable, not only for violations of human rights by the police or the judiciary, but also for failing to protect their citizens from each other.

Only in a society where democratically elected representatives are accountable for determining political development, can a civil society-based understanding of respect for human rights, and civilized forms of engaging in social conflict, develop in a multiethnic and tolerant bottom-up process. In that respect, UNMIK and KFOR, but also the OSCE and the EU under the UN umbrella, failed to understand the multi-dimensional complexity of local perceptions, which in essence influences these bottom-up processes. Indeed, they perceived themselves as external actors with a short-term presence, in contrast to the long-term peacebuilding needs of the local society. In doing so, international peacebuilders are hardly able to establish the groundwork for such a self-sustaining peacebuilding process for the future, fostering respect for the rights of others, and the peaceful and sustainable "civilization" of conflict in Kosovo.

Notes

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2 Human Rights Watch, "Failure to Protect: Anti-Minority Violence in Kosovo, March 2004," Human Rights Watch Publications, 16, no. 6, (July 2004). Available at: http://hrw.org/reports/2004/kosovo0704/kosovo0704.pdf (accessed December 1, 2006).
3 Dieter Senghaas, "The Civilization of Conflict," 6.
4 Senghaas, "The Civilization of Conflict," 5.
5 United Nations, International Covenant on Civil and Political Rights of the United Nations, Art. 9 (I) in connection with Art. 12 (III), Art. 22 (II), Art. 25–26, Art. 2 (III), Art. 19 (IIIa) (December 19, 1966, into force March 23, 1976), United Nations Treaty System 999, 171; Art. 9 of the International Covenant on Economic, Social and Cultural Rights of the United Nations (December 19, 1966, into force January 3, 1969), United Nations Treaty System 660, 195; Art. 29 (II) of the Universal Declaration of Human Rights of the United Nations (December 10, 1948), United Nations Document A/RES/217(III), 71. Compare also the European Charter for Local Self-Government of the Council of Europe (October 15, 1985, into force September 1, 1988), European Treaties Series 122.
6 United Nations Mission in Kosovo, On a Constitutional Framework for Provisional Self-Government in Kosovo, UNMIK/REG/2001/9, May 15, 2001, Chapter 8.
7 United Nations Mission in Kosovo, On the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo, UNMIK/REG/2000/47, Sections 2 and 3. Available at: http://www.unmikonline.org/regulations/unmikgazette/02english/E2000regs/RE2000_47.htm (accessed December 3, 2006).
8 In 2001, the author was serving as an OSCE Human Rights Monitor in the municipality of Dragash and experienced this UNMIK policy first-hand.
9 United Nations Mission in Kosovo, Constitutional Framework, UNMIK/REG/2001/9, Chapter 9.1.3 (b). See also Central Election Commission in Kosovo, "Certified Candidates List for the 2004 Kosovo Assembly

Elections." Available at: http://internet.cec-ko.org/CertifiedCandidatesList2004.pdf (accessed December 4, 2006).
[10] The Plemetina camp mainly inhabited by Roma IDPs provides a sad example of this. Myrna Brewer Flood, "Plemetina Camp Approaching Final Days," *Focus Kosovo*, 18, (February 2005): 24–25.
[11] David Buerstedde. "Violence in Kosovo Calls for a Fresh Look at the Mission's Priorities," *OSCE Yearbook* 2004, vol. 10, ed. Institute for Peace Research and Security Policy at the University of Hamburg (Hamburg: Nomos, 2005), 135–145.
[12] Niklas Luhmann, *Soziale Systeme: Grundriß einer allgemeinen Theorie* (Frankfurt: Suhrkamp, 1984), 34–70, 191–242, 328.
[13] Luhmann, *Soziale Systeme*, 593–646.
[14] High-ranking officer of the German military contingent in Kosovo (interview with author, Berlin, Germany, September 25, 2004).
[15] For the immediate response of UNMIK toward the PISG, see Office of the SRSG of UNMIK and Office of the Prime Minister of the PISG, *Kosovo Standards Implementation Plan*, (March 2004): 3. Available at: http://www.unmikonline.org/pub/misc/ksip_eng.pdf (accessed December 4, 2006).
[16] On the behavior of the media and members of the Kosovo assembly, see Harald Schenker, "Violence in Kosovo and the Way Ahead," European Centre for Minority Issues, ECMI Brief 10, (March 2004): 3. Available at: http://www.ecmi.de/download/brief_10.pdf (accessed December 4, 2006).
[17] International Crisis Group, Kosovo: *Towards a Final Status*, ICG Europe Report 161, (24 January 2005): 5. Available at:
http://www.crisisgroup.org/library/documents/europe/balkans/161_kosovo_toward_final_status.pdf (accessed December 6, 2006).
[18] Luhmann refers mainly to the concept of double contingency in a classical distinction between alter and ego, whereas he also acknowledges its multiple options. Luhmann, *Soziale Systeme*, 148–190.
[19] The International Crisis Group, for example, proposed a monitoring mission after a "conditioned independence" comprised of the EU, the OSCE and judges from the European Court for Human Rights under the Council of Europe. International Crisis Group, *Kosovo: Towards a Final Status*, 25. See also the upcoming proposals of UN Special Envoy for the Future Status Process for Kosovo to the UN Security Council. Available soon at: http://www.unosek.org/unosek/en/index.html.
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[21] This coincides also with a strong economic trading link with Turkey being the third most important trading partner for imports next to Ex-Yugoslav countries and the EU. Ministry of Services, *Kosovo in Figures 2004*, 63.
[22] United Nations Mission in Kosovo/Office of European Integration, *Kosovo Action Plan for the Implementation of European Partnership 2006*, 7. Available at: http://www.euinkosovo.org/upload/EPAP%20Eng.pdf (accessed December 4, 2006).
[23] For such an understanding of integration see Luhmann, *Soziale Systeme*, 315.
[24] OSCE Kosovo Verification Mission, *Kosovo/Kosova -As Seen, As Told. An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission October 1998 to June 1999* (Warsaw: OSCE Office for Democratic Institutions and Human Rights 1999); OSCE Mission in Kosovo, *Kosovo/Kosova - As Seen, As Told. A Report on the Human Rights Findings of the OSCE Mission in Kosovo June to October 1999* (Pristina: OSCE Mission in Kosovo 1999).
[25] Compare United Nations Security Council Resolution 1244, United Nations Document S/RES/1244 (June 10, 1999), and the Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (June 9, 1999). Available at: http://www.nato.int/kfor/kfor/documents/mta.htm (accessed December 4, 2006).
[26] United Nations Mission in Kosovo, UNMIK/REG/2000/47.
27 These narratives are well presented on public places in Kosovo, such as the Albanian Skenderbeg memorial in the city center of Pristina or the Serbian memorial tower for the battle in 1389 north of the city. Noel Malcolm, *Kosovo—A Short History* (London/Oxford: Macmillan 1998), 22–92.
[28] For the different perceptions compare United Nations Mission in Kosovo, Local Media Monitoring Reports, following 17 March 2004. Available at:
http://www.unmikonline.org/press/2004/mon/mar/lmm170304.pdf (accessed December 4, 2006).
[29] United Nations, *Reports of the Secretary General of the United Nations on the United Nations Interim Administration Mission in Kosovo*, United Nations Documents S/2004/348, S/2004/613, S/2004/907, S/2004/932, S/2005/88, S/2005/335, S/2005/635, S/2006/45, S/2006/361 and S/2006/707.

Formal Models and Conflict Intervention: Success as a Research Program and Policy Relevance

by David Carment and Dane Rowlands

> *International relations theory can identify and frame important questions, but Pentagon and State Department officials will probably always be more interested in detailed case studies, prepared by area-studies experts. Theorizing about the causes of war might occasionally generate clean, law-like propositions that appeal to policymakers. But more typically, the discipline generates broad patterns that can be applied to particular cases only with a great deal of caution. "We have to recognize that there are limits to the predictive powers of political science," says Mr. [Robert] Art. "That's not an excuse to be sloppy. It's just to say that we don't have unified grand theories of many phenomena, especially not something as complex as war. None of us can predict the consequences of what will happen in the Middle East. Maybe this is why policy makers don't pay much attention to academics."*[1]

This article is an assessment of conflict intervention models and what can be done to improve the possibilities that formal techniques of conflict analysis can have a broader policy-relevant audience and impact. First, we examine the effectiveness of formal intervention modeling as a research program. More specifically, we evaluate the success of formal modeling in meeting the objectives of accumulation, integration, and synthesis. Second, we examine how its strengths and failures as a research program affect the policy relevance of conflict intervention modeling. We conclude with observations about how to strengthen future research in order to enhance contributions to policy applications.

Evaluating Formal Modeling of Intervention as a Research Program

To help us understand and evaluate the progress of formal modeling, we consider its capacity to meet three key objectives within the broader research program of conflict analysis. The first objective is "accumulation," or the ability to build on previous findings and modify or discard arguments for which empirical support is lacking. The second objective is "integration," the drawing on alternative

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methodologies that provide similar findings in a different research context. The third objective is "synthesis," the use of multiple levels of analysis ranging from individuals to large groups or nations.[2] We examine each of these objectives in turn.

Accumulation

Beginning with the objective of accumulation, there is a higher degree of success in this area than in integration and synthesis. We identify convergence with respect to three key areas: rationality, intervention as a dynamic bargaining strategy, and bias. Although it is probably too early to identify any nascent consensus regarding precise modeling approaches to conflict intervention, it does appear that there is consensus on these basic minimal assumptions about what third parties do and the impact they have.

Rationality

For the most part, formal models of conflict rely on assumptions of rationality, even though rational behavior is often constrained by limited information. This focus may be in part derived from the existence of relevant modeling antecedents in other social science disciplines, primarily economics. In addition, formal models must identify general but persuasive behavioral rules to determine the choices of different combatants. Rationality provides such a framework, and hence forms the basis of most formal models.

Fearon provides a restricted, but rigorous, typology of conflict focused exclusively on rational conflict in its strictest, almost hyper-rationalist, sense.[3] On this basis, Fearon asserts that there are only two purely rational explanations of conflict. The first explanation is one of private information about willingness or ability to fight. Since each antagonist has a clear incentive to exaggerate its ability, or willingness, to fight, any information shared in an attempt to avoid conflict will not be considered credible. Consequently, "collectively irrational" assessments of combat willingness and ability may arise in which the sum of the antagonists' own calculated expected gains from fighting exceed that which would be available by sharing between them. Only fighting itself becomes a credible signal, frequently leading to games of escalation.

While Fearon provides only a heuristic discussion of this explanation, bolstered by some empirical examples, others present formal models of this process. Brito and Intriligator present a more complex representation of a similar problem of uncertainty (asymmetric information in this case), where the first stage involves selecting a strategy for arming (aggression or deterrence) and the second stage involves the possible use of a challenge that could lead to war.[4] The result is that when a country does not know its opponent's true propensity for fighting, its optimum strategy may be to react to challenges in a probabilistic manner—sometimes acquiescing and sometimes resisting—in order to deter bluffing by a weaker opponent. As a consequence of this strategy, war may occur in an otherwise rational framework.

The second rationalist explanation of war in Fearon deals with problems of commitment. Two more formal approaches are provided in this case: pre-emptive war with offensive advantages, and preventive war as a commitment problem. The former is the traditional "gunslinger" problem that has simple interpretations in a Prisoner's Dilemma framework. As in Brito and Intriligator, you are either at war or you are not; in gunfighter's parlance, you are either quick or you are dead. There is no temporal point at which one side can back down once all of the information for calculating the final outcome is known. As Schelling and others have noted, this type of model seems very applicable to nuclear confrontation. Stability and prevention in this sort of situation comes from either confidence building and commitment mechanisms, or by eliminating the first mover advantage by the presence of a credible retaliatory strike.

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The second of Fearon's formal presentations of the commitment problem is a more interesting approach utilizing a dynamic multi-period framework. In this model, the most powerful country initiates war in the first period in order to prevent an up-and-coming rival from dictating less preferred outcomes in future periods. This story is a modification of the declining hegemon argument for war; a hegemon in its sunset "lashes out" at rivals in a doomed attempt to maintain its status. Fearon provides the important insight from rationality that conflict emerges because the challenger cannot credibly pre-commit to not challenge the current hegemon in the future. While the outcome of current fighting is unknown to both players, and may lead to the initiator's defeat, Fearon shows that the initiators expected outcome for fighting now can exceed the certain bad outcome to which it would have to acquiesce in the future. The rising challenger faces a classic problem of time-inconsistency; it would like to be able to assuage its rival's fears by pre-committing to a non-aggressive policy in the future, but it has no credible mechanism for such a commitment.

However, we feel that Fearon's typology is incomplete. Garfinkel and Skaperdas, for example, provide a formal model that is arguably distinct from Fearon's models but closely related to the preventive war with commitment problems.[5] Using a two period model, Garfinkel and Skaperdas portray two countries that must divert resources towards their militaries in order to secure their respective share of resources. War becomes Pareto superior for both sides, as victory by either side settles the security dilemma and eliminates, or significantly diminishes, the need for subsequent investment in military preparation. The gain from war now is the reduction in military spending in the future. This approach can be thought of as cashing in on an extreme "peace dividend," even though recent history has taught us that such dividends are often illusory or short-lived.

Other formal models effectively accept conflict as an inherent and unavoidable element of human affairs. These same models implicitly accept that commitment problems prevent more peaceful means of settling distributional disputes and seek instead to explain only the intensity of conflict. Models by Hirshleifer are prime examples of this approach to formal conflict analysis.[6] While Hirshleifer is careful to build on rationalist foundations of utility maximization, there is no explicit consideration of why they are unable to overcome coordination problems to reach Pareto superior outcomes. Associated models of intervention that build on Hirshleifer's approach are able to examine the details of marginal reactions to intervener behavior but cannot easily deal with the corner solutions of complete peace or complete victory.[7]

Dynamic bargaining

There is also consensus that intervention is a kind of dynamic bargaining strategy, where the characteristics of the intervener and its choice of strategy are treated endogenously.[8] Alternative static approaches are unable to explain, for example, the development of crises over time or the temporal aspects of conflict management. Consequently, conflict intervention modeling has tended to go beyond the static approach in order to incorporate essential dynamic processes. One key aspect of this approach is the recognition of the importance of escalation, which Schelling identifies as the coercive side of negotiating a peace plan. Since intervention imposes costs on all parties to a conflict (including the intervener), the threat of escalation and higher cost imposition motivates actors to make concessions at the bargaining table.[9]

Many of the earliest attempts to address the question of escalation between states placed the bargaining process at center stage. Building on Schelling's insights, Harvey and Powell argue that since both actors are engaged in demonstrating their superior ability to tolerate the risks of higher cost imposition, escalation is conceptualized as a game of competitive risk-taking.[10] It also seems to be accepted that the rate at which states escalate (impose costs) can have an important effect on the bargaining process.

One of the primary impediments to bringing formal modeling into policymaking is simply the absence of consensus regarding what should be the primary object of analysis.

Schelling was also the first to note that deterrence situations are akin to non-zero-sum games such as Prisoner's Dilemma or Chicken. Unfortunately, in these games the least best outcomes may arise as a consequence of either the pure Nash equilibrium strategies (Prisoner's Dilemma), a lack of coordination in games where there are multiple Nash equilibria (such as Chicken), or a mixed strategy equilibrium. The more these games are repeated in an uncoordinated setting, the higher the

probability of a disastrous outcome eventually occurring. Schelling's contribution was a reorientation of game theory, introducing elements of commitment and resolve in strategic interaction. This effort made the games more realistic and potentially more policy relevant.

In practice, many models of deterrence and escalation are based on imperfect information.[11] These modeling approaches use extensive form games to illustrate how antagonists probe each other until sufficient information is revealed for a resolution to occur on mutually acceptable terms.[12] In the specific context of intervention models, Carment and Rowlands construct an intervention game with full information in which a dominant combatant and the intervener play sequentially.[13] As in Brams and Kilgour, the payoff matrix ultimately determines the extent to which either side is prepared to escalate in order to acquire benefits at the margin; full information implies that both sides know how far the opponent is prepared to go to achieve or avoid certain outcomes.[14] Powell's recent study on war is certainly helpful in understanding why.[15] He shows that recent formal work on conflict management issues draws very heavily on Rubinstein's seminal analysis of the bargaining problem and the research that flowed from it.[16] More importantly, he suggests that there is now what might be called a standard, or canonical, model of the origins of war that sees its occurrence as a bargaining breakdown.

The Effects of Bias

A third area where there is emerging consensus focuses on the importance of bias and moral hazard, as is Andrew Kydd's assessment of biased mediators.[17] Kydd argues that mediators are often thought to be more effective if they are unbiased or have no preferences over the issue in dispute. His article presents a game theoretic model of mediation drawing on the theory of "cheap talk" that highlights a contrary logic. Conflict arises in bargaining games because of uncertainty about the resolve of the parties. A mediator can reduce the likelihood of conflict by providing information on this score. For a mediator to be effective, the parties must believe that the mediator is telling the truth. This is especially true if the mediator counsels one side to make a concession because the opponent has high resolve and the will to fight.

An unbiased mediator who is simply interested in minimizing the probability of conflict, however, will have a strong incentive to make such statements even if they are not true. Hence, the parties will not find the mediator credible. Only mediators who are effectively "on your side" will be believed if they counsel restraint. The intuition behind Kydd's result is simple and persuasive; the mediator is effectively acting to replace steps in a game of escalation under imperfect information. As in traditional public goods problems in economics, Pareto inefficient solutions emerge because of the difficulties of preference revelation. A biased mediator can credibly solve the problem of incentives to misrepresent in terms of one player.

Using a theory of mediation and peacekeeping, Smith and Stam point to the sources of recent events in the Middle East and reasons for the more general pattern

of failed mediation.[18] In this light, third-party intervention and mediation are explored in the context of a random walk model of warfare and war termination. In considering how third parties can hasten the end of conflict, it is shown that while mediators can use side payments or threats to intervene directly, unlike in Kydd, they cannot help nations resolve informational differences. The model's equilibria demonstrate that conflict continues until beliefs converge sufficiently for both sides to agree that the costs of fighting exceed likely gains in the bargaining process. Thus, at issue is whether the mediator can end such wars by speeding up the convergence via non-violent presentation of information. It is concluded that deductive reasoning allows for the parsing out of those mechanisms through which third parties influence conflict.

Integration

Our second objective of integration is defined as efforts to draw on findings from different methodologies and present them in one package. Within the literature, findings appear to be quite diverse and inconclusive, and there appear to be only a few efforts at integration. Part of the problem in achieving integration is that, in contrast to our example of economics, formal conflict theorists do not yet have a sufficiently developed consensus about how to model conflict (not just intervention) or identify when one approach is more applicable than another. This mirrors the problems that are manifested in the intervention literature in general.

In the absence of a comprehensive set of conflict (and conflict intervention) models, the only alternative is to use formal approaches to intervention that are sufficiently robust to transcend any underlying conflict model. One possible candidate is deterrence theory, the formal analysis of which has wide, though not universal, acceptance. Deterrence theory has sufficient rigor in structure to be generalizable and sufficient flexibility in interpretation to be tailored for specific application. More importantly, deterrence theory has been broadly applied using a variety of different methodologies: induction, deduction, and assumptions of rationality and non-rationality. Rational deterrence has a proven ability to permeate government institutions, having been the foundation of Cold War security policy, and broad empirical content.

While promising, certain caveats need to be acknowledged before embracing rational deterrence as the only or best approach to intervention analysis. First, failures of deterrence have been frequent despite its apparent acceptance within the policy community. Whether these represent teething problems in recalibrating the theory to fit intrastate conflict conditions or more fundamental defects that preclude its universal application is difficult to say. Certainly it is plausible that deterrence would be more difficult when dealing with irregular forces lacking a clear political or military hierarchy, and operating outside the control of a clearly recognizable political structure. Second, it is not apparent that rational deterrence is the most efficient basis for organizing intervention, especially if the "cause" of the war is informational asymmetry. Third, even if it is the most efficient, past practice suggests that

interveners may not have the inclination to apply sufficient effort to make deterrence effective. Finally, while deterrence theory may provide a shortcut to modeling conflict intervention, it still requires an understanding of what motivates the different combatants in a conflict. This brings us back to the initial and fundamental problem regarding the nature of the conflict.

Synthesis

We turn now to our third objective of synthesis: the integration of findings at different levels of analysis. It could be argued that conflict analysis and, more specifically, intervention theory should lend themselves to synthesis, because so much has been written on the topic from a variety of methodological perspectives. However, there appear to be few efforts to take findings from one level of analysis (e.g. the individual or group) and apply them at higher levels of aggregation. An exception to this would be mediation and negotiation research, wherein insights and research on small group interactions—questions of bias and impartiality—lend themselves to questions of third-party effectiveness at the state level.[19]

Of course, synthesis has its limitations. Rationalist explanations assume interveners are capable of making decisions on a conflict according to coherent, well-ordered preferences. Despite the presence of complex coalitions and domestic political economy processes, interveners and belligerents are generally treated as rational actors for analytic convenience. Even if we accept the abstraction of third parties and belligerents as rational unitary actors, we still must satisfactorily specify the objectives of their decision makers.

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Arrow's theorem suggests that although states unified under a multilateral coalition may act as if they are unitary decision makers, they may also act incoherently by not revealing a complete set of transitive preferences.[20] It may be impossible to argue that any collection of persons or states is acting as if they were pursuing an identifiable goal. Bueno de Mesquita has suggested that we cannot truly understand any international behavior or process unless we specify the role of decision makers in the process. The difficulty lies in estimating the values that policymakers assign to particular goals or objectives and their willingness to bear the potential risks and costs of a particular action.

Maoz offers some valuable lessons on synthesis, accumulation, and integration.[21] Maoz first develops a game theoretic model with modified versions of: a) conflict-initiation, b) conflict management, and c) negotiation. These factors are viewed first from the perspective of a single actor, and then from the perspective of both actors. This approach cuts across levels of analysis and draws on findings from disparate research on management and conflict analysis. Maoz uses this model to address three

questions: a) what is the relationship between the preferences of individual decision makers and aggregate outcomes which individual decision makers and groups observed at the international level? b) What is the relationship between choice and consequence in determining and assessing foreign policy outcomes? and c) Is there a link between micro and macro decision making and choices as evolutionary patterns develop over time? Maoz argues that micro and macro decision making behavior cannot be treated as discrete and independent variables if one wants to explain change in outcomes over time. Thus, Maoz sets about attempting to synthesize micro and macro models in order to explain changes over time. According to Maoz, synthesis leads to propositions that are both surprising and theoretically testable. Furthermore, synthesis is capable of explaining situations where "good results" would not be expected.

To recapitulate, one of the primary impediments to bringing formal modeling into policymaking is simply the absence of consensus regarding what should be the primary object of analysis. We interpret this problem as a function of the relative immaturity of the discipline, and not an inherent feature of the methodology. Conflict and conflict management are inherently complex phenomena, and modeling them for both precision and nuance is difficult. For this reason, deriving policy implications from formal models is difficult. This realization carries with it some implications.

First, policy recommendations that flow from formal studies can be inconsistent or contradictory. Inconsistency leaves the policy maker to choose alternative forms of analysis that provide a more consistent perspective. To be fair, some inconsistencies can be traced to differences in the evaluation technique, not flaws in the methodology itself. For example, some studies are concerned with explaining intervention outcomes. Others focus on the relative effectiveness of different types of actors, while still others focus specifically on procedure.[22]

Despite the presence of complex coalitions and domestic political economy processes, interveners and belligerents are generally treated as rational actors for analytic convenience.

Other problems reside within the logic of models themselves. In this vein, Bueno de Mesquita argues that a theory of conflict must be first deduced and must be logically consistent internally. Deduction begins with value-based assumptions about what are the important areas to study. Generally, but not always, this occurs through consensus among researchers working within a common paradigm.[23] This approach is consistent with "sophisticated methodological falsification" used to test propositions of deductively derived theories. The "truth" of a theory resides in whether or not its conclusions can be arrived at without faulty logic, and whether the properties of the model are clear. If a deduction follows logically from a set of assumptions, then that deduction is necessarily true under the precise conditions

assumed in the theory. The truthfulness of a deduction is not an empirical investigation. Falsification requires more than observation; it requires a clear analytical critique of the logic and concepts used in the model.

Second, there is a need to separate out *explaining* the process of strategic interactions from *understanding* the decisions that policy makers face at any specific point. Modeling can contribute to understanding the processes and choices. However, the modeling and explanatory dimensions must be refined before developing an approach that would help guide policymakers on specific choices in a given context.

Third, there is a need for accessibility. In our review of the formal modeling literature, there are few efforts to render formal modeling accessible to policy makers. It should be noted that our assessment of formal approaches is not exhaustive, but indicative.

Implications for Policy

> *There are two major reasons why policymakers pay greater attention to case studies than empirical models. First, they are generally older, having completed their primary education well before the behavioral revolution, and the government doesn't provide much incentive to stay current in your field. Case studies are generally easy to understand and appreciate regardless of your educational level or methodological training. Second, the tension between qualitative and quantitative analysis in the government is, in times and places, much more acrimonious than it is in many political science departments, but this applies more at the level of the government analyst than the policymaker…."I don't think there's anything unique about international behavior that makes it less predictable than, say, economic behavior," says Philip A. Schrodt, a professor of political science at the University of Kansas. "If anything, an economic system is far more complicated than an international system. And yet we just constantly engage in economic forecasting.*[24]

Conflict analysis and formal theories of intervention that expect to be policy relevant must do three things. First, they must specify which elements of intervention are the most effective in assisting policy makers in designing more effective policies. In order for a theory to be politically useful it must have a solid body of empirical evidence to back its propositions. We have argued that efforts to provide empirical support for formal models is still in the nascent stages, but improving.

Second, intervention theory can aid policy by helping decision makers analyze problems in a manner that is superior than without it. In this case, intervention theory serves as a set of analytical tools; policy relevance stems directly from observing the behavior of interveners and belligerents each with its own logic and behavioral properties. Additionally, identifying systematic deviations from optimal decision making and the identification of certain correcting principles adds to our toolbox.

In each of the aforemetioned areas there has been some progress. The connection between formal modeling and policy is not a simple one. It is useful to

consider analogous situations where models have come to underpin policy analysis and formulation. Good examples come from economics, where policy discussions are routinely informed by the analysis derived from formal models. Four observations from economics may prove useful for conflict resolution modeling and policymaking. First, the degree of consensus within the discipline regarding the basic models and their assumptions is overwhelming. Second, the models that tend to underpin most policy discussions have generally been tested and refined through empirical investigation. Hence, the influence of formal modeling is often indirect and filtered through a more complete "scientific" research programme that includes some degree of empirical verification. While differences of opinion are common in economics, it is often relatively easy to isolate the points of contention and identify empirical approaches to settling the dispute.

Natural suspicion of novel and unconfirmed theories is reinforced by the fact that modeling economics and modeling political behavior is inherently different.

Third, the substantial consensus in the discipline is perpetuated by the essentially uniform education of economists. Fourth and finally, most government economic policymakers who consume formal analyses are themselves trained in economics. Even if they cannot produce the formal analyses, economic policymakers will possess sufficient familiarity with the assumptions, techniques, concepts, terminology, and disciplinary biases to make the models accessible and more compelling. While this portrait is no doubt idealized, it is arguable that all of these elements are rarely present when it comes to formal models of conflict analysis. Each of these points are examined in turn.

First, formal modeling of conflict intervention cannot easily be translated into policy terms because of the lack of a developed consensus on conflict causes. If there was stronger agreement on how to model conflict, or how to model intervention, policymakers would have greater confidence in the consequent policy recommendations. Natural suspicion of novel and unconfirmed theories is reinforced by the fact that modeling economics and modeling political behavior is inherently different. In contrast to Glenn's quote we might suspect that fewer actors and a simpler, less regulated, system will lead to more challenging and less predictable behavior. While the law of large numbers may allow us to ignore aberrant individual behavior in a disaggregated market context, no such convenience exists in international relations. Fewer actors encourages strategic behavior where actions can be changed abruptly and dramatically in response to the choices of others. Markets are typically constrained by well-specified and enforced rules—something the international system decidedly is not.

The absence of a clear consensus about the theories and models of conflict and intervention translates into the absence of an empirical consensus. Indeed, the two are clearly related in a scientific sense; empirical investigation should be weeding out those models that fail the test of evidence. While considerable progress has been

made on the empirical examination of both conflict and intervention, any consensus remains elusive even at the most fundamental levels of analysis.

Second, the research endeavour has not proceeded to the stage of refinement and qualification. Consequently, the margin of error for any associated policy suggestion is daunting. Any error has the potential implications for thousands of lives and millions of dollars, generating understandable reluctance to rely on any single formal model that may produce counter-intuitive results. In simplest terms, formal models of intervention largely remain untried, untested, and potentially not true.

The third barrier is simply one of the larger challenges for formal modeling arising from the lack of consensus. In economics, university courses are largely standardized and formal modeling is pervasive. Ironically, economics seems to suffer from the opposite problem as the study of conflict; common sense discursive analysis is viewed with extreme scepticism or dismissed entirely in the absence of corroborating formal models. Furthermore, the battle between competing ideas, methodologies, and normative standards is far more intense in international relations than in economics. As a result, there are conflicting schools of thought that are unwilling to acknowledge the legitimacy of their competitors. This absence of convergence is apparent in course structures, doctoral thesis expectations, and even journal refereeing. As long as there are large sections of the academic establishment that are incapable of understanding or producing formal models with mathematical representations, then there will be tremendous difficulty in forging a consensus on how they might be incorporated into policymaking.

Finally, the policymaking community itself will generate the same sort of resistance to applying formal models of intervention. Even when policymakers and modelers are drawn from the same discipline, usually the models have been tested empirically and translated into more accessible language prior to their emergence in any policy discussions. Disciplinary uniformity and complementarity would undoubtedly expedite this process in a number of ways. Firstly, policy makers can engage the theory and theory-builders directly. This aids in directing the terms of how the model may need to be modified, refined, or repackaged in order to be useful in policymaking. Secondly, the extent of these modifications may be minimized by the presence of a common analytical and terminological framework for discussion. Thirdly, the affinity of policymakers to modeling will be stronger if they have formal training that is in common with the modeler. Finally, there will be a natural bureaucratic reluctance to adopt novel techniques. Adoption may lead to failure, and there is a good chance that an external evaluator will disagree with the theory underlying the technique. It is harder to blame a single bureaucrat for a policy failure if he or she is following the prescriptions of a model with widespread currency.

Further Research

A predictive capacity, based on dynamic theories of intervention and careful empirical work, can provide policy-relevant forewarning to interveners. This paper

highlights some of the theoretical and empirical challenges that emerge in identifying the consequences of intervention strategies. Addressing such challenges is crucial as current policy initiatives continue to race ahead of clear and precise strategic analysis.

As a next step, we suggest greater incorporation of findings from different methodologies and greater efforts at synthesis. Current models need to be placed within a typology in order to identify areas of distinction and similarity. Fearon and Powell begin this process. Once a typology has been created, classes of models can be developed, refined in a cumulative fashion, and gaps can be identified by theoretical innovation and the presence of empirical anomalies.

Current and future models then need to be subjected to more systematic empirical testing, starting with case studies. For readers, especially policymakers, who may be unfamiliar with formal modeling, a case study can provide an accessible and practical way of acquiring the insights of a model and its insights into causality. Simultaneously, irregularities between a model and a case study, while insufficient to refute propositions, can identify potential directions for model modification or refinement. By the same token, consistency between the model and the cases does not provide irrefutable support for the model; for this, we would need the confidence of larger sample studies. Druckman demonstrates how case study and large N study approaches can be synthesized.[25]

The work of Maoz illustrates another useful direction for research in terms of addressing accumulation, integration and synthesis. By explicitly marrying micro and macro levels of analysis, a model can provide richness without sacrificing generality and vice versa.

The question of uncertainty points to the last research direction that needs to be addressed. Information plays an important role in game theory and in real life. Analyzing models for robustness, particularly with respect to variant assumptions on information, is critical for good policymaking. The recent furor over intelligence failures in both the 9/11 attacks and the 2003 invasion of Iraq demonstrates the centrality of information sets in determining behavior. Testing inferences for sensitivity to information both at the formal and empirical levels is critical. Testing also permits decision makers to examine risks with a better sense of probabilities and boosts confidence in the models that are underpinning policy choices. Ultimately, policymakers will adopt formal models when there is confidence in them. This will not occur until the academic community has that same requisite confidence that is born from sufficient accumulation, integration, and synthesis. These are the hallmarks of good scientific research.

Notes

[1] Portions of this paper were presented by the authors at a conference on Formal Models and Negotiation at the International Institute for Applied Systems Analysis, June 2004, Laxenberg, Austria, and will appear in the forthcoming: David Carment and Dane Rowlands, "Formal Models of Intervention," in *Diplomacy Games: Formal Models of, on, and for International Negotiation,* ed. Rudolf Avenhaus and I. William Zartman (London: IIASA); David Glenn, "Calculus of the Battlefield: Do game theory and number crunching—the New Math of international relations—shed light on the conflict with Iraq?" *The Chronicle*, November 8, 2002. Available at: http://chronicle.com/free/v49/i11/11a01401.htm (accessed January 11, 2007).

[2] The concept of integration is more thoroughly covered in Daniel Druckman, "Toward Integrated Knowledge" in *Conflict: From Analysis to Intervention*, ed. Sandra Cheldelin, Daniel Druckman, and Larissa Fast (London: Continuum, 2003); Michael Brecher, *Crises in World Politics: Theory and Evidence* (London: Pergamon, 1993).
3 James Fearon, "Rationalist explanations for war," International Organization 49, no. 3 (1995): 379–414.
[4] Dagobert Brito and Michael Intriligator, "Conflict, War, and Redistribution," *American Political Science Review* 79, no. 4 (1985): 943–957.
[5] Michelle Garfinkel and Stergios Skaperdas, "Conflict without Misperceptions or Incomplete Information: How the Future Matters," *Journal of Conflict Resolution* 44, no. 6 (2000): 793–807.
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[7] Dane Rowlands and David Carment, "Moral Hazard and Conflict Intervention," in *The Political Economy of War and Peace*, ed. Murray Wolfson, (Boston, MA: Kluwer Academic Press, 1998):; Dane Rowlands and David Carment, "Force and Bias: Towards a Predictive Model of effective Third-Party Intervention," *Defence and Peace Economics* 17, no. 5 (2006): 435–456.
[8] Static decision-making assumes either that behavior does not change because it is in equilibrium or that the decision process can be collapsed into one grand decision. For example, the Bueno De Mesquita expected utility theory in *The War Trap* is static in the sense that the unitary rational actor nations-state does not consider the possible responses to each possible move it makes.
[9] Thomas C. Schelling, *Strategy of Conflict*. (Cambridge, MA: Harvard University Press, 1960).
[10] Frank Harvey, "Deterrence Failure and Ethnic Conflict: The Case of Bosnia," in *Peace in the Midst of Wars: Preventing and Managing International Ethnic Conflicts*, ed. David Carment and Patrick James (Columbia, SC: University of South Carolina Press, 1998). Robert Powell, "Nuclear Deterrence and the Strategy of Limited Retaliation," *American Political Science Review* 83, no. 2 (1989): 503–519.
[11] Frank Zagare, "NATO, Rational Escalation and Flexible Response," *Journal of Peace Research* 29, no. 4 (1992): 435–454; Michael Kraig, "Nuclear Deterrence in the Developing World: A Game Theoretic Treatment," *Journal of Peace Research* 36, no. 2 (1999): 141–167; Lisa Carlson, "A Theory of Escalation and International Conflict," *Journal of Conflict Resolution* 39, no. 3 (1995): 511–534.
[12] Michael Kraig, "Nuclear Deterrence in the Developing World: A Game Theoretic Treatment," *Journal of Peace Research* 36, no.2 (1999): 141–167; Lisa Carlson, "A Theory of Escalation and International Conflict," *Journal of Conflict Resolution* 39, no.3 (1995): 511–534.
[13] David Carment and Dane Rowlands, "Three's Company: Evaluating Third Party Intervention in Intrastate Conflict," *Journal of Conflict Resolution* 42, no. 5 (1998): 572–599.
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[22] For a discussion of the range of research see. Alvin Saperstein, "The Prediction of Unpredictability", in *Chaos Theory in the Social Sciences*, eds. Douglas Kiel and Euel Elliot (Ann Arbor, MI: University of Michigan Press, 1996).
23 Bruce Bueno de Mesquita, "An Expected Utility Theory of International Conflict," *American Political Science Review* 74 (1980): 917–931; Bruce Bueno de Mesquita "The War Trap Revisited: A Revised Expected Utilities Model," *American Political Science Review* 79, no. 1 (1985): 156–173.
24 David Glenn, "Calculus of the Battlefield: Do game theory and number crunching—the New Math of international relations—shed light on the conflict with Iraq?," *The Chronicle*, November 8, 2002. Available at: http://chronicle.com/free/v49/i11/11a01401.htm (accessed January 11, 2007).
[25] Daniel Druckman, "Four Cases of Conflict Management: Lessons Learned," in *Perspectives on Negotiation: Four Case Studies and Interpretations*, ed. Diane Bendahmane and John McDonald (Washington, DC: Foreign Service Institute, 1986). Four case-based research approaches to analysis of data on international negotiation are discussed: the single, analytical case study, the temporal or time-series case study, the focused comparison of a small number of similar cases, and aggregate comparisons of a large number of different cases.

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A Case Study in Declining American Hegemony: Flawed Policy Concerning the ICC

by Eric K. Leonard

On April 11, 2002, a group of state representatives, along with a coalition of non-governmental organizations, International Criminal Court supporters, and media personnel, gathered at the United Nations headquarters in New York. The purpose of this gathering was to celebrate the establishment of a permanent International Criminal Court (ICC). At this event, the Rome Statute for an International Criminal Court received its 60th ratification, establishing it as a functioning organization.[1] For many states, NGOs, and other human rights advocates, this marked a joyous moment in the struggle to uphold international humanitarian law and the principles of global justice. However, as a large portion of the international community celebrated, the United States began action to "unsign" the Rome Statute.[2] In the words of US Ambassador for War Crimes Issues, Pierre-Richard Prosper:

> *Today, at the request of the President, our mission up in the United Nations deposited a note with the UN Secretary-General as the depository of the Rome Treaty for the International Criminal Court stating that the United States does not intend to become a party to the ICC treaty and accordingly has no legal obligation as a result of our signature on December 31st, 2000. The president decided that this step was appropriate, and an important one in order make our position clear—our position that we will not support the ICC, believing that the document is flawed in many regards.*[3]

Since that time, the Bush administration's opposition to the Court continues.[4] In the 2004 presidential debates, President Bush twice referred to the ICC. In both instances, the President reiterated his opposition to the Court due to the fact that it can prosecute American citizens, troops, and diplomats. His administration also referenced the Court in its 2002 National Security Strategy:

> *We will take actions necessary to ensure that our efforts to meet our global security commitments and protect Americans are not impaired by the potential for investigations, inquiry, or prosecution by the International Criminal Court (ICC), whose jurisdiction does not extend to Americans and which we do not accept.*[5]

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The primary question that this article engages is whether the Bush administration's opposition to the Rome Statute is in the national interest of the United States. More broadly speaking, does the Bush administration's opposition to the ICC serve as an example of how a hegemon, founded upon a particular ideology, may undermine its own hegemonic status? The international community established the ICC to prosecute individuals accused of committing the most heinous international crimes—genocide, war crimes, and crimes against humanity.[6] Given the fact that traditional American allies and every member state of the European Union, with the exception of the Czech Republic, support this Court, is active opposition to the ICC's existence a prudent position, or will such a position simply ostracize the United States from the rest of the international community and undermine its ability to maintain America's hegemonic position?

In order to address these questions, this article begins with an examination of the concept of hegemony, along with its contested definition. It then proceeds to an analysis of American hegemony, including the basis for its continued preeminence. This article then returns to the ICC and examines this institution within the framework of the hegemonic discourse. Finally, it provides policy recommendations concerning the United States' position towards the ICC and draws upon this case as a starting point for policy recommendations concerning other liberal international institutions.

Understanding Hegemony

Hegemony is a concept that describes a global system of dominance and control. Its presence results in the initiation of a system that parallels the interests of the hegemonic actor(s). However, within the field of world politics, the notion of whom or what can attain, and hold, the status of a hegemon is contested. There exist several forms of hegemony, each with its own understanding of who initiates and upholds a hegemonically controlled system.

The more traditional understanding of hegemony cites nation-states as the sole possessors of hegemonic power. Stephen Gill describes this form of hegemony as follows: "International hegemony, as normally defined in the literature, has been associated with the dominance and leadership of a powerful state within the system of international relations, achieving power over other states."[7] The basis for this traditional form of hegemony is the notion of dominance and coercion. It engages the notion of military or economic dominance that the hegemonic power employs in an attempt to impose coerced loyalty from the rest of the global community, instead of simply resonating ideologically with the majority of actors. Currently, a large portion of hegemonic literature discusses the United States from this traditional perspective, while very little literature allows for a more ideational interpretation.[8]

Despite the historically accepted nature of this definition, international relations (IR) scholars have sought alternative, more inclusive definitions of this concept.

Robert Cox, building on the work of Italian scholar Antonio Gramsci, provides one of the most prominent of these alternative understandings. According to Cox:

> *Hegemony is a structure of values and understandings about the nature of order that permeates a whole system of states and non-state entities. In a hegemonic order these values and understandings are relatively stable and unquestioned. Such a structure of meanings is underpinned by a structure of power, in which, most probably, one state is dominant, but that state's dominance is not sufficient to create hegemony. Hegemony derives from the dominant social strata of the dominant states in so far as these ways of doing and thinking have acquired the acquiescence of the dominant social strata of other states.*[9]

The Gramscian form of hegemony denotes several key factors that differentiate it from the traditional definition. First, this definition engages hegemony as a consensual, rather than a coercive, form of rule. Building on Machiavelli's classic man/centaur analogy, Gramsci discusses power as occurring in two forms:

> *The supremacy of a social group manifests itself in two ways, as "domination" and as "intellectual and moral leadership." A social group dominates antagonistic groups, which it tends to "liquidate," or to subjugate perhaps even by armed force; it leads kindred and allied groups. A social group can, and indeed must, already exercise "leadership" before winning governmental power […] it subsequently becomes dominant when it exercises power, even if it holds it firmly in its grasp, it must continue to "lead" as well.*[10]

As Gramsci described, one form of power exists in the act of dominance and direct physical coercion. Although Gramsci acknowledges this form of authority, he also recognizes its limitations. Thus, Gramsci does not focus on this method of control in his definition of hegemony. Instead, Gramsci defines hegemony as "intellectual and moral leadership." In other words, Gramscian hegemony is obtained and perpetuated by popular consent, not coercion. If the actor relies on the latter, Gramsci believes he/she is showing signs of weakness, not strength. The implications of this definition for policymakers is clear—if a hegemon wishes to maintain the current social order, they must use consensus not repression.[11]

Second, this definition is much more inclusive than the traditional definition in that it embodies both state and non-state actors (in the form of social forces). Gramsci details an understanding of hegemony that expands beyond the traditional boundaries of authority and encompasses the social forces that are at work in the political system. These social forces, defined as civil society, include: social institutions such as religion, educational institutions, family, institutions involved in production and finance, classes, intellectuals, and others.[12] Thus, a Gramscian understanding of hegemony acknowledges both the influence and importance of state and society, and attempts to analyze the relationship that exists between them.

Finally, Gramscian hegemony describes the outcome of the dialectical interaction of state and society as a historical bloc.[13] According to Gramsci, a historical bloc constitutes the alliance between political, economic, and social forces/institutions that form a complex, yet politically stable form, of rule. A historical bloc encompasses an intersubjectively accepted hegemonic order amongst

the divergent forms of actors that then creates an amalgamation of economic, political, social, and ideational forces. The result of such a bloc is usually the establishment of, in Marxist terminology, a superstructure in the form of identifiable institutions, which uphold the hegemonic doctrine of the current historical bloc.

One way to understand this conception of an historical bloc, and its relation to hegemony, is to look at Robert Cox's notion of world order. According to Cox, world order is predicated on the interaction amongst three social forces: ideas, material capabilities, and institutions.[14] The coordination of these forces works in a similar fashion to the previously discussed historical bloc. Thus, the coercive power of a dominant state, via material capabilities, is not sufficient for maintaining hegemony. The dominant power also needs the consent of other actors in the system around the ideational foundations of the historical bloc. Along with the consensual side of the triangle, Cox's understanding of world order emphasizes the importance of institutions that uphold and maintain the historical bloc. It is important to note that Cox does not consider any of these factors as the causal factor for hegemony. All three of these factors work in a co-constitutive manner, thus necessitating the presence of all three within an historical bloc.

In terms of global politics, many scholars view the widespread acceptance of classic liberal ideology as an example of an emerging historical bloc.[15] This dominant ideology, from a Gramscian perspective, is not simply the result of American dominance or traditional hegemony. The acceptance of these ideals, on a global scale, is the result of both state (material capabilities) and social forces (ideas). As this article will show, the ICC is the embodiment of the political freedoms found in classical liberal ideology, thus serving as a reflection of the historical bloc (the institution). Its approval by the global community is the result of an intersubjectively accepted ideal of justice that employs liberal ideology as its philosophical foundation. However, in order to assess the place of the ICC and/or other international institutions in this historical bloc, it is imperative that we first understand the characteristics of the liberal hegemonic order as found in classical liberal ideology.

Liberal Hegemony

The foundation of the current hegemonic order resides in the United States, through its current material position in the global community. However, the true source of this order is the ideational understanding of politics that focuses on a classical conception of liberal ideology. Following the logic of a Gramscian understanding of hegemony, one can see that this liberal ideational component of hegemony is what perpetuates and sustains the American position of primacy. The question that remains is whether the United States, as exemplified in its policy toward the ICC, is working to maintain the consensual side of hegemony, or simply promoting a more coercive order. Moreover, if the latter is the current reality, what does this mean for the future of American hegemony?

Philosophical Foundations

The ideology of liberalism is an often misunderstood and misinterpreted ideology. Most often, liberalism is regarded as an economic ideology that focuses on free market capitalism. Although this interpretation is not wrong, it is incomplete. The classic liberal philosophers' primary focus was on a new understanding of political and civil rights that forms the basis for a good society. The main crux of this ideology is that the individual and his/her rights are a priority.[16] This is counter to the classical philosophical understandings of political society that usually assert the primacy of the community and describe the individual as an organic "part" of the whole. Liberal ideology takes this classical notion of community and stands it on its head by describing the good society as one in which the individual is the central focus and the protection of his or her rights and liberties is the aim of the political structure.

If one adheres to the Gramscian conception of hegemony, then the cooperative nature of liberal institutionalism appears to be the most conducive form of authority when trying to solidify one's interests.

Along with this notion of individual primacy, liberalism embodies at least four other characteristics. First, liberal ideology asserts that reason and rationality are a critical component of human nature. In fact, it is reason that allows the individual to liberate themselves from the bonds of traditional, authoritarian, and rigid, hierarchically defined political structures, and move towards the construction of a free, individual-oriented liberal society.

In conjunction with the above, reason also provides each individual with freedom—freedom to pursue one's individual wants and desires. The liberal tradition defines this notion of freedom as liberty. Liberty is the ability to pursue one's self-defined goals without undue interference from outside sources. Liberal philosophy articulates this notion of liberty/freedom in the premise of individual rights or natural rights. These rights include life, liberty, and estate, or to use a more Jeffersonian understanding: life, liberty and the pursuit of happiness. According to classical liberal ideology, the only limitation on one's liberty or rights is in instances when the pursuit of one's own rights interferes with that of another.

It is this conflictual situation that gives rise to the third characteristic of liberal ideology—the need for limited government. Liberalists view government as a necessary evil whose primary purpose is to eradicate the conflict that arises between free individuals. Thus, government serves to counter the anarchical situation found in the state of nature, thus becoming a necessary component in the establishment of a stable and free liberal society. However, liberal tradition also emphasizes that the government's role remains minimal so as not to impinge on the rights of its citizens. Individuals allow for the establishment of a constitutional state so that it can protect their rights and freedoms, but does not hinder their pursuit of happiness. Thus, the

rule of law, not the independent power of the government, serves as the societal foundation of any liberal society.

Finally, liberalism asserts the equality of individuals, not in a substantive way, but in a fundamental one. In other words, liberalism does not pursue a socially, politically, and economically egalitarian society, as in a more Marxist socialist state. The liberal tradition believes in a society where freedom and liberty are equal, and where the rule of law remains the most appropriate method of achieving this equality.

Liberalism in the United States

Domestically, it is evident that classical liberal ideology played a fundamental role in the development of the United States. One only has to look at the foundational pillars of American political life (the Declaration of Independence, the Constitution, and the Bill of Rights) to recognize the Lockean, liberal bend to American society. However, the question remains as to how, if at all, this liberal ideology affects the development of US foreign policy. Although it is clear that the United States does not always predicate its foreign policy design on the principles of liberalism, it is also clear that during the twentieth century and into the twenty-first, there exists a strong lineage of foreign policy rhetoric and decision-making that focuses on the expansion of these liberal ideals.[17] Whether reality reflects the rhetoric is another question that I will return to later.

In dissecting the Rome Statute and its relationship to the liberal-legalist perspective, it is clear that the ICC embraces many of the liberties and freedoms of the American legal system.

The characteristics of what G. John Ikenberry has referred to as the "American liberal grand strategy" are best captured by the concept of liberal internationalism.[18] Liberal internationalism involves the active promotion of American liberal ideals throughout the global community, in an attempt to create a community of liberal democratic states. Throughout the twentieth, and into the twenty-first century, this policy of liberal internationalism has an undeniable empirical basis in American foreign policy.[19] A sampling of Presidential speeches makes clear that almost every modern administration invokes the tradition of liberal internationalism in describing its foreign policy strategy. However, although Presidents from Woodrow Wilson to George W. Bush espoused the need for a liberal democratic order, the means by which they hope to achieve this liberal order differ significantly. Some, like Wilson, expressed the need for a liberal institutionalist foreign policy. This policy, often wrongly equated with liberal internationalism, extols the virtue of multilateral international institutions as the primary avenue for pursuing liberal order.[20] Others, like George W. Bush, believe in achieving a liberal order by whatever means necessary—institutional or not. The means of achievement in the latter policy is via

unilateralism and the notion that American interests shall determine how the United States engages the global community.

A Gramscian understanding of power provides a plausible framework for this debate over means. If one adheres to the Gramscian conception of hegemony, then the cooperative nature of liberal institutionalism appears to be the most conducive form of authority when trying to solidify one's interests. On the other hand, if one initiates a more unilateralist policy agenda, then one is simply imposing their views on the international community in a coercive manner. I will return to this discussion of means when analyzing US foreign policy concerning the ICC.

Liberalism and the ICC

With our understanding of liberal ideology complete, let us now turn to an examination of the details and infrastructure of the International Criminal Court. The purpose of this discussion is to decipher whether the structure and rules of the ICC embody the principles of liberalism, the American Creed, and as a result, the underlying historical purpose of American foreign policy. Such an analysis will provide readers with an empirical example of a current liberal institution, and American behavior towards it. In order to achieve such a goal, this article will assess the liberal nature of the ICC by employing a liberal-legalist model.

A liberal-legalist model argues for a system of government based on a certain set of core values: individual rights, equality before the law, and accountability.[21] In general, the liberal-legalist point of view espouses all of the virtues of a liberal world order. Therefore, if the ICC embraces the principles of a liberal-legalist model, then one can deduce that it also embraces and justifies, via its institutional existence, the liberal historical bloc. As a result, this empirical example will exemplify the position of US power and the future of its ability to lead this hegemonic order.

In dissecting the Rome Statute and its relationship to the liberal-legalist perspective, it is clear that the ICC embraces many of the liberties and freedoms of the American legal system. In regards to the individual rights of the accused, the Rome Statute retains a standard of protection that is equal to that of the American liberal judicial system. It prohibits self-incrimination, provides for free legal counsel, upholds the doctrine of innocent until proven guilty, allows for cross-examination of witnesses, and prevents the use of coercion, duress or threat of duress, torture, or any other form of cruel, inhumane, or degrading treatment or punishment.[22] In many ways, the Rome Statute parallels the American Bill of Rights—providing accused individuals the same set of rights accorded to any American citizen in their domestic legal system.[23]

The ICC also embraces the liberal tradition by predicating its notion of justice on established principles of international law. The authors of the Rome Statute did not create new definitions for the ICC's prosecutorial offenses. Instead, the leadership at the conference, along with the attending delegates, were very careful to base all of their definitions on established, accepted international legal doctrine. For instance, the conference delegates extracted the definition of genocide directly from

the Genocide Convention; the Geneva Conventions form the basis for the ICC's definition of war crimes; and the Hague Conventions, along with the Geneva Conventions, act as the foundation for the Court's definition of crimes against humanity. In conjunction with these codified definitions, the ICC also predicates its understanding of justice on the work of previous international tribunals. These tribunals include the International Military Tribunal at Nuremburg (IMT), the International Military Tribunal for the Far East (IMTFE), the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR).

Finally, the ICC adheres to a democratic form of elections when appointing both the prosecutor and the sitting judges. According to the Rome Statute, the necessary qualifications for election as an ICC prosecutor and/or a judge are very demanding. The member states are responsible for nominating the candidates for prosecutor and justices. Upon nomination, these candidates must display experience and competency not only in the field of international law, but also in the area of humanitarian law.[24] Thus, the international community must recognize every nominated prosecutor and judge as an established and acknowledged expert within this issue-area. Once the Court receives nominations for these positions and ICC officials verify their credentials, member states vote (in a democratic fashion) for the open positions. A prospective judge must receive a two-thirds majority of the state parties present and voting, while the nominee for prosecutor must receive an absolute majority of the member states.[25] The Rome Statute also mandates that no two judges may claim the same nationality, and that the state parties shall consider geographic and gender equity in the nomination and election process. Finally, the Rome Statute instructs the judges and the prosecutor that their primary interest is the welfare of the Court. All other forms of identity are to remain subservient to the interests of international justice and the principles of the ICC.

Upon reading the Rome Statute, it becomes clear that this document, and its resulting institution, represents many of the core values inherent in a liberal democratic order, both in regards to the civilian population and the military personnel.[26] If one considers the ICC, with its liberal agenda, within the framework of a Coxian understanding of world order, it is empirically defensible to view the Court as the institutionalization of the liberal hegemonic order. The question that this article must now address is why the hegemonic state, and, in many ways, the primary author of the liberal hegemonic order, refuses to support the institutionalization of its ideational hegemony?

Assessing US Foreign Policy

As shown above, the ICC clearly embodies the basic principles of the liberal tradition and the American Creed. As a result of this conclusion, two questions arise: (1) Why does the United States feel it is imperative that it strive to undermine the work of the Court? (2) What does this mean for the future of American hegemony? The remainder of this article addresses these two questions and concludes with

policy recommendations concerning the ICC and the US relationship with other liberal institutions.

United States Opposition

In regards to the first question, official US opposition to the ICC centers around four broad concerns. The primary concern of US officials is that the Rome Statute allows for the prosecution of individuals from non-party states.[27] According to the Rome Statute, the Court's jurisdiction extends to: (1) actions taken by citizens of party states; (2) actions that take place on the soil of party states, irrespective of the defendant's nationality; or (3) actions taken on board a vessel registered within a party state.[28] This extensive form of jurisdiction allows the ICC prosecutor to pursue indictments of citizens whose national state is not party to the Rome Statute.

Although the US description of ICC jurisdiction is factually accurate, it fails to recognize the similarity between the ICC's jurisdiction and the current system of international justice, which the US supports. Currently, if a country accuses a US soldier of perpetrating a crime against humanity, the US military system, in almost all cases, serves as the forum for prosecution. Under the principle of complementarity, the ICC allows for the same procedure.[29] If and only if the democratically elected panel of ICC judges deems the military trial to be biased, or otherwise unwilling or unable to produce an impartial hearing, can the ICC proceed with its own prosecution procedures. In short, the principle of complementarity assures the global community that any prosecution of the accused occurs in their native state first. Thus, in the case of the United States, the ICC can only act if the United States domestic judicial system, including the Uniform Code of Military Justice (UCMJ), fails to prosecute in an acceptable manner.[30]

If one considers the ICC, with its liberal agenda, within the framework of a Coxian understanding of world order, it is empirically defensible to view the Court as the institutionalization of the liberal hegemonic order.

The other prosecutorial scenario that exists under current international legal precedent is one in which an American service member or citizen stands trial in the country in which the crime was committed. In this scenario, the United States has no recourse to the judicial proceedings and the prosecutorial country holds the accused accountable to their specific rule of law. This form of law may, or may not, coincide with the US system of law but, unlike the rule of law embodied in the Rome Statute, the method of foreign prosecution remains unpredictable. For example, if the Nigerian government accuses an American service member or citizen of a crime, that individual, in most instances, will stand trial in Nigeria, not in the United States. The ICC, because of the complementarity principle and the ratification process, allows the accused to return to their native country and stand trial before their own

domestic judicial system. Such a system would seem more consoling to those states, such as the US, that are concerned about politically motivated prosecutions by unfriendly governments.

Accompanying their concern over jurisdiction, US officials are also concerned that the ICC is prone to become more of an instrument of political motivation than a source of global justice. This argument centers on the power of the ICC prosecutor to initiate investigations proprio motu (on his/her own initiative), and the ability of other state parties to initiate investigations.[31] US officials are concerned that such broad powers of prosecutorial initiation will create an environment in which American service members, government officials, and/or citizens may become the target of politically motivated charges. Instead of pursuing criminals accused of violating the core crimes of humanitarian law, the US contends that the ICC will become a forum for attacking American foreign policy by accusing and prosecuting American military personnel, officials, or possibly even citizens. However, it is clear that the ICC's principle of complementarity serves as an institutional safety nets against the occurrence of such illegitimate prosecutions.[32]

Although the US description of ICC jurisdiction is factually accurate, it fails to recognize the similarity between the ICC's jurisdiction and the current system of international justice, which the US supports.

By dictating that the accused must return to their native state to face prosecution first, the Rome Statute significantly hinders the prosecutor's (or any other actors') ability to pursue a politically motivated charge. This is primarily due to the many layers of justice that the indictment must pass through. These layers include: first, a panel of judges that must approve the charges and the arrest warrant; second, the domestic judicial system of the accused, which has the initial opportunity to prosecute (the principle of complementarity); third, a panel of ICC judges which rules on the satisfactory nature of the domestic proceedings and whether the ICC has a right to prosecute; finally, the accused stands trial before the ICC and its liberal-legal principles. It seems, at least to this author, that the prospects of successfully pushing a trumped up, politically motivated charge through such a rigorous judicial process appears unlikely.

The third American objection concerns the constitutionality of the Statute. US officials have voiced concerns that the Rome Statute does not mesh with our own constitution, thus making its ratification in the United States Senate an unconstitutional act.[33] However, according to leading constitutional scholar Ruth Wedgewood, "there is no forbidding constitutional obstacle to US participation in the treaty."[34] She cites five principles that allow the US to ratify the Rome Statute without violating the American Constitution:

- US participation in past tribunals has already affected American lives and property. Thus, the precedent for such courts already exists.

- The ICC embodies the US principles of due process and individual rights.
- If the US government, and not the ICC, tried the crimes that come under the ICC's jurisdiction, these trials would occur in a military court. Since these military courts differ dramatically from US common law trials, the applicability of different standards of judgment is not a viable argument (i.e., a lack of a jury trial).
- The well-drafted rules and procedures of the ICC avoid many of the pitfalls found in the two ad hoc tribunals of the 1990s, both of which garnered US support.
- The Status of Forces Agreements (SOFAs) protects American military personnel from local arrest. According to SOFA, the President of the United States remains the final arbitrator over extradition matters. Therefore, if he/she deems the case unfair, the President retains the right to refuse extradition of the accused to the ICC.[35]

These five principles undermine the argument of constitutionality, thus providing US officials with the ability to ratify the Rome Statute without concern over its conflict with the US Constitution.

The final objection concerns the relationship between the ICC and the United Nations Security Council.[36] Most analysts believe that the United States, under the direction of the Clinton administration, would have moved forward with ratification if the international community allowed the United Nations Security Council to maintain veto power over the Court's proceedings. In essence, this would have created a situation in which the United States has veto power over, among other things, investigations, prosecution, and implementation of new regulations. One area in which this issue became critical was in regards to the inclusion of the crime of aggression.

The crime of aggression is contained within the Rome Statute, but its active inclusion in the Court's future prosecutorial power is contingent on an accepted definition of the concept, along with a future amendment to the Rome Statute. Therefore, in order for a definition to be settled upon, it must pass through the procedures of an amendment to the Statute, as defined in Articles 121 and 123. This procedure entails a rigid democratic process: a majority of those present must first vote to review the proposal, then a two-thirds majority of the state parties must vote to accept the amendment, and finally, seven-eighths of the state parties must accept the amendment. Even at this point, according to Article 121.5, the Court will not exercise its jurisdiction over nationals of a state party that has not accepted the crime. Such a multilayered and clearly democratic process was not sufficient for US representatives, however. The United States desired, and would still prefer, to have this issue decided by the UN Security Council (a patently undemocratic method). However, because of a concerted effort to limit UN Security Council activity in the ICC, the Rome conference delegates agreed to leave this issue to the member states. The contentious discussion surrounding this issue once again illuminates the Court's democratic methods and the US opposition to seemingly acceptable procedures.

If one views American concerns from an objective position, it is obvious that US trepidation over the reach of the Rome Statute, although valid in some instances, remains overstated. Thus, the United States lacks a procedural reason for opposing the ICC. However, this procedural form of opposition, although essential to the discussion, is not our primary focus. Instead, this article is tasked with an assessment of the impact of US opposition to the ICC on the current hegemonic discourse. For a proper analysis of this question, I must return to a discussion of Gramscian hegemony in order to link this interpretation to US policy concerning the ICC.

US Opposition and its Hegemonic Status

As stated earlier, Gramscian hegemony is predicated on the notion of consent within a particular world order or historic bloc. The consent arises from an intersubjectively accepted ideology that permeates large portions of the global community. Thus, the relationship of the hegemon to the historic bloc and its base ideology is one of leadership, not domination. If the dominant power chooses to rule via coercion rather then consent, then it is more likely that its power will decline, rather than flourish.

One can view the formation of the International Criminal Court as an institutional manifestation of the current, Gramscian world order. Its formation is the result of a widely adhered to liberal ideology and, thus, the Court exists as the institutionalization of these ideas. The interesting aspect of the ICC's formation process is that the current hegemon has consistently opposed the institution, at least in its Rome Statute form. As stated earlier, the Clinton administration initially signed the Rome Statute, but it never intended to send the treaty before the Senate for ratification. The Bush administration not only opposes the notion of the ICC, it has also worked vehemently to undermine its objectives through a variety of methods.[37]

From a policy perspective, it is difficult to accept such action as serving the United States' national interest. As President Bush has stated, liberal internationalism remains the primary objective of American foreign policy. As stipulated in the National Security Strategy:

> *In pursuit of our goals, our first imperative is to clarify what we stand for: the United States must defend liberty and justice because these principles are right and true for all people everywhere. No nation owns these aspirations, and no nation is exempt from them.*[38]

Considering that these same liberal principles are the primary objectives of the Rome Statute, it appears nonsensical for the administration to oppose the ICC. Yet, the Bush administration, through its actions concerning the ICC, has made it clear that a discussion of promoting liberty and justice is secondary to considerations of state sovereignty and prosecutorial control. Liberal internationalism may be the rhetorical basis of the Bush administration's foreign policy agenda, but it pursues this goal via coercion and unilateralism, rather than consent. What this administration fails to recognize is that the means by which it pursues an historically defensible grand strategy is resulting in a loss of control over the liberal hegemonic order that

it, at least in rhetoric, desires to perpetuate. The Bush administration's need to openly oppose and undermine the objectives of the ICC in order to protect American sovereignty is but one example of this policy.

The formation of the ICC is the result of several factors, including the confluence of material capabilities from the like-minded states, the ideational input of the CICC, along with the Rome Conference's individual leadership.[39] The result is an institution that reflects an intersubjectively accepted liberal hegemonic order. Despite this fact, the United States feels the need to attack and degrade the Court, describing it as an institution constructed of "unaccountable judges and prosecutors."[40] The fact of the matter is that the judiciary composition of the ICC entails a set of democratically elected judges and prosecutors who are accountable to the body of member states. These judges and prosecutors vow to uphold the principles of established international law as a form of law that, as this article has shown, fully reflects the basic construct of American constitutional law. In short, from a strategic standpoint, one can only describe the current administration's position on the ICC as detrimental to the liberal grand strategy of American foreign policy. If, as Gramsci articulated, hegemony is based on consent and not coercion, then the United States must consider supporting institutions that reflect the liberal global order as the foundation of their hegemonic power. Anything less constitutes a sign of weakness, not strength.

The Unique Nature of the ICC Case

Although this argument is theoretically sound, one could argue that US policy since its rise to hegemonic status has not corresponded with its liberal rhetoric. More well-known examples include the United States' failure to ratify the Genocide Convention for nearly forty years (and then only with several reservations), US refusal to ratify the Convention on the Elimination of All Forms of Discrimination Against Women, and the US standing as one of only two states to have not ratified the Convention on the Rights of the Child.[41] Despite actions that remain clearly opposed to the liberal ideological basis of US hegemony, the United States has remained the hegemon throughout this period. So what makes US opposition to the ICC and its liberal-legal principles different?

With the end of the Cold War and the emergence of a new, predominantly liberal global order, a failure of the United States to accept these liberal-legal institutions becomes far more detrimental.

Several factors differentiate this case from past opposition to liberal-based treaty law. The first involves the alteration in global order and the impending decline of "hegemonic need." During the Cold War era, the United States could act in an exceptional manner with little consequences. The failure to ratify treaties that accorded with liberal values was inconsequential because the United States was seen

as a beneficial hegemon, necessary to counter the perceived threat of the Soviet Union.[42] Other actors in the system accepted these binding liberal agreements as a counter to the Soviet threat and yet, also accepted US denial of ratification because, materially, no other actor could fill the role of liberal hegemon. With the end of the Cold War and the emergence of a new, predominantly liberal global order, a failure of the United States to accept these liberal-legal institutions becomes far more detrimental.[43] In short, it is now the ideational, not simply the material-structural, authority that provides a state with power in the global system.

The second reason involves the level of legalization present in the ICC, as opposed to the aforementioned treaties.[44] From a legalization perspective, scholars rank all forms of international law based on three criteria: "the degree to which rules are obligatory, the precision of those rules, and the delegation of some functions of interpretation, monitoring, and implementation to a third party."[45] If a legal doctrine or institution has a low level of these characteristics, then it has a low level of legalization. The result is a relatively weak legal principle with little to no ideational authority or binding power. On the opposite end of this spectrum is an institution that has high levels of binding legal obligation, a precise use of language within the statute, and delegation of authority to a third party arbitrator. These institutions, if fully functioning, encompass a high level of ideational acceptance and thus present a strong presence in the international legal community.

The failure to participate in such a strong liberal-legal institution clearly places the United States at odds with a now fully functioning and relatively powerful institution that is intersubjectively accepted by a large number of its allies.

The typical Cold War treaty and/or institution lacked a high level of legalization, thus making its ideational power minimal.[46] The US may not have accepted these legal treaties, but this did not have a detrimental affect on its hegemonic status because, despite the fact that other countries had ratified these liberal treaties, the treaties themselves lacked any real authority. Therefore, failure to ratify a weak legal instrument was inconsequential. However, the ICC is a quintessential example of a hard form of legalization. This becomes important in the discussion of US hegemony because the failure to participate in such a strong liberal-legal institution clearly places the United States at odds with a now fully functioning and relatively powerful institution that is intersubjectively accepted by a large number of its allies. Within the area of humanitarian law, the United States' vehement opposition also appears as somewhat of an historical anomaly, thus further accentuating the divide between the US and this newly formed liberal institution.[47] It also exemplifies the current ideational position of the United States—which might now appear as contradictory to its traditional liberal foreign policy rhetoric.

Finally, it is not simply the changing nature of the global system or the unique nature of the ICC but, as alluded to earlier in this article, it is also the level of obstruction that the United States has initiated that should be taken into account. In the past, though the United States has not ratified certain liberal treaties, it has also not initiated an overtly hostile attitude towards these legal statutes. In regards to the ICC, the United States, particularly under the Bush administration, has attempted to undermine the Court and its authority in several substantive ways. These include the diplomatic use of Bilateral Immunity Agreements (BIAs), or so-called Article 98 agreements, as well as domestic legislative action, such as the American Servicemembers Protection Act (ASPA), often referred to as The Hague Invasion Act.

The first of these methods (BIAs) are bilateral agreements, initiated by the United States, in which both parties agree not to extradite current or former government officials, military personnel (regardless of their national status), or citizens of the other party to the ICC. The purpose of these agreements, according to the US, is to protect American nationals from politically motivated prosecution in the ICC. As John Bolton articulated in November of 2003:

> *Article 98 agreements serve to ensure that US persons will have appropriate protection from politically motivated criminal accusations, investigations, and prosecutions. These straightforward agreements require that our partners agree, either reciprocally or non-reciprocally, not to surrender US persons to the International Criminal Court, not to retransfer persons extradited to a country for prosecution, and not to assist other parties in their efforts to send US persons to the ICC. We have worked hard to find mechanisms and formulations in these agreements that meet our requirement of blanket coverage while also responding to the needs of our bilateral partners.*[48]

In order to attain these agreements, the United States has threatened economic sanctions that include the termination of military aid and other forms of foreign assistance.[49] Such a hard line stance by the Bush administration exemplifies their displeasure with the Court, and its fears of its jurisdictional reach.

Along with the signing of BIAs, the United States government has also passed domestic legislation with the intent of undermining the ICC.[50] The American Servicemembers Protection Act of 2001 stipulates that the United States government views the ICC as an institution that exposes US military personnel and governmental officials to prosecution that is not pursuant with the US Constitution. As a result, the ASPA authorizes the President "to use all means necessary and appropriate to bring about the release from captivity of any person described in subsection (b) who is being detained or imprisoned against that person's will by or on behalf of the International Criminal Court."[51]

This act also allows the United States to terminate military assistance to ICC party states, limits the availability of US peacekeepers to UN-mandated missions, prohibits the transfer of classified national security information to the ICC, and generally prohibits any cooperative arrangements between the United States and the Court. As with the BIAs, this act of Congress is a clear attempt to undermine the

actions of the ICC, publicly state US opposition to the Court, and generally limit the ICC in its ability to pursue international justice.

Such activity not only shows a failure to embrace the binding nature of liberal-legal principles (as was the case during the Cold War), but a desire to defeat the implementation of these principles. This hostile approach to the ICC is a radically different policy agenda than was previously pursued and, one could argue, is detrimental, on a much greater scale than previous non-acceptance tactics, to the ideational power of the United States and its ability to lead a liberal global order.[52]

Conclusion

This article attempted to demonstrate several things: (1) that the ideational basis of American hegemony resides in the classical liberal tradition, and that this consensual component of American hegemony is the true strength of US power; (2) that this liberal tradition also serves as the foundation for the International Criminal Court, thus showing that the interests of ICC advocates coalesce with American interests; (3) that American policy towards the ICC is not only hindering the international community's pursuit of global justice, it is also undermining the current status of American hegemony and the perpetuation of the American liberal order. Furthermore, if the US policy towards the ICC extends to other liberal institutions, the end of the US liberal hegemonic moment appears imminent.[53]

In empirically analyzing the basis of American hegemony, it is clear that the United States, throughout much of its history, has pursued an international system that reflects its domestic liberal values. Under the Bush administration, the tradition of liberal internationalism remains a critical doctrine of American foreign policy. Thus, the current administration recognizes, at least implicitly, the power of liberal Gramscian hegemony. This hegemony of ideas is one aspect of America's position as the dominant global power. However, counter to the recommendations of Machiavelli and the understandings of Gramsci, the current administration appears to be working against its own position of power by engaging in more coercive, unilateralist tactics, instead of assuming a leadership role in the perpetuation of the consensual base surrounding global liberal values. By assuming a more affable position on the ICC, the Bush administration would make great strides towards the retention and perpetuation of its power.

In making this recommendation, it is important to recognize that such a policy originates from a power-based perspective, not a moral one. Many of the world's most pre-eminent legal scholars have drafted supportive documents in favor of US ratification based on morality. As evidenced by the continuing lack of ICC support in the United States government, it is apparent that this line of rational thinking has not fully permeated the mindset of current American policymakers. Thus, this article attempts to speak to government officials in a language they can understand—power. By opposing the ICC, the United States is failing to support its own liberal agenda. The result of such action is a loss of ideational power, a decline in hegemonic status, and a defeat for American national interest—in short, a loss of power.

In order to rectify this situation, the US need not openly embrace the ICC and immediately move toward ratification. Instead, the US should establish a working relationship with the Court and cease its undermining tactics.[54] An initial step might entail participation in the upcoming review conference in 2009. Another possible policy initiative would be to act on Secretary of State Condelezza Rice's stipulation that the US not follow through on the BIAs it has signed.[55] If the US takes these small steps, then it is possible to restore American influence and ideational leadership.

It is also important to recognize that US policy concerning the ICC is but one example of a counter-productive foreign policy agenda concerning the maintenance of US hegemony. Thus, in making a recommendation concerning future American relationships with multilateral liberal institutions (such as the ICC), it is clear that a supportive association with these organizations will better serve the administration's ultimate goal—the perpetuation of America's position of power and the spread of American ideals. Movement towards an acceptance of the ICC might serve as an initial signal of future policy change, but it will also serve as a foundation for future participation in liberal institution building and the continued promotion of a liberal world order.

NOTES

[1] International Criminal Court, *The Rome Statute for the Establishment of a Permanent International Criminal Court*. Available at: http://www.iccnow.org (accessed February 19, 2007). The Rome Statute for the Establishment of a Permanent International Criminal Court required 60 state ratifications for the Court to come into force. As of 2/14/07, the Statute has 104 ratifications and 139 signatories (although the United States and Israel have withdrawn their signatures).

[2] For a detailed discussion of the action of "unsigning." see Edward T. Swaine, "Unsigning," *Stanford Law Review*, v. 55 (2003): 2061–2089,

[3] Pierre-Richard Prosper, Foreign Press Center Briefing, May 6, 2002. Available at: http://fpc.state.gov/9965.htm (accessed December 2, 2006).

[4] Jean Galbraith, "The Bush Administration's Response to the International Criminal Court," *Berkeley Journal of International Law*, v. 21 (2003): 683–702. Provides a detailed analysis of Bush administration policy towards the ICC. The one instance in which the US opposition appears to have softened is the UN Security Council decision (UNSC Resolution 1593) to allow ICC jurisdiction over the Darfur crisis. The US abstained on this vote.

[5] National Security Council, *The National Security Strategy of the United States of America*, (Washington DC: September 2002), 31. Available at: http://www.whitehouse.gov/ncs/nss.pdf, (accessed February 1, 2007).

[6] The crime of aggression is also included in the Rome Statute. However, the international community has not yet approved a definition of this crime. Until a consensus definition emerges, this crime will remain outside of the ICC's jurisdiction.

[7] Stephen Gill, "Epistemology, Ontology, and the Italian School," in *Gramsci, Historical Materialism and International Relations*, ed. Stephen Gill (Cambridge: Cambridge University Press, 2003), 41–42.

[8] Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance* (New York: Metropolitan Books, 2003); one example of the more materially-focused or traditional literature on American hegemony.

[9] Robert W. Cox, "Gramsci, Hegemony and International Relations: An Essay in Method," in *Gramsci, Historical Materialism and International Relations*, ed. Stephen Gill (Cambridge: Cambridge University Press, 1993), 42.

[10] Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci*, Translated by Q. Hoare and G. Nowell Smith (NewYork: International Publishers, 1971), 57–58.

[11] The notion of consensus building instead of repression is a familiar theme in the current literature on American power. Most notably, Joseph S. Nye, Jr., *The Paradox of American Power: Why the World's Only Superpower Can't Go It Alone* (New York: Oxford University Press, 2002); and Joseph S. Nye, Jr., *Soft Power: The Means to Success in World Politics* (New York: Public Affairs, 2004); discusses the concept "soft power."

Although this concept is similar to Gramscian hegemony, the concepts are not synonymous (as Nye himself implicitly admits by not acknowledging Gramsci's work in his list of references).
[12] Joseph V. Femia, *Gramsci's Political Thought: Hegemony, Consciousness, and the Revolutionary Process* (Oxford: Oxford University Press, 1981), 26–29.
[13] Gramsci, Selections from the Prison Notebooks, 366.
[14] Robert W. Cox, "Social Forces, States, and World Orders: Beyond International Relations Theory," *Millennium: Journal of International Relations Studies* 10 (1981): 126-155; Robert W. Cox, *Production, Power, and World Order: Social Forces in the Making of History* (New York: Columbia University Press, 1987); Cox, "Gramsci, Hegemony and International Relations."
[15] Cox, "Gramsci, Hegemony and International Relations."; Enrico Augelli and Craig N. Murphy, "Gramsci and International Relations: A General Perspective and Example From Recent US Policy Toward the Third World," in *Gramsci, Historical Materialism and International Relations*, ed. Stephen Gill (Cambridge: Cambridge University Press, 1993).
[16] John Locke, *Second Treatise of Government*, (Cambridge, MA: Hackett Publishing Company, Inc., 1980); serves as the philosophical foundation for liberal ideology. Several contemporary works on US foreign policy explore the importance of this ideology within the foreign affairs and international politics literature. This list includes: Daryl Glaser, "Does Hypocrisy Matter? The Case of US Foreign Policy," *Review of International Studies* 32 (2006): 251–268; Michael Ignatieff (ed.), *American Exceptionalism and Human Rights* (Princeton, NJ: Princeton University Press, 2005); G. John Ikenberry, "Liberalism and Empire: Logics of Order in the American Unipolar Age," *Review of International Studies* 30 (2004): 609–630; G. John Ikenberry, "Liberal Hegemony and the Future of American Postwar Order," in *International Order and the Future of World Politics*, eds. T.V. Paul and John A. Hall (Cambridge, MA: Cambridge University Press, 1999), 123–145; and Seymour Martin Lipset, *American Exceptionalism: A Double-Edged Sword* (New York: W. W. Norton & Company, 1997).
[17] Tony Smith, *America's Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century* (Princeton, NJ: Princeton University Press, 1994); Colin Dueck, "Hegemony on the Cheap: Liberal Internationalism from Wilson to Bush," *World Policy Journal* (Winter 2003/2004): 1–11.
[18] G. John Ikenberry, "America's Liberal Grand Strategy: Democracy and National Security in the Post-War Era," in *American Democracy Promotion: Impulses, Strategies, and Impacts*, ed. Michael Cox et al. (New York: Oxford University Press, 2000), 103–126.
[19] Smith, *America's Mission*; Ikenberry, "America's Liberal Grand Strategy"; Dueck, "Hegemony on the Cheap."
[20] John Gerard Ruggie, "Multilateralism: The Anatomy of an Institution," in *Multilateralism Matters*, ed. John Gerard Ruggie (New York: Columbia University Press), 3–50.
[21] Antonio Franschet, "The Rule of Law, Inequality, and the International Criminal Court," *Alternatives: Global, Local, Political* 29 (2004): 23–43.
[22] *Rome Statute*, Articles 22–33, 55, 81–85.
[23] The one glaring exemption from the Rome Statute is trial by jury. All ICC proceedings are bench trials conducted by a panel of judges. The process is much more akin to the United States form of military justice then United States constitutional law.
[24] *Rome Statute*, Articles 36.3[b] and 42.4.
[25] *Rome Statute*, Articles 36.6[a] and 42.4.
[26] In regards to military personnel, many of the liberal principles inherent in the Rome Statute exceed those contained in the United States Military Code of Justice. It also seems unlikely that a US service member will ever face trial in the ICC due to the principle of complementarity. See Robisnon O. Everret, "American Servicemembers and the ICC," in *The United States and the International Criminal Court: National Security and International Law*, ed. Sarah B. Sewall and Carl Kaysen (Lanham, Maryland: Rowman and Littlefield Publishers Inc., 2000), 137–152; and Victoria Holt and Elisabeth W. Dallas, "On Trial: The US Military and the International Criminal Court," *The Henry L Stimson Center*, Report No. 55 (March 2006).
[27] David Scheffer, "US Policy and the Proposed Permanent International Criminal Court (transcript of a speech at the Carter Center, Atlanta, GA)," *US Department of State Dispatch* 8 (1997): 20–22; David Scheffer, "Development at the Rome Treaty Conference (transcript of a speech to the Foreign Relations Committee, United States Senate)," *US Department of State Dispatch* 9 (1998): 19–23; David Scheffer, "The United States and the International Criminal Court." *The American Journal of International Law* 93 (1999): 12–22; David Scheffer, "The US Perspective on the ICC," in *The United States and the International Criminal Court: National Security and International Law*, ed. Sarah B. Sewall and Carl Kaysen (Lanham, MD: Rowman & Littlefield Publishers Inc., 2000), 115–118; David Scheffer, "Evolution of US Policy Towards the International Criminal Court," address at Washington College of Law, American University, Washington DC, March 31, 1998. Available at: http://www.state.gov/www/policy_remarks/1998/980331_scheffer_tribs.html (accessed February 19, 2007); George W. Bush, "Comments During First Presidential Debate," September 30, 2004. Available at http://www.debates.org/ (accessed February 19, 2007).

[28] *Rome Statute*, Article 12.
[29] *Rome Statute*, Article 17(2).
[30] Anne-Marie Slaughter, "The partial rule of law: America's opposition to the ICC is self-defeating and hypocritical," *The American Prospect* 15 (2004). Article 20 of the Rome Statute points out the irrationality and hypocrisy of the United States' position.
[31] Scheffer, "Development at the Rome Treaty Conference," 21.
[32] Eric K. Leonard, "Discovering the New Face of Sovereignty: Complementarity and the International Criminal Court," *New Political Science* 27 (2005): 91–108.
[33] Colin Powell, "Transcript of fiscal year 2002 State Department Appropriations Hearing Before the Subcommittee of the House Appropriations Committee," US House of Representatives, (April 26, 2001). Powell stated that he does not think the Bush administration should send the Rome Statute to the Congress for ratification "because of concerns we have, frankly, about the constitutional rights of our servicemen and women who might be overseas and somehow become subject to the risks associated with such a court."
[34] Ruth Wedgewood, "The Constitution and the ICC," in *The United States and the International Criminal Court: National Security and International Law*, ed. Sarah B. Sewall and Carl Kaysen (Lanham, MD: Rowman & Littlefield Publishers Inc.,) 121.
[35] Wedgewood, "The Constitution and the ICC," 120–127.
[36] The ICC-UN relationship is articulated in: United Nations, Negotiated Relationship Agreement Between the International Criminal Court and the United Nations, Available at: http://www.iccnow.org/documents/ICC-ASP-3-Res1_English.pdf, (accessed December 12, 2006).
[37] US Department of Sate, "American Servicemembers Protection Act of 2002" Available at: http://www.state.gov/t/pm/rls/othr/misc/23425.htm, (accessed December 12, 2006), This act, which was part of a 2002 supplemental appropriations bill, is one such method. The Act gives the President of the United States the right to protect US officials, service members or citizens from prosecution before the ICC. This protection takes the form of any means necessary, including invasion of the Hague. I will return to US undermining tactics later in the article.
[38] *The National Security Strategy*, 3.
[39] Fanny Bendetti and John L. Washburn, "Drafting the International Criminal Court Treaty: Two Years to Rome and an Afterword on the Rome Diplomatic Conference," *Global Governance* 5 (1999): 1–38; Eric K. Leonard, *The Onset of Global Governance: International Relations Theory and the International Criminal Court* (Aldershot, Hampshire: Ashgate Publishing, 2005).
[40] Bush, "Comments During First Presidential Debate."
[41] Somalia is the other non-ratifying state. These are just a few examples of US aversion to international treaty law.
[42] One could argue that the United States failure to serve as a hegemon in the inter-war years is one contributing factor to World War II. Therefore, the democratic liberal community of states saw a real need for a hegemon to lead during the Cold War years.
[43] See John Gerard Ruggie, "American Exceptionalism, Exemptionalism, and Global Governance," in Ignatieff, ed., *American Exceptionalism*, 304–338; and Nye, *The Paradox of American Power*; for a discussion of the changing nature of global governance and the US position in that structure.
[44] See Judith Goldstein, Miles Kahler, Robert O. Keohane and Anne-Marie Slaughter (eds.), "Legalization and World Politics," special edition of *International Organization* 54 (2000): 385–703.
[45] Goldstein, Kahler, Keohane, and Slaughter, "Introduction: Legalization and World Politics," 387.
[46] The Genocide Convention is one example. This treaty has a high level of precision, but a rather low level of obligation and a low level of delegation thus defining its norms as low level legalization.
[47] In the past, the United States has not only accepted, but in many instances initiated the movement to such hard forms of legalization. Examples of this support would include: the post-World War II tribunals in Germany and Japan, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda.
[48] John Bolton, "American Justice and the International Criminal Court," remarks at the American Enterprise Institute, Washington, D.C. on November 3, 2003. Available at: http://www.state.gov/t/us/rm/25818.htm. (accessed February 14, 2007).
[49] This has culminated in the passing of the Nethercutt Amendment, as part of the 2006 joint Appropriations Bill, which authorizes the termination of Economic Support Funds to ICC party states that have not signed a BIA with the United States.
[50] See Lilian V. Faulhaber, "American Servicemembers Protection Act of 2002," *Harvard Journal on Legislation* 40 (2003): 537–557; for a detailed analysis of this legislation.
[51] *American Servicemembers Protection Act of 2002*, Sec. 2008 (a).
[52] As discussed earlier in this article, numerous scholars have empirically verified this claim including, Ignatieff (ed.), *American Exceptionalism*; Julie A. Mertus, *Bait and Switch: Human Rights and U.S. Foreign Policy*

(New York: Routledge, 2004); and Nye, *The Paradox of American Power*.
[53] I emphasize "US" because it will not mean the end of the liberal moment, just the United States' ability to serve as its hegemon.
[54] One example of a more conciliatory tone concerning the work of the ICC is the recent United States abstention from the Security Council vote on the Darfur situation. United Nations, *Security Council Refers Situation in Darfur, Sudan, to Prosecutor of International Criminal Court* (New York, 2005), SC/Res/1593.
[55] Condoleezza Rice, "Trip Briefing, En Route to San Juan, Puerto Rico," March 10, 2006, Available at: http://www.state.gov/secretary/rm/2006/63001.htm, (accessed December 12, 2005). As stipulated earlier in this article, BIAs or Article 98 agreements are US requested agreements in which other nation-states agree not to transfer US current or former officials, military officials, or common citizens to the ICC.

Russian Phoenix: The Collective Security Treaty Organization

by Adam Weinstein

Russia's quest for security and power did not die with the collapse of the USSR in 1991, though it did face new complications. Fifteen republics arose from the Soviet rubble, and with them, fifteen competing notions of national prestige. While media images in the West reinforced a uniformly positive view of communism's death throes—statues of Lenin and Marx felled like dead timber, red flags and banners ripped down—little sober thought was given to what might rise in their place. To the lay observer, the age of cold war alliances, arms races, and geopolitical competition was now strictly a concern for historians.

Not so in the Russian Federation and its surrounding regions. Although independence—both from the strictures of Soviet communism and the expenses associated with leading the USSR—was a priority for Russia, life in 1992 presented a bevy of new defense concerns. Control of the Soviet nuclear and conventional arsenals was a priority, as was the prevention or control of sectarian violence in the former USSR, particularly where large numbers of ethnic Russians were concerned. Furthermore, seventy-four years of communist rule, preceded by centuries of czarist domination, reinforced a sense of security interdependence (as well as a Russian sense of imperial pride and responsibility) in the Russian "near abroad." The breakaway republics shared many such concerns with Russia but disagreed over how to address them. Most of these fledgling republics preferred a "lone wolf" or regional approach to any Moscow-led form of security cooperation.

That appears to have changed in the interceding years. While collective measures and deference to Russian authority were nonstarter issues for most of the post-Soviet states in their infancy, these nations have achieved a degree of stability and sovereignty that enables them to reconsider their old military ties—particularly as shared apprehensions have grown over the threat of terrorism and extremism in the post-Soviet space. The evolution of the Collective Security Treaty Organization (CSTO) reflects this sea change.

Born in its current form in 2002, the CSTO actually has its genesis in the Russian-inspired early military agreements of the Commonwealth of Independent

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States (CIS), particularly the 1992 Collective Security Treaty. Through most of the 1990s, the Collective Security Treaty (CST) was a weak, unenforceable convention between mainly Central Asian and Eurasian nations that accomplished little, notable only for the public defection of several of its members in 1999. Yet, since the Treaty Organization was formalized and terrorism has become a global concern, "collective security" under the Russian aegis is experiencing a rebirth. Ironically, American diplomacy and military operations in recent years have played a hand in strengthening the CSTO and expanding its mandate beyond cursory matters of military cooperation. At a time when Russia displays a renewed interest in regional hegemony, US policies in Iraq and Afghanistan encourage ex-Soviet nations to cooperate with Russia on security policy. A glance at the CSTO's evolution suggests that, should current conditions persist, this organization could very well develop into a full-fledged military alliance—a postmodern Warsaw Pact that could help Russia fully realize its aspiration for leadership of the post-Soviet space.

Beginnings: The Collective Security Treaty

In spite of the Soviet Union's spectacular implosion, the newborn Russian Federation was still a major military power—in theory. Practically, however, the largest former Soviet nation needed extensive cooperation from its counterparts to maintain that strength. Many of the USSR's tactical and strategic nuclear weapons were widely scattered throughout Ukraine, Kazakhstan, and Belarus. When the Soviet Union was dissolved and the Commonwealth of Independent States was created, these nations agreed in principle to transfer their arsenals to Russia. However, principles were not so quickly put into practice. Though hardly equipped to assume status as nuclear powers, the non-Russian nations made the most of their position, concluding the weapons handover and signing non-proliferation pledges only after Russia made considerable economic and defense concessions.[1] Sakwa and Webber argue that, by asserting absolute command and control over former Soviet nuclear arms, Russia undermined its own case for collective security.[2] Initially, Russian leaders publicly suggested joint control of the arsenal through the CIS framework. However, once able to secure unilateral power over the weapons, Russia was wholly willing to do so—thereby rendering moot the CIS agreements it had lobbied for. This incident suggests that, while Russia is willing to pursue collective security mechanisms, it prefers to dictate strategy from Moscow when possible.

At the time of the Soviet Union's demise, conventional military strength was also a gathering concern for Russia. On this front, Russian assertions in favor of collective security did not fare much better. At the time of the Soviet Union's demise, the majority of first-rate ground troops were situated in border areas that were now sovereign: the Baltic states, Belarus, Ukraine, and the Caucasus. The Russian Federation, whose borders lay mostly in the Soviet interior, was manned by weaker and less-equipped forces.[3] Further, a civil war in Tajikistan threatened to spill over into the rest of Central Asia (in spite of the presence of large numbers of former Soviet, ethnic Russian troops), and the former Soviet-controlled president of

Afghanistan was ousted from power. All of the former Soviet republics' leaders recognized a need to consolidate their positions and prevent the balkanization of their territories. A debate ensued in the CIS between two camps. One, led by Russia, sought to maintain the integrity of the Soviet army. In the other, Uzbekistan, Ukraine, Azerbaijan, and Turkmenistan sought the right to form their own national armies out of Soviet units left in their territory.[4] Neither was a purely realistic solution; the Russians envisioned that command of a united force would be tied to each nation's contribution, effectively leaving them in charge of a great number of foreign installations—a situation none of the republics rushed to embrace. The argument for national armies, however, was made by states that could not possibly afford them to maintain large indigenous standing forces.[5]

At a time when Russia displays a renewed interest in regional hegemony, US policies in Iraq and Afghanistan encourage ex-Soviet nations to cooperate with Russia on security policy.

The Tajik situation forced the parties to come to an agreement. In May 1992, presidents of six of the twelve CIS nations—Russia, Armenia, Kazakhstan, Uzbekistan, Kyrgyzstan, and Tajikistan—signed a Collective Security Treaty.[6] It provided for the formation of a Collective Security Council in the CIS to jointly coordinate defense policies, and rapidly led to additional agreements in the following months, such as a framework for the assembly of multinational peacekeeping forces and a protocol that defined the borders covered by the Collective Security Treaty as those of the CIS.[7] Most dramatically, the Treaty echoed Article 5 of the NATO agreement: "aggression or threat of aggression against one country would be regarded as aggression against all participants in the treaty."[8] In spite of all this, the Treaty did little to live up to its name. No substantial collective effort arose to address the Tajik crisis (in fact, Russian bilateral assistance to the Tajik government so alarmed the neighboring Uzbeks that they subsequently viewed the Russian military might with greater suspicion). Thousands were killed and hundreds of thousands of refugees fled their homes before Emomali Rahmonov, the former Communist Party leader, consolidated power in the capital. Only then did Russian forces advance to secure the Tajik-Afghan border, not under the Collective Security Treaty, but on the terms of a separate Tajik-Russian accord.[9]

The Collective Security Treaty faced other serious challenges. Even among Treaty states, national sovereignty was too strong a force, and the specter of Soviet domination was too recent a memory, to permit Russians the military command and control that they believed lay at the heart of the Treaty. The Russian military establishment, too, was loath to integrate its forces or command structure. Any common staff arrangement would, at least in the short term, dilute Russian command. Further, although cash-poor, the relative size and strength of Russia guaranteed that it would bear the lion's share of financial expenses entailed in any

collective military project.[10] In fact, it appears that the civilian Russian leadership that pressed for the Treaty was less interested in a stable system of collective security than in a collective defense scheme that served its geopolitical aspirations.

A word is necessary here on the distinction between *collective security* and *collective defense*, at least as it concerns the Russian near abroad. While collective *security* concerns the regulation of behavior within a group of states, a collective *defense* system focuses on external threats to its participants.[11] The failure of the Collective Security Treaty countries to produce a coherent response to the Tajik civil war, and Russia's subsequent preoccupation with Commonwealth border security, suggest that the Treaty was a collective defense convention. Certainly this would have served Russia's strategic purposes well. Many of the independent states were accelerating their exports of fossil fuels. As the global impact of such exports began to be felt, Russia's zeal to check outside influence and make itself indispensable to the republics was palpable. As one commentator put it,

> *If the Russian Federation could retain its position as the primary defender of the Caucasus and Central Asia while the region became a major oil and gas producer, Russia's international stature would increase. If Russia failed to maintain its influence in the new oil regions, its relative importance in world affairs would decrease.*[12]

This was a revival of the "great game" of resource competition in Central Asia and the Caucasus. It combined easily with traditional Russian attitudes regarding the "country's special responsibility" toward "the territory of the former USSR," which found new articulation with President Boris Yeltsin: "I believe the time has come for authoritative international organizations, including the United Nations, to grant Russia special powers as guarantor of peace and stability in the region."[13] Yet the entire notion of Russia playing *tsar batyushka* in the post-Soviet space was predicated upon a "consensus on external threat perceptions among CIS member nations," which was impossible "owing to their varied geopolitical positions and levels of military development."[14]

Disintegration and Defections

If Russia's aim was regional hegemony under the guise of collective defense, the Collective Security Treaty was a poor vehicle. Each of its members was motivated to sign by a pragmatic calculation of national interest—a weak adhesive for interstate structures. Armenia, for example, hoped to exploit Russia's traditional role as protector of Christians in the Caucasus, just as Tajikistan sought Russian help in fighting its rebels.[15] Absent such tactical necessities, Treaty provisions simply could not hold.[16]

The contrast between the Treaty's aims and its accomplishments grew even sharper in 1996 after the radical Taliban captured Kabul and established an Islamic caliphate in Afghanistan. Russian foreign policy displayed a near-obsessive fear of Islamic extremism, particularly in Central Asia; indeed, the fear of religious rebels

was a chief source of Russian interest in the Tajik civil war.[17] This obsession only intensified after the Taliban victory. General Aleksandr Lebed, a respected Afghanistan veteran and Russian presidential candidate, clamored for aid to the mainly Uzbek-Tajik Northern Alliance to combat the Taliban, who he claimed sought to annex Bukhara.[18] In addition, the Central Asian republics also saw Taliban rule (and extremism in general) as a threat to their secular governments. Yet even this immediate external danger failed to provoke a unified response from the Treaty members. Indeed, in the coming years, Uzbek President Islam Karimov would assail Russia for using the Taliban boogeyman as a pretext "for pushing the region's countries to join forces and urging Uzbekistan to accede to the CIS."[19]

If anti-terrorism and suspicion of NATO brought the Collective Security Treaty Organization (CSTO) powers together, the American invasion of Iraq firmly cemented CSTO relations on the basis of fear of American power.

The Treaty was, in effect, for a five-year term, beginning April 20, 1994. By 1999, not only the Treaty, but also virtually every post-Soviet cooperative scheme was in disarray. The increasingly sovereign nations had lost pretenses to all but the loosest cooperation with Russia; they had all opted instead for self-determination, Western engagement, or regional cooperation. Azerbaijan, dissatisfied with the Russian failure to mediate its dispute with Armenia over the territory of Nagorno-Karabakh, refused to reaffirm the Treaty for another five years. Georgia, wary of Russian motives and eager to signal NATO (whose expansion plans included the former Soviet Baltic states), followed suit. "National border troops," stated one Georgian lieutenant general, "can guard state frontiers of Georgia as reliably as Russian colleagues."[20] Uzbekistan withdrew from the Treaty as well. President Karimov still accused Russia of exploiting the Afghan Taliban's rise to further its interests in the region. Furthermore, since 1996, he had sought membership in the NATO Partnership for Peace, violating the Collective Security Treaty's prohibition against members' joining competitive alliances.[21]

As the remaining Treaty members gathered in April 1999 to salvage the agreement, the three defectors took an extraordinary step: they joined Ukraine and Moldova to form GUUAM, an alternative economic and security group. As if this move were not provocative enough in itself, the group's formative meeting was held in Washington, DC. Its existence, stated one commentator, exposed "the 'hollowness' of the CIS Collective Security Treaty framework" and offered the alternative of an "anti-Russian bloc."[22] Regional cooperation—sans Russia—experienced rapid growth. In October, 2000, representatives of Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan formed a Eurasian Economic Community to harmonize their customs agreements.[23] The message sent by both of these organizations was clear: Russian initiatives for international cooperation constituted

unwelcome interference, and the "near abroad" would organize collectively to balance Russian power as much as possible.

The next few years represented the nadir of the Treaty's legitimacy and authority. The remaining members agreed to a few procedural reforms, such as the establishment of a permanent secretary general to oversee the Collective Security Council's meager administration. A new rotating chairmanship gave each head of state an opportunity to set the Council's schedule, but in practice the agenda was still Russian-centered and subject to rejection by the other national presidents. Without a shared notion of likely threats to their sovereignty, all of these nations preferred policies that reinforced "the 'hard shell' of the modern nation-state."[24]

Terrorism: The Integrating Force

Anti-Russian security policy in Central Asia and Eurasia, crested at the turn of the millennium, then showed signs of receding. The first and greatest factor in this reversal was common anxiety toward interstate terrorism. Muslim *mujaheddin* had a variety of targets to choose from in the post-Soviet space. Renewed fighting between Russia and the secessionist Muslims of Chechnya was especially brutal, with both sides regularly committing atrocities. Central Asian leaders, recalling the Tajik uprising and eyeing the Taliban with ever-greater suspicion (it was, after all, dominated by pious veterans of the successful Afghan war against the Soviets), cracked down on over-exuberant displays of religion in their nations, with the predictable result that radicalism flourished in the region. The problem was particularly acute in Uzbekistan, a police state with a "disastrous" human rights record. That nation's repressive policies spawned a Taliban-supported jihadist movement, the Islamic Movement of Uzbekistan, which also trained combatants for the struggle in Chechnya.[25] In spite of this shared stake against extremism, the independent nations did not rush willingly to Russia or the Collective Security Council for help. Uzbekistan sought the aid of the United Nations, China and its neighbors to fight the IMU and assist an Uzbek general, Rashid Dostum, in his campaign against the Taliban's northern front.[26] Yet, the magnitude of the threat—and the lack of international will to address it—drove these nations reluctantly to seek Russian security cooperation. "The UN Security Council closely monitors the situation in Kosovo and Yugoslavia," Karimov complained, "but pays no attention at all to Afghanistan."[27]

September 11, 2001, immediately transformed the global community's priorities, and it would have profound effects on the Collective Security Treaty's future as well. Attacks by the Afghanistan-based al Qaeda network challenged America's physical and emotional sovereignty; the US/NATO response—military action to capture or kill al Qaeda leaders, oust their Taliban hosts, and remake the Afghan state—raised issues of sovereignty with Russia and its neighboring states. The United States undertook a massive program of diplomatic engagement with Afghanistan's northern neighbors. The Central Asian states, sensing generations' worth of economic and security incentives within their grasp, eagerly jumped onto the

American bandwagon. Uzbekistan offered the US an airbase at Khanabad from which to launch strikes against the Taliban, and Kyrgyzstan offered a similar arrangement with its airbase at Manas.[28]

Russia was not nearly as pleased with direct American involvement in its historical sphere of influence, but it, too, had an abiding interest in seeing terrorism combated generally and the Afghan rebels toppled in particular. Moreover, as the largely successful war against the Taliban wound down and American attention turned to the Middle East, the Central Asian republics renewed their interest in cooperation with Russia. In October 2002, the Collective Security Treaty members voted to restructure the convention and turn it into a full-fledged defense regime, the Collective Security Treaty Organization. Its purpose, as Russian President Vladimir Putin put it, was "to guarantee the security, territorial integrity, and sovereignty of its member states."[29] They appointed Nikolai Bordyuzha, a former Russian military intelligence officer with close ties to Putin, as Secretary General. The immediate focus of the new organization was the formation of a multi-state Collective Rapid Deployment Force (CRDF) to address threats as they emerged; its military command headquarters, naturally, would be situated in Moscow.[30] An unnamed Kremlin official, just as naturally, praised the revitalized treaty group as "a serious step on the way to developing integration in the military-political sphere… an important element of the global security system."[31]

NATO and the US: Accelerators of CSTO Integration

NATO was a far more significant element of the global security system. After the Taliban's ouster, US forces passed strategic control of their Afghanistan coalition, the International Security Assistance Force (ISAF), over to the North Atlantic Treaty Organization. NATO activity in the post-Soviet space had always been a burr in the Russian side. The Alliance's plans for expansion of its membership remained a sticky issue. The Partnership for Peace (PfP), a NATO program set up to engage formerly communist states not slated for full alliance membership, further rankled the Russians and emboldened the republics; all five of the smaller CSTO members signed on to the PfP. NATO's moves against the Russian-backed Serbs in Bosnia and Kosovo further hardened the Federation against the alliance. Before 2002, Russia could say very little to dissuade its neighbors from engaging the West and inviting in NATO.

Subsequent events in Afghanistan, however, enabled Russia to argue against NATO's presence in the region on the grounds that it was heavy-handed, uncooperative, and ineffective. The Afghan political progress had slowed to a crawl, violence continued to flare in the south of the country, and the NATO-run ISAF largely ignored the illicit Afghan opium trade, a boon to tribesmen and terrorists, and a destabilizing force. A Russian minister for organized crime-related issues attacked NATO's lack of an "effective solution to the problems of terrorism and narcotics" in Central Asia. "Russia," the minister continued, "has repeatedly proposed NATO-CSTO cooperation" in the region, "but we have not heard a substantive answer from

Brussels."[32] At the same time, Russia stirred up discontent with NATO among its Eurasian CSTO allies. While the US, the Czech Republic, Hungary, and Poland met to discuss the possible deployment of a NATO missile defense system in mid-2004, Russia and Belarus held talks on a CSTO response. Belarusian President Alexander Lukashenka summed up the mood: "I suggested deploying S-300 [antiaircraft] systems in certain locations in Belarus to increase the defense capability of Belarus and Russia."[33] By the beginning of 2006, the CSTO had set up its own working group to explore ways of intervening in Afghanistan, and Secretary Bordyuzha called cooperation with NATO "not so important to the CSTO, which is a self-sufficient organization […]."[34]

Initially, Russia's problems with the Afghan situation were directed at both NATO *and* the United States. This changed in late 2002, after the US shifted its strategic focus from Afghanistan to Iraq. If anti-terrorism and suspicion of NATO brought the CSTO powers together, the American invasion of Iraq firmly cemented CSTO relations on the basis of fear of American power. The US case for war with Iraq was partially based on ending the tyrannical rule of Saddam Hussein. In making this argument, the Bush administration expressed a general desire to forcibly replace or reform undemocratic governments. Democracy enforcement gained prominence as the war dragged on and its primary justification—the existence of Iraqi weapons of mass destruction—was thoroughly discredited. But this American pressure for regime change in authoritarian states proved especially alarming to the former Soviet republics. It came at a point when popular support was flagging throughout the region. Peaceful coups occurred in Georgia, Ukraine, and Kyrgyzstan, all with tacit American blessings or tolerance.

The CSTO nations have begun to address environmental security, the drug trade, trafficking in persons, and organized crime—issues that they cannot solve alone and that the West has generally shown little interest in.

A major crisis ensued in Uzbekistan in May 2005, when a number of businessmen in Andijan were arrested for "Islamic extremism." Townspeople gathered en masse to protest the arrests, and police fired indiscriminately into the crowds. As many as seven hundred protesters may have been killed, but the true number remains unknown, because government agents quickly disposed of the dead bodies.[35] The Uzbek government subsequently faced intense international scrutiny of its behavior. The US Department of State announced that it was "disturbed" and "disappointed" by "the indiscriminate use of force against unarmed civilians" at Andijan, hinting that the incident would have serious diplomatic consequences.[36] Uzbek President Karimov then decided that US troops in his country represented a potentially destabilizing force. He soon announced that "the resentful forces… have been told to leave the Khanabad airfield," but colorfully warned that US

representatives "will not rest. They never tire of subversive activities. I would say their main goal is to discredit Uzbekistan's independent policy, disrupt peace and stability in the country, and make Uzbekistan obey."[37]

Russia was quick to capitalize upon such fears and portray itself as a staunch defender of the status quo in Central Asian politics. The Russian Security Council Secretary accused America of fomenting instability to further its own imperialist aims: "What we see are practical attempts to interfere in the political life of new independent states under the guise of advancing democratic values and freedoms, by putting pressure on authorities via protest practices."[38] A Russian newspaper asked Bordyuzha in an interview if "political regimes in certain allied states" supported the CSTO in an effort "to find in Moscow a potential defender from possible external mop-ups, like the Iraqi [invasion]." Bordyuzha's reply was telling: "The Iraqi developments forced many political leaders, whether they liked it or not, to ponder over the security of their states." He worried aloud about the plight of countries, which "will be unable to defend themselves and have no allies capable of raising their voice in their defense." The general secretary suggested that cooperation with Russia could ease the regimes' anxieties: "I think that the CSTO member countries, including Russia, look to each other for certain help with counteraction against the existing threats."[39] Uzbekistan, of course, was no longer a Treaty party, but it reached out to the CSTO with new sincerity, especially after the Russian government supported the official Uzbek account of events in Andijan: that the uprising was planned as part of a plot by outside Muslim extremists to depose Karimov and that only 170 people died in the government response.[40]

Russia effected similar reversals of fortune elsewhere. At the same meeting that opened the CSTO for business in 2003, Russia secured its own Kyrgyz airbase at Kant near the capital, Bishkek.[41] Kant was to become the "centerpiece of Russian efforts to maintain a ground and air presence in and around Central Asia."[42] The United States, too, had already established a Kyrgyz base at Manas after 9/11 (which now took on an even greater significance after the US expulsion from Uzbekistan). However, in early 2006, Bordyuzha and Russia's top air force general, Vladimir Mikhailov, met with the new Kyrgyz cabinet and secured an agreement to expand Russia's CSTO-related operations at Kant. While Mikhailov told the Russian media that "our base is here forever," Kyrgyzstan's new president stated in an interview that the Americans were also welcome to maintain their presence at Manas, as long as the Afghan situation dictated it—and as long as they were willing to tolerate a raise in annual rent from $2 million to $207 million. At least one Western analyst expressed concerns that this might "be the first step among many, many steps to come… making it so difficult for the American military to be there that they decide to leave."[43]

The Russian Phoenix: Consolidation

The cumulative effect of these forces—terrorism and extremism, perceived NATO interference, fear of America, and belief in Russia as an effective

counterbalance—has been to transform the CSTO into an organization that, while flying under the international radar, is an alliance with real teeth. The CSTO has been particularly successful in its recent military goals. Member nations are able to purchase Russian-built military hardware at cost, which increases interoperability between forces and encourages the nations to cooperate with Russia on training and joint exercises.[44] The CSTO's Rapid Deployment Force is currently 2,000-strong, and plans are underway to pool national military assets for a standing peacekeeping force.[45] CSTO cooperation has produced two fully integrated army groups, Russia-Belarus and Russia-Armenia, and Bordyuzha has announced intentions to organize a third, a "Central Asian army" comprised "not by battalions, but by regiments and divisions;" in the event of a major conflict, the member nations' armed forces would probably be subordinated to the Central Asian army group.[46]

Most remarkably, an organization that for so long failed to achieve any consensus is now potent enough to expand its agenda and its membership. "The media associate our treaty, first of all, with its military component," lamented Bordyuzha. "But the first consideration, in my opinion, is to create conditions in which there would be no need to use armed forces. It's not enough to speak of the area of military security only."[47] The CSTO nations have begun to address environmental security, the drug trade, trafficking in persons, and organized crime—issues that they cannot solve alone and that the West has generally shown little interest in.[48] Partisans of the CSTO also argue that the way to greater solvency on these issues is to cast a wider net. The Russian Defense Minister expressed his interest in enlargement of the CSTO membership beyond its six current members.[49] Bordyuzha echoed the sentiment: "We are open for all those wishing to reinforce our ranks or (for a start) to conduct with us a dialogue on the mutual tackling of similar tasks—both with CIS countries and with other states."[50]

Final Analysis: Why the CSTO Works

Given the weight of recent history, the question is no longer *whether* or *how* the CSTO works, but rather *why* it works. Gregory Gleason proposes three possible models for international cooperation. Constitutionalism entails the subordination of short-term interests to draft a compact based upon stable norms; functionalism allows for more skepticism and incremental progress among the participants. Hegemony, for Gleason, is "a situation in which a cooperative regime is established through the imposition of the will of a single, dominant cooperator."[51] Writing in 2001, Gleason foresaw functionalism as the proper course for collective action in Central Asia. Though the CSTO's evolution demonstrates the current salience of hegemony as a binding force in the post-Soviet space, it is not clear how stable and lasting that hegemony will be as a basis for future cooperation.

John Mearsheimer, a contemporary scholar of "offensive realism" whose work examines hegemony in depth, suggests that cooperation depends chiefly upon two factors: "relative-gains considerations, and concern about cheating."[52] The first consideration indicates that it is not enough for each member to achieve gains from

an agreement; the individual state must also see that its counterparts do not make disproportionately greater gains. Taken at face value, CSTO growth seems to contradict this. But the relative-gains considerations of smaller CSTO states look quite different from those of great powers. They have not yet reached a point where they can compete for global or even regional hegemony. A large part of the international pie is only available to a few actors, such as the US, Western Europe, Russia, and China. Their primary concern, then, would be the balancing of great power threats. The republics have clearly determined that the balancing of Western military influence, even if it cedes Russia more power, is an acceptable relative gain. Why should these states see a relative loss of power to Russia as an overall gain? Mearsheimer's second consideration explains this: owing to a variety of factors, the republics see Russia as more transparent, more stable, and less willing to cheat. Politically, the current Russian political regime (which shows no signs of changing course) pledges support to existing power structures in its CSTO counterparts, while "regime change," democratization, and preventive war are observable tenets of US and NATO foreign policy. Militarily, while Russian strength is overwhelming, it is far less formidable, stealthy, and quick to mobilize than Western firepower. It is also worth noting that the nations in question are equipped with Russian military hardware; hence, numbers aside, they possess a parity in weapons platforms that makes Russian military aggression unlikely.

Though the CSTO's evolution demonstrates the current salience of hegemony as a binding force in the post-Soviet space, it is not clear how stable and lasting that hegemony will be as a basis for future cooperation.

Of course, there are also considerations outside the realist scope that raise the states' trust in Russia. Fifteen years on from the fall of the Soviet Union, the twelve CIS nations are viable and sovereign. National survival is no longer contingent upon the establishment of a separate identity—such identities are now political facts. The USSR's fall and the early CIS and CST failures taught these states that they could effectively resist Russian hegemony when determined to do so. Finally, with fears of terrorism and Western interference eclipsing separatist fervor, the states are willing to reexamine their historical bonds to each other and to Russia. "We all used to live in a single country," Bordyuzha proclaims. "We have so much in common."[53] Fifteen years ago, he would have been roundly lambasted for that comment. Such rhetoric is far less controversial today.

To be sure, the CSTO is no Warsaw Pact. Six nations a super alliance doth not make. Further, the smaller states of the CSTO are not pure satellites: they do not depend upon Moscow for social, political, or economic sustenance, nor are they in immediate danger of doing so. Notwithstanding Russian rhetoric to the contrary, the alliance is certainly not cemented by fraternal or ideological bonds. Yet it is clearly evolving as an effective organ of Russian military and diplomatic policy, funded

chiefly by Russia. Bordyuzha estimated that "Russia assumes financially 50 percent of" CSTO expenses, since "its economic potential is significantly higher" than that of the partners. "For security," he concluded, "one has to pay."[54] This doubles the republics' security dependence; for they not only come to rely upon the umbrella of Russian security, they also grow accustomed to a peace dividend, dedicating their domestic budgets to non-security matters—a difficult course to alter. Of course, these states' very willingness to delegate some defense responsibilities to Russia only arose after their nations achieved a degree of economic and political self-sufficiency that a hegemon cannot easily roll back. Yet, once those defense functions are ceded, it is unclear just how disgruntled republics might later recover them.

Hence, sober comparisons to a communist-era security bloc are apt. A perceived heightening of US/NATO belligerence, particularly with respect to human rights, democracy, or weapons proliferation, encourages Central Asian and Eurasian reliance on Russian power. The dilemma for the United States is that, while the continuance of a vigorous foreign policy of rights or arms control may galvanize the CSTO, disengagement may have the same effect: the absence of a potent alternative may reinforce faith in Russia's natural role as the regional arbiter and defender.

The "Bush Doctrine," as exemplified in the United States' National Security Strategy of 2002, assumes that a willingness to decry, disarm, or depose certain undemocratic regimes will send a clear message to others, ultimately deterring bad behavior and encouraging liberalization. In places like Iraq, Iran, North Korea, Cuba, and the Palestinian territories, the United States now finds that "muscular democracy" is just as likely to reinforce anti-Western fears and harden resistance. This, more than any other phenomenon, explains why states in Central Asia and Eurasia, which strove so vigorously for independence in 1991, now look to the Russian Federation for security. In half a generation, Russian regional hegemony has ceased to become the independent states' greatest fear; it is now the lesser of evils. If conditions allow, Russian dominance may again be seen in a positive, protective light. That, in any case, is Russia's hope for the Collective Security Treaty Organization. Thus far this hope is well founded.

Notes

[1] Richard Sakwa and Mark Webber, "The Commonwealth of Independent States, 1991–1998: Stagnation and Survival," *Europe-Asia Studies* 51, no. 3 (May 1999): 381.
[2] Ibid, 382.
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BOOK REVIEWS

The State of Securitization Theory: A Review of *The Politics of Insecurity*

by Kapil Gupta

The Politics of Insecurity: Fear, Migration and Asylum in the EU. By Jef Huysmans. London: Routledge, 2006. 191 pp. $120, hardcover. ISBN 0-415-36124-9.

Distinctions exist between European and American academic discussions of security as a subfield of international relations.[1] Jef Huysmans' *The Politics of Insecurity: Fear, Migration and Asylum in the EU* is a compelling introduction to current trends in European security studies. The book also has relevance beyond the academy. For security practitioners, *The Politics of Insecurity* offers an opportunity for critical self-awareness.

Through careful critique, Huysmans advances the Copenhagen School's theory of "securitization." His explanation of "security framing" describes how government and public approaches to security are generated, the contextual conceptualization of security itself, and how these definitions correspond with governmental and administrative security techniques. Following an initial theoretical exegesis, securitization theory is applied to an examination of immigration, asylum, and refugee policy in the context of the European Union.

Huysmans' securitization thesis emphasizes the constructed quality of security definitions by questioning what is being secured and the consequent governmental techniques of securitization qua policy responses to publicly perceived threats. Securitization theory illustrates how the rhetoric of security reifies political and policy solutions by invoking an imagined unity, threatened by outside forces: "Securitization constitutes political unity by means of placing it in an existentially hostile environment and asserting an obligation to free it from threat."[2]

Securitization itself can be interpreted as a technique or tool of governmental security practices. Taken to an extreme, the thesis could suggest that any particular security discourse can be reduced to "wag the dog" rhetoric in which interested

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government actors consciously construct public perceptions in order to justify particular solutions. Such deconstructions run the risk of reducing policymaking and governance to sophisticated conspiracies.

The more robust use of the securitization approach requires further theory. To reach beyond the limits of subject-object antinomy, securitization can instead be understood as a process where public and government actors are nearly co-equal constituting forces. Using Bourdieu's terms, the secured public and the securing state have different positions within a single field of security. Based on their locations, individuals (re)act from their distinct security habitus. When manifested through government institutions, the results are security policies, practices, and techniques.

Huysmans' treatment of immigration illustrates how political objectives are inherent within securitization. The governmental administration of immigration policy is superficially tantamount to border control; i.e. the identification and exclusion of criminals, terrorists, agents of hostile countries, and persons otherwise determined by law to be unwelcome. This construction of security focuses on specific types of threats and threatening actors, without explicitly examining what is being secured. As a consequence, the focus is on exclusion, which is necessarily reactive and instrumental.

This book inspires confidence in the intellectual project of security "widening." Although the policy implications of narrow security approaches (meaning kinetic, military, intelligence, and criminal type threats) seem straightforward and accessible, a narrow security orientation fails to address satisfactorily the field of threats even defined within these narrow objectives.

There are instrumental benefits to security widening. Narrow security frameworks fail to satisfactorily anticipate threats germinated from within, such as disaffected domestic extremists, hate-based groups, religious radicals, eco-terrorists, et al. By widening security definitions to include the "softer" non-traditional typologies of security (viz. individual human security, socio-cultural security, economic security), broader networks of causality, extremist motives, and agency can more fully be theorized, and therefore be potentially better understood and addressed.

Huysmans does not intend to provide a comparative analysis of the US and Europe. Nonetheless, this discussion serves as a conceptual mirror for understanding the challenges for US-European relations in the context of current geo-political securitization projects. The US and Europe ostensibly share broad security goals: the search for peaceful coexistence between liberal democracy and Islam, maintaining first-world standards of living, and supporting humanitarian and development progress in other regions of the world.

Despite these common goals, European and American cultural differences and related historical trajectories toward current institutional arrangements suggest that the contexts and outcomes of securitization projects will necessarily be different. Precisely because of the EU project and the related conceptual and practical challenges of post-national/trans-national institutional arrangements, the European

socio-political experience and associated intellectual foment better foreshadows the future of geo-political postmodernity. Thus, this genre of European security literature provides a means to better comprehend differences in the security orientation of the US and European states.

Deploying securitization theory as a means of understanding contrasting policy solutions for given security projects (e.g. Afghanistan, for NATO) can fill the conceptual void masked by certain diplomatic terms of art, such as "national will," "leadership," "consensus," "willingness," etc. Accordingly, securitization can be used as a theory both of domestic security policy and international relations.

While the theoretical dimensions of this book are very well developed, some potentially interesting dimensions of immigration and securitization in the EU are not discussed. Huysmans successfully argues that particular notions of political community are the referent objects of securitization, but he does not go into great detail when examining specific instances which make this theoretical move so potentially rewarding. For instance, Huysmans does not address the securitization dimensions of Turkey's ambition to join the EU. The conditions of once-colonized minority communities in given EU member states are also not discussed. Although "whither Europe?" is not a question this book asks, Huysmans does provide the means for readers to reach their own conclusions.

The Politics of Insecurity presents intellectual challenges for both academics and practitioners of international relations. Securitization theory is a tool for expanding conceptual options and reassessing old modes of thought and action. As a consequence, even the possibility of becoming more secure merits critical examination: advancement may simply be the exchange of a known security issue for phenomena that have yet to be securitized.

Notes

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Coping with Democracy

by Andreea Florescu

Democracy in Question: Democratic Openness in a Time of Political Closure. By Alan Keenan. Stanford, CA: Stanford University Press, 2003. 238 pp. $21.95, paperback. ISBN 0-804-73865-3.

> *We are (almost) all stockholders now, and if not stockholders, then homeowners, polluters, overconsumers, racists, sexists, and/or homophobes, enjoying consciously or unconsciously the benefits of American, or first-world, hegemony. …we are all just tiny cogs in huge systems we can't control and that render our personal preferences and good intentions largely irrelevant.*[1]

This quotation from Alan Keenan's *Democracy in Question* expressively describes the psychological and political predicament of the average citizen in democratic societies. Citizens of hyper-individualized liberal democracies are at the same time empowered and enslaved, bullies and victims. Keenan's poignant and timely analysis of the paradoxes and difficulties of contemporary democracy attempts to restore the potential of democracy to be the rule of the people, while acknowledging the cynicism and lack of democratic participation of our times. In a critical reading of texts by Castoriadis, Rousseau, Benhabib, Arendt, Laclau, Mouffe, and Sandel, the author asserts the inherent imperfection and incompleteness of democracy and proposes a social mechanism of coping with this seemingly unacceptable truth.

The book's title is indicative of its contents: the author analyzes the question of democracy defined as perpetual questioning, or institutionalized uncertainty.[2] Keenan defines democracy in terms of its constitutive openness, as a system whose raison d'être is debate itself. Democracy's radical openness poses a double threat to its existence. First, because democracy is by definition ever revisable, its constituents are free to stray from its rules and recreate the system under a less-than-democratic guise. Its fragility, then, imposes the need for institutional safeguards for its basic tenets. In other words, the openness of democracy must be preserved through closure.

Having established the central paradox of democracy, Keenan dedicates the core of his book to critiques of several democratic theories, pinpointing other

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expressions of the imperfection of the system. He finds both Castoriadis and Rousseau guilty of not reconciling the coming into being of the democratic community with the values of democracy. Rousseau's argument is circular: the (public) individual enters a social contract for the common good, but it is the social contract that brings the public individual into being. In order to solve the paradox, Rousseau introduces the "legislator," a non-democratic, albeit legitimate and necessary figure, who makes democratic claims in the name of the people prior to their becoming a party to the social contract. Keenan deems this a feeble attempt by Rousseau to resolve a fundamental inconsistency of his theory.

Next, the author delves into an elegant analysis of Arendt's concepts of mutual promising, freedom (as plurality), and authority. Arendt views democracy as the result of mutual promising reiterated ad infinitum. Mutual promising creates the potential for new beginnings (which amount to freedom) and for the remembering and self-perpetuation of freedom. Authority (in the form of constitutions, etc.) is the promise (institutionalization) of promising, a necessary curtailment of freedom. Keenan finds fault with Arendt's attempt to separate freedom from authority and sovereignty (i.e. individual, non-pluralistic will) completely and claims that freedom is always impure.

The author also critiques Laclau and Mouffe's work on radical and plural democracy, which nevertheless seems to inform his own understanding of democracy to a great extent. In this view of democracy, the contingent, conflictual, and pluralistic spirit of democracy is affirmed rather than avoided. The authors embrace the fragmentation of contemporary individual sensitivities, which are unified across class and group interests. In democracy, individual (and hence autonomous) interests are expressed successfully only when grouped according to equivalent needs—through common action. Though equivalence and autonomy diverge, they are never brought to completion and, hence, coexist in democracy. Thus, the divide between individual liberalism and communitarianism is an artificial one. According to Keenan, this theory is a powerful description of the way democracy works, but fails to show how its mechanism is negotiated—this is central to his concern about the state of democracy today. In order to participate in the community, individuals (who otherwise have conflicting opinions and interests) must surrender important parts of their identities. Moreover, embracing the imperfections and contingency of radical plural democracy makes it less palatable for those in search of an ideal system of governance. How, then, can citizens of democracies cope with these difficulties?

The final chapter of *Democracy in Question* offers the most rewarding part of Keenan's argument. After deploring the state of American democracy (marred by cynicism, divisiveness, malaise, and lack of a collective identity and participation), the author reaffirms the existence of a false dichotomy between individual liberalism and communitarianism and rejects the moral judgments made against one or the other. Liberals and conservatives who stand firmly behind each of these views not only demonize the other side, but also alienate the non-aligned citizens who thus regard

politics as a power struggle and withdraw from the public sphere. Keenan argues that the moralism associated with these positions (and moralism in general) is rigid and hence profoundly anti-democratic.

Instead, he calls for citizens to participate in democracy without nominal judgments regarding the common good, or about which position (Right or Left) is preferable. He urges the public to accept the fundamental ambiguity and incompleteness of democracy. Embracing an amoral version of participation in an imperfect system eliminates the negative emotions and cynicism associated with the current practice of democracy. Citizens will cease to feel angry at one another, guilty for the pitfalls of democracy, or helpless as pawns in an alienating mechanism. Through an exercise in introspection and compassion, they will learn to understand that what they share is not the abstract Rousseauesque "common good," but rather the ambiguity and lack of closure of democracy, a common inability to control the direction of democracy—which must remain uncertain, contested, and open. Democracy does not bring people together in harmony, but through the shared experience of fractures. It is, as Arendt would have it, only a promise.

Alan Keenan undertakes the imperative task of salvaging the theoretical grounds for the rule of the people at a critical time for the practice of democracy everywhere, but particularly in its traditional strongholds. At once rigorous and graceful in his writing, Keenan devotes the largest part of *Democracy in Question* to sophisticated theoretical discussions, which may, however, alienate the reader who is not well versed in political philosophy. The first and last chapters provide critical, if succinct, assessments of the alarming weakness of democracy today, alongside creative, simple solutions for strengthening it. Still, Keenan's intention is not to write a "how to" manual of democracy. Rather, he posits crucial questions and offers vital answers about the meaning and direction of democracy in a time when it is, indeed, in question. Keenan's award-winning book is an elegant, provoking, and, above all, urgent lesson in civics.

Notes

[1] Alan Keenan, *Democracy in Question: Democratic Openness in a Time of Political Closure* (Stanford, CA: Stanford University Press, 2003), 183.

[2] The definition of democracy brought forth by Keenan is not new. Among others, Adam Przeworksi famously notes: "Democracy is a system of ruled open-endedness, or organized uncertainty." Adam Przeworski, *Democracy and the Market* (Cambridge: Cambridge University Press, 1991), 13.

Michael Kevane's *Women and Development in Africa: How Gender Works*

By Jean Githinji

Women and Development in Africa: How Gender Works. By Michael Kevane. London: Lynne Rienner Publishers, 2004. 244 pp. $19.95, paperback. ISBN 1-58826-238-3.

Michael Kevane's *Women and Development in Africa: How Gender Works* explores various aspects of economic development in Africa as related to gender dynamics. Kevane analyzes land rights, labor rights, investment in education, gendered treatment of children, micro-financing and women, and the economics of marriage in African agrarian societies. He begins with an introduction to the economic situation in Africa followed by an overview on the origins of gendered structures in those countries. Kevane then explores precisely the economics of land tenure rights, labor rights, and the institution of marriage. He devotes the final chapters to the socialization of African children in highly gendered structures that have an impact on the choices they make as they reach adulthood. An evaluation of some practical solutions to the predicament of African women and their abilities to change the gendered economic constructs concludes the book.

The exploration of gender interactions in priority areas of African agrarian societies must include an analysis of both land rights and labor allocation, and Kevane's development on land tenure rights reflects much of what has been known to be the nature of property rights in Africa—a tense exchange between individualization and communalization of land rights. For women in highly patriarchal societies especially, this tension adds a layer of complexity to the idea of ownership. The informal structures that sustain labor allocation methods in these societies, Kevane finds, also place restrictions on activities of women and seem to continually undermine their economic attainment.

An exploration of the economics of marriage represents another gendered structure that, in African societies, sets "the space of feasible action that persons might take," through determination of bargaining power within the household.[1] Therefore, the quality of a marriage can be surmised by its ability to sway bargaining

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power to one's advantage. Indeed, bargaining power is of immense importance to women in Africa, as it determines outcomes that may, or may not, "result in inefficient allocation of productive resources."[2]

Due to its current relevance, Kevane's analysis of third-party (NGOS, private institutions, advocacy groups, etc.) initiatives designed to change the economic status of women by providing opportunities to earn their own income, and acquire private property, deserves mention. Consistent with the current state of knowledge on the impact of micro-finance, and similar programs, on the status of women in Africa, Kevane observes that shifting entrenched biases against women requires the establishment of sustainable cooperative efforts. For instance, in micro-finance ventures, the simple provision of liquid capital does not, in itself, shift the balance in societal interactions. However, by increasing the bargaining power of women in the home, and decreasing discriminatory practices in business, these programs have afforded women a greater degree of self-determination in both economic and social decision-making.

Perhaps Kevane's most striking insights have to do with the connections between economic structures and the resultant gendered social interaction patterns. Kevane presents a thorough exploration on the "origins" of informal social structures and the endurance of such structures in African agrarian societies. It is interesting that he considers the economic structures as more or less the determinants of the choices that men and women can make, for this possibly implies that changes in the economic structures should/could change the kinds of social patterns exhibited. As women become more important stakeholders in their homes and societies, the kinds of choices they are "allowed" to make will change. Accordingly, resulting social interactions would change form and would not necessarily favor one gender over the other. Even if the relations remain partially gendered, the gross inequality and bias against women would not be observed. It must be noted, though, that conclusions related to structural change are often the sum result of, both deliberate acts, and the unintended consequences of individual decision-making. Kevane does highlight, however, that change in economic standing for women may not necessarily result in equality, as the nature of economics must allow for inequality in some form.

According to Kevane, mere social reengineering is inadequate, as most informal structures require organic regeneration over time. Alterations in the kinds of choices individuals make can lead to structural changes; "if just enough people change their behavior, then through their spontaneous choices a new economic structure comes to quickly replace the old."[3]

It must be noted, however, that the author tends to focus on rural societies in African communities without considering urban societies and the nature of gendered interactions in such a context. Kevane's work would be useful in evaluating certain aspects of urban culture and the nature of gender dynamics observed in ownerships rights, labor interaction, and modern perceptions of marriage. Such an exploration could provide an insight into the kinds of impact modern economic systems have on

the status of women and gender interactions, as well as how these interactions contribute to the nature of development

This book is quite useful in providing an economic model to gender dynamics and their role in development; and those interested in a "purely" economic perspective should find this piece especially instructive. The extensive economic modeling does require rudimentary understanding of such economic theory. One of the more appealing qualities of this book is that it builds on previous research in a comprehensive way. The blending of anthropology, gender studies, and economics, is an alluring quality and proves useful in building a good understanding of African societal relations. While it is easy to get lost in the details of some of the developments, by keeping the broader topic in mind, readers will find a very informative and well-developed book.

Notes

[1] Michael Kevane, *Women and Development in Africa: How Gender Works* (London: Lynne Rienner Publishers, 2004), 29.
[2] Ibid., 122.
[3] Ibid., 6.

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