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Content

PAPERS

ESSAYS

BOOK REVIEWS

EDITORIALS

Letter From the Editor

In this issue of Global Politics Review we publish five papers, one essay, one editorial and two book reviews on a wide array of issues such as international security, migration, international law, and trade agreements.

Anne Irfan examines the work of the UN Relief and Works Agency (UNRWA) with the aim of providing a useful case study for today's refugee crises. Focusing on Palestine, Anne accurately describes the intersections between international politics and human displacement, focusing on the role of international organizations in managing and mitigating such crises. She concludes her paper with practical policy advice on the Syrian refugee crises, drawing numerous lessons learned during the UNRWA experience.

Mateo Corrales Hoyos conducts a thorough analysis of international terrorism from a legal perspective. His paper focuses on the potential role of the International Criminal Court (ICC) in the prosecution of individuals involved in acts of terrorism. In his final argument, he claims that changes in the international system have created the necessary space and precedents for the ICC to deal with the crime of terrorism.

Jie Wang analyzes the intersections between political exiles, Islamist forces, and Libyan politics. Focusing on the activism of political exiles in Cairo from 2012 to 2015, she provides an up to date picture of post-Qaddafi Libya's political reordering, showing the in-depth complexity of transnational politics in the North Africa region. By extensively using primary sources, Wang was also able to find evidence to support the argument that the Egyptian government has been using political exiles as a propaganda tool to strengthen its narrative of opposition to Islamist extremism.

Elisa Chavez tackles the highly controversial topic of sexual abuses perpetrated by immigrants in Europe. Using Norway as a case study, she analyses rape statistics comparing Middle Eastern and North African (MENA) immigrants with other immigrant groups. In particular, she investigates the effects that racial discrimination can have in triggering stress reactions that involve violence. Whereas her findings show that there has been an increased number of reported rape cases carried out by MENA immigrants, she also points out that these immigrants are among the most discriminated, and should accordingly have much higher rates of stress reactions inductive to violent behaviors.

Gordon Gatlin provides an informative analysis on why the vast majority of preferential trade agreements that include services do not comply with one or more of the GATS requirements. Offering an alternative perspective to that of the Managerial School, he argues that balance of power struggles between rising and revisionist powers provide the impetus for status quo and revisionist powers alike to conclude agreements that threaten the legitimacy and institutional integrity of the WTO.

Finally, in this issue you will also find an essay by Benedikt Buechel on the right

of states to exclude would-be immigrants; a review by Giuseppe Gabusi of the book *Centrifugal Empire: Central-Local Relations in China* by Jae Ho Chung; a review by Maximilian Ernst of the book *The Perfect Dictatorship: China in the 21st Century* by Stein Ringen; and an editorial written by Nate Kerkhoff on the rise of migration and reactionary politics.

On behalf of the Editorial Board of Global Politics Review, I would like to express my deepest gratitude and appreciation to the authors who have made this issue possible with their outstanding contributions.

I hope that all readers of this issue find its contents informative and engaging.

Cesare M. Scartozzi
Editor-in-Chief

Editorial Team

About the Journal

Global Politics Review (GPR) is a peer-reviewed journal of international studies published twice a year by the Association for Research, Innovation and Social Science (ARISS). The Journal was founded in 2015 by the Association through a sponsorship of the University of Turin. GPR publishes high quality research papers, interviews and essays that survey new contributions to the field on international studies, with a focus on alternative and non-western theories of international relations.

The Journal aspires to achieve a two-pronged goal: to provide the opportunity for distinguished scholars and graduate students to publish unconventional and innovative researches, and to be a vehicle for introducing new ideas while encouraging debate among the academic community. Global Politics Review aims to make a distinctive contribution to the field of international studies and serve the academic community as a whole.

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UNRWA and the Palestinian Precedent: Lessons From the International Response to the Palestinian Refugee Crisis

Anne Irfan

ABSTRACT: Considering the major refugee crises currently facing the world, this essay argues that an examination of earlier refugee crises is needed in order to devise an effective international response today. On this basis, it assesses the unique international system that was set up in response to one of the largest refugee crises of the twentieth century: that of the Palestinians. Like the Syrian refugee crisis today, the Palestinian case encapsulated the connection between global politics and mass migration. On this basis, this article evaluates the merits of the international organization responsible for serving the Palestinian refugees: the UN Relief and Works Agency (UNRWA). Identifying and assessing the key features of the UNRWA system, the essay argues that its uniqueness generated both benefits and many disadvantages for the Palestinian refugees it served. In particular, the Palestinians' ineligibility for UNHCR services has left them uniquely vulnerable when seeking international protection. Creating a similar international organization to serve Syrian refugees today is likely to cause similar problems, and will raise the question of whether other large refugee populations also need their own UN agencies. However, the internationalist rationale behind the UNRWA system is also contrasted harshly with the current imbalance in the response to the Syrian crisis, whereby a small number of countries are hosting the majority of the refugees. Thus despite its considerable flaws, UNRWA's precedent still provides important lessons for the crisis today.

Keywords: *Refugees, Palestine, Syria, UN, UNRWA, UNHCR.*

Introduction

The UN estimates that nearly six million people have now fled Syria to seek refuge elsewhere.[1] It has described the resulting situation as the worst refugee crisis to face Europe since the Second World War.[2] Yet the vast majority of Syrian refugees are in the Middle East and not Europe.[3] Moreover, it is not the first time in recent decades that Levantine countries have borne the brunt of the fallout from a large-scale refugee crisis.

This essay argues that learning the lessons of previous refugee crises is key for devising

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1 "Syrian Refugees: A Snapshot of the Crisis in the Middle East and Europe," EU, accessed January 13, 2017, http://syrianrefugees.eu.

2 "Urging global assistance for Syrian refugees, European Union at the UN says 'everyone can offer help'," UN News Centre, accessed January 13, 2017, http://www.un.org/apps/news/story.asp?NewsID=52055#. WHN9-7FnlE5.

3 "Syrian Refugees: A Snapshot of the Crisis in the Middle East and Europe."

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an effective international refugee policy today. On these grounds, the essay assesses the historical responses to the largest and longest-running refugee situation in the Middle East: that of the Palestinians. As the Middle East is the same region now engulfed by the Syrian crisis, the Palestinian precedent is particularly salient here. The international response to the Palestinian crisis was largely channeled via the UN Relief and Works Agency (UNRWA), which will accordingly be the focus of this assessment.

Since beginning operations in 1950, UNRWA has provided large-scale welfare, health and education services to registered Palestinian refugees across the Middle East, playing a particularly important role in the camps. As the only UN Agency mandated to serve refugees from a specific region, it is unique in its status and functioning, encapsulating the intersection between international relations and migration. The central question here is whether such a system is recommendable for other refugee crises, particularly the Syrian one today.

Examining this question is complicated by UNRWA's absence from much of the relevant literature. Palestinian historiography, while acknowledging the importance of refugee history, rarely includes in-depth studies of the impact of UNRWA's work.[4] Meanwhile literature in the field of Refugee Studies has too often fallen prey to 'Palestinian exceptionalism' that seals UNRWA off from synoptic studies because of its unusual set-up.[5] The resulting literary gap is particularly glaring in view of the numerous shared features of the Palestinian and Syrian refugee crises; aside from their regional proximity, they are both large-scale and both closely connected to highly contentious regional and global politics.

This article will seek to address this gap by providing a close assessment of the UNRWA system as a case study of an international approach to a refugee crisis. Looking at how its unique setup has worked in practice, the essay identifies the key features of UNRWA's structure, and assesses the resulting advantages and drawbacks. The underlying argument is that historical precedents should always be considered when examining migration crises that share some of the same traits. UNRWA is neither an exemplar to be adopted as an ideal model, nor a disaster that should be entirely disregarded. Instead, it is a flawed case study that can provide much-needed lessons to a world currently struggling to devise

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4　See for example: Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York: Columbia University Press, 1997); Rosemary Sayigh, *The Palestinians: From Peasants to Revolutionaries* (London: Zed Books, 2007); Helena Lindholm Schulz, T*he Palestinian Diaspora: Formation of Identities and Politics of Homeland* (New York: Routledge, 2003); Helga Baumgarten, "The Three Faces/Phases of Palestinian Nationalism, 1948-2005," *Journal of Palestine Studies* 34, no. 4 (2005): 25–48; Shaul Mishal, *West Bank/East Bank: The Palestinians in Jordan, 1949-1967* (New Haven: Yale University Press, 1978); Muhammad Muslih, "Arab Politics and the Rise of Palestinian Nationalism," *Journal of Palestine Studies* 16, no. 4 (1987): 77–94.

5　See for example: Karen Jacobsen, *The Economic Life of Refugees* (Bloomfield, CT: Kumarian Press, 2005); Margaret McGuinness, "Legal and Normative Dimensions of the Manipulation of Refugees," in *Refugee Manipulation: War, Politics and the Abuse of Human Suffering*, ed. Stephen John Stedman and Fred Tanner (Washington D.C.: Brookings, 2003), 135–66.

an effective and successful response to continuing refugee crises.

The role of the UN

At its core, UNRWA signifies the UN's responsibility for Palestinian refugees. As such it is an expression of international duty towards humanitarian crises, in keeping with the rising internationalism of the post-WWII period in which UNRWA was established. The late 1940s saw the dominance of new internationalist norms, according to which refugee problems should be the responsibility of the entire world and not just the immediate region concerned. This idea was codified in the 1951 Refugee Convention.[6] The establishment of organizations like UNRWA thus theoretically safeguarded the concept of shared international responsibility as a way of overriding regional imbalance. In view of recent complaints from the Lebanese[7] and Jordanian[8] governments about insufficient international support for their hosting of millions of Syrian refugees, this approach is again timely and relevant.

In theory, creating a UN body to respond to specific crises avoids over-burdening the region concerned, especially when that region might already be suffering the political and economic aftershocks of the crisis. This approach should result in a comprehensive and streamlined approach that channels global opinion, or at least the opinion of UN Member States. Ideally, the representation of the international community should also promote political neutrality and with it legitimacy. In the age of globalization, the politics of any migration crisis are rarely confined to one region, and the establishment of an international organization to manage it reflects this. However, the question of whether this translates into practice remains – which is where UNRWA provides the all-important case study.

When it comes to UNRWA and the Palestinian refugees, the direct involvement of the UN has led to some obvious benefits. It has given UNRWA's work a higher profile and greater prestige than the same work might have coming from a standard non-governmental aid agency. In practical terms, its UN affiliation provides UNRWA with greater access to governments and more potential resources. In the complex setting of the modern Middle East, holding UN status has also enabled UNRWA staff to travel across regional borders more easily while carrying out their work. Arguably, these benefits to UNRWA in turn also benefit the Palestinian refugees.

Importantly, many of the refugees themselves are aware of the advantages that the involvement of a UN body brings for their cause. As most UNRWA-registered refugees are

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6   Susan M. Akram, "Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution," *Journal of Palestine Studies* 31, no. 3 (Spring 2002): 36-51.

7   Najib Mikati, "My country cannot cope with the Syrian refugee crisis," *The Telegraph,* January 21, 2014, accessed January 13, 2017, http://www.telegraph.co.uk/news/worldnews/middleeast/lebanon/10587174/Lebanon-PM-My-country-cannot-cope-with-the-Syrian-refugee-crisis.html.

8   Michael Holden, "Jordan needs international help over refugee crisis: King Abdullah," *Reuters*, February 2, 2016, accessed January 13, 2017, http://www.reuters.com/article/us-mideast-crisis-jordan-idUSKCN0VB0WI.

stateless, the Agency is the closest thing they have to formal international representation. Some argue that the continuing existence of a UN agency for Palestinian refugees provides a positive validation that their plight is remembered on the world stage.[9] In the simplest terms, UNRWA's work is taken as an indicator of the UN's ongoing responsibility for resolving the Palestinian refugee situation. The refugees' attachment to this idea is demonstrated by the intensity with which they usually protest cuts in UNRWA services, fearing that its disappearance will mean they are forgotten on the world stage.[10]

Yet the case of UNRWA also betrays many ways in which the theoretical advantages of UN involvement in regional refugee crises have fallen flat. In particular, rather than gaining the aura of political neutrality through internationalism, UNRWA has been tainted by the UN's political controversies. This has had a particularly damaging effect on its relationship with the Palestinian refugees – a relationship that lies at the core of the Agency's operations. While welcoming the continuing presence of a UN body for the reasons outlined above, many Palestinian refugees have at the same time held concerns over the UN's politics.

This is best explained by the historical context. Since the late 1940s, many Palestinians have blamed the UN for facilitating their dispossession by legitimizing the partition of Palestine in Resolution 181.[11] Numerous Palestinian refugees and observers have recorded the resulting hostility towards the UN that was commonplace in the camps.[12] As a UN body, UNRWA became tarred with the same brush.[13] From the perspective of many Palestinians, matters were made worse by the fact that UNRWA's funding came largely from the US and the UK, both Israeli allies.[14] The resulting mistrust is far from ideal for either the Agency or the refugees it serves. Successive UNRWA Commissioner-Generals have sought to counter such perceptions by repeatedly emphasizing that the Agency is

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9   Nell Gabiam, "When 'Humanitarianism' becomes 'Development:' The Politics of International Aid in Syria's Palestinian Refugee Camps," *American Anthropologist* 114, no. 1 (2012): 95-107.

10 See for example: Martin Armstrong, "Palestinians protest against UNRWA cuts in Lebanon," *Al Jazeera*, February 29, 2016, accessed January 13, 2017, http://www.aljazeera.com/indepth/features/2016/02/palestinians-protest-unrwa-cuts-lebanon-160223151011960.html; "UNRWA cuts trigger self-immolation, protests in Lebanon refugee camps", *Al Araby*, January 14, 2016, accessed January 13, 2017, https://www.alaraby.co.uk/english/society/2016/1/14/unrwa-cuts-trigger-self-immolation-protests-in-lebanon-refugee-camps; Nisreen El-Shamayleh, "UNRWA funds crisis worries Palestinian refugees", *Al Jazeera*, August 5, 2015, accessed January 13, 2017, http://www.aljazeera.com/blogs/middleeast/2015/08/unrwa-funds-crisis-worries-palestinian-refugees-150805155300792.html.

11 UN General Assembly, Resolution 181 (II), "Future government of Palestine," November 29, 1947.

12 See for example: Elfan Rees, Report to the Department of Inter-Church Aid and Service to Refugees of the World Council of Churches, November 1949, GB0165-0161, File 2, Box 73; Dr Leslie Houseden, Report on the Refugee Children in the Middle East, 28 August 1953, Sir Edward Spears Collection, GB165-0269, File 2, Box 15, both at the Middle East Centre Archive, Oxford University (MECA).

13 Benjamin Schiff, *Refugees Unto the Third Generation: UN Aid to Palestinians* (Syracuse: Syracuse University Press, 1995), 101. See also: Fawaz Turki, *Exile's Return: The Making of a Palestinian American* (New York: Free Press, 1994), 132; UNRWA, Note DUA/L-1, November 21, 1963, File RE150 II, Box RE3, UNRWA Headquarters' Archive (UNHA), Amman, Jordan.

14 Leila Khaled and George Hajjar, *My People Shall Live: The Autobiography of a Revolutionary* (London: Hodder and Stoughton, 1973), 56, 128.

apolitical and purely humanitarian, but the concerns remain.[15]

To make matters worse, UNRWA has also had to respond to the opposite accusations from other key actors. Again, these have been rooted in its UN status, usually the fact that the Agency was established by and remains answerable to the General Assembly (UNGA). Citing incidences such as Resolution 3379, which stated that Zionism is a form of racism, supporters of Israel have claimed that both the UNGA and UNRWA are inherently biased towards the Palestinians.[16] While Resolution 3379 was revoked in 1991,[17] these accusations have continued. In 2012, Middle East Quarterly journal ran a special edition containing a series of articles that condemned the Agency as prejudiced against Israel and inappropriately politicized.[18] UNRWA's UN affiliation has thus had the unintended effect of tainting it with the political controversies of the latter. In generating mistrust, this has also damaged the Agency's ability to work effectively.

In practical terms, being affiliated with the UN also places restraints on UNRWA's work. As a body ultimately answerable to the UNGA, the Agency must comply with UN resolutions in its actions. It therefore has limited autonomy and cannot always act as the situation on the ground may require. For example, UNRWA is required to hold to UNGA Resolution 2253 by refusing to recognize or legitimize the Israeli annexation of Jerusalem, and more generally the occupation of the West Bank and Gaza.[19] In practice, the Agency has needed to work with the Israeli occupying forces in order to carry out its mandated operations in these fields. It must therefore walk a tightrope in order to comply with the UN while still carrying out its mandate. This tension is the opposite of the streamlined comprehensive approach outlined earlier.

These problems would be recreated with the establishment of any new UN body to serve the Syrian refugees. Indeed, the highly controversial nature of contemporary Syrian politics makes it particularly undesirable in this case. However, this would be true of any new UN organization, not merely one based on the UNRWA model. To assess the specificities of the latter, it is necessary to look at its distinguishing features more closely.

UNRWA's Mandate

Many of UNRWA's specificities and distinctions stem from its mandate. In December

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15 See for example: John Blandford Jr., Report of the UNRWA Director, A/1905, June 30, 1951, accessed January 13, 2017, https://unispal.un.org/DPA/DPR/unispal. nsf/0/91377BAF198AFBA6052565AE0068263D; "Frequently Asked Questions: Final status issues and peace negotiations," UNRWA, accessed January 17, 2017, https://www.unrwa.org/who-we-are/ frequently-asked-questions#final_status.

16 UN General Assembly, Resolution 3379, "Elimination of all forms of racial discrimination," November 10, 1975. For more on UNGA politics see: Bruce Russett and Soo Yeon Kim, "The New Politics of Voting Alignments in the United Nations General Assembly," *International Organization* 50, no. 4 (1996): 636-639.

17 UN General Assembly revocation, resolution 46/86, December 16, 1991.

18 *Middle East Quarterly: The Trouble with UNRWA* 19, no. 4 (Fall 2012).

19 UN General Assembly, Resolution 2253, "Measures taken by Israel to change the status of the city of Jerusalem," July 4, 1967.

1949, the UNGA created UNRWA as a subsidiary UN organ with a mandate "to carry out in collaboration with local governments...direct relief and works programs [for the Palestine refugees]" in five geographical fields: the West Bank, Gaza, Jordan, Lebanon and Syria.[20] The scope of its mandated work was humanitarian, with increasing emphasis given to long-term development in later years.[21] UNRWA's creation constituted the UN's first attempt to create a comprehensive refugee relief system, albeit in one particular region.

In view of this, it is perhaps unsurprising that UNRWA's mandate has numerous limitations. Its aforementioned geographical restrictions mean that it does not serve all Palestinian refugees; indeed, there are significant numbers outside the so-called 'five fields' who are excluded from UNRWA services. Egypt in particular hosts a large population of Palestinian refugees who cannot seek support from the Agency.[22] It is estimated that UNRWA has registered less than two-thirds of the total number of Palestinian refugees worldwide.[23]

This is due not only to the Agency's geographical limitations but also to its restrictive definition of who constitutes a Palestinian refugee. According to UNRWA, a Palestinian refugee is:

> a person whose normal residence was Palestine for a minimum of two years preced-
> ing the outbreak of the conflict in 1948 and who, as a result of this conflict, lost both
> his home and his means of livelihood.[24]

This definition was developed with operational rather than legal considerations in mind. As a result, it excludes those refugees who left Palestine after 1948, with an exception for those displaced in 1967. It also excludes Palestinians who were not continually present in Palestine for the two years preceding 1948, such as those who were studying abroad. While it may be argued that such people were in lesser need, the exclusion has created inconclusive and highly-contested UNRWA records that cannot be relied upon for comprehensive figures of the Palestinian refugee population. The Agency's patriarchal structure has created further exclusions over the years, as only the children of Palestinian refugee men – not women – can register for UNRWA services.[25]

The Agency's mandate is restricted in time as well as space. Despite its continuing 67-year existence, UNRWA has retained its original status as a temporary agency, with its mandate renewed approximately every three years. Its current mandate is accordingly due

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20 UN General Assembly, Resolution 302(IV), "Assistance to Palestine Refugees," December 8, 1949.

21 Lance Bartholomeusz, "The Mandate of UNRWA at Sixty," *Refugee Survey Quarterly* 28, no. 2-3 (2010): 452-474.

22 Ibid, 460.

23 BADIL Resource Center for Palestinian Residency and Refugee Rights, *Survey of Palestinian Refugees and Internationally Displaced Persons 2004-2005* (Bethlehem: BADIL, 2006), 49.

24 UNRWA, "UNRWA: A Brief History 1950-82," File RE 100 III, Box RE2, UNHA.

25 Ilana Feldman, "The Challenge of Categories: UNRWA and the Definition of a 'Palestine Refugee'," *Journal of Refugee Studies* 25, no. 3 (2012): 387-406.

to expire in June 2017.[26] The reasons for this paradoxically long-term temporary status are political and largely self-evident; making UNRWA's mandate permanent would imply that the Palestinian refugee crisis will never be resolved. However, the temporary set-up is also problematic, meaning that UNRWA cannot make long-term plans and is compelled to be consistently reactive rather than strategic.

These problems are worsened by the nature of UNRWA's funding, which comes entirely from voluntary donations. As a result of this unreliable income stream, UNRWA has started every year for the last three decades with a large projected deficit for its General Fund.[27] The last time that all core programs were sufficiently funded was in 1986 - and even then, the Commissioner-General remarked that funds "fell far short of the assessment needed to carry out essential construction projects."[28] The Agency's deficit currently stands at $81 million.[29] As a result, it has made significant service cuts over the last two years, reducing its provision of health and education so substantially that major protests have been organized in Palestinian camps in response.[30] This financial instability is arguably the most serious practical problem with the Agency's set-up, with the most serious day-to-day repercussions for the refugees it serves.

The nature of the Agency's mandate is key in distinguishing it from other organizations – particularly the UN's other refugee agency, the High Commissioner for Refugees (UNHCR). Like UNRWA, UNHCR was created with a temporary mandate to be renewed regularly; but unlike UNRWA, the wisdom of this was debated early on and finally formally abolished in 2003.[31] Also unlike UNRWA, UNHCR receives a subsidy directly from the UN budget, albeit only for a small proportion of its costs.[32] Moreover, it uses a legal rather than an operational definition to determine who constitutes a refugee, and is accordingly less exclusive in its service provision.[33] These differences are not merely academic but have solid concrete implications that lie at the heart of the debate over UNRWA's merit as a system. This debate is encapsulated in one particular variance, which is covered next.

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26 "History and Establishment of UNRWA," UNRWA, accessed January 13, 2017, https://www.unrwa.org/who-we-are/frequently-asked-questions#final_status.

27 UNRWA Annual Reports, accessed January 13, 2017, https://www.unrwa.org/tags/annual-report.

28 Giorgio Giacomelli, Report of the Commissioner-General of UNRWA, A/42/13, September 15, 1987, accessed January 13, 2017, https://unispal.un.org/DPA/DPR/unispal.nsf/53936ddf3dd093a1852575530073f2e6/7c04848f7a9cc45b85256880005773e0?OpenDocument.

29 UN Secretary-General's Remarks on the Sustainability of UNRWA, May 5, 2016, accessed January 13, 2017, https://www.unrwa.org/newsroom/official-statements/un-secretary-generals-remarks-sustainability-unrwa.

30 Armstrong, "Palestinians protest against UNRWA cuts in Lebanon," *Al Araby*, "UNRWA cuts trigger self-immolation, protests in Lebanon refugee camps;" El-Shamayleh, "UNRWA funds crisis worries Palestinian refugees."

31 "History of UNHCR," UNHCR, nd, January 13, 2017, http://www.unhcr-centraleurope.org/en/about-us/history-of-unhcr.html.

32 "Figures at a Glance," UNHCR 2015, accessed January 13, 2017, http://www.unhcr.org/uk/figures-at-a-glance.html.

33 Michael Kagan, "Is there Really a Protection Gap? UNRWA's Role vis-à-vis Palestinian Refugees," *Refugee Survey Quarterly* 28, no. 2-3 (2009): 511-530.

The 'Protection Gap'

The 'protection gap' is central to the question of whether the uniqueness of UNRWA advantages or disadvantages the Palestinian refugees. Again, it hinges on the details of the Agency's mandate. UNRWA is not mandated to provide protection for the Palestinian refugees, only welfare services.[34] As a result, it cannot pursue political solutions to the refugee crisis. This task falls instead to the UN Conciliation Commission for Palestine (UNCCP), which was created in 1948 for this precise purpose.[35] When UNRWA was established the following year, the UNGA directed it to "consult with the UNCCP" on their respective tasks.[36]

Of course, the UNCCP was unsuccessful in achieving its objective. The Commission's work hit a brick wall in the 1950s and by the 1960s it had become merely symbolic, holding no political weight.[37] Despite this, the UNCCP has never been abolished and continues to submit annual reports to the UNGA – usually stating that it has nothing new to report.[38] It has no budget and no staff. As a result, there is no active UN body currently pursuing solutions to the Palestinian refugees' plight as part of working for their protection.

By contrast, UNHCR's statute makes explicit reference to its responsibility for providing protection.[39] As a result, UNHCR explicitly promotes repatriation as a durable solution, and directly engages with the politics of refugee crises.[40] The Palestinians are exempt from this; they have been excluded from UNHCR's mandate since its creation, due to the contemporaneous existence of UNRWA. UNGA Resolution 428, which established UNHCR, states that:

> The competence of the High Commissioner.. shall not extend to a person […] who continues to receive from other organs or agencies of the UN protection or assis-tance.[41]

In practice, this exception only applies to Palestinian refugees registered with UNRWA. No other group of refugees receives assistance from any other UN agency or organ. In

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34 Benjamin Schiff, "Between Occupier and Occupied: UNRWA in the West Bank and the Gaza Strip," *Journal of Palestine Studies* 18, no. 3 (Spring 1989): 60-75. See also: Bartholomeusz, "The Mandate of UNRWA at Sixty."

35 UN General Assembly, Resolution 194, "Palestine – Progress Report of the United Nations Mediator," December 11, 1948.

36 UN General Assembly, Resolution 302(IV).

37 For more on UNCCP's early work see: Michael R. Fischbach, "The United Nations and Palestinian Refugee Property Compensation," *Journal of Palestine Studies* 31, no. 2 (Winter 2002): 34-50.

38 See for example: Report of the UNCCP, A/66/296, August 12, 2011, accessed January 13, 2017,https://unispal.un.org/DPA/DPR/unispal.nsf/b792301807650d6685256cef0073cb80/f089fed47e7a3779852578ef004ce076?OpenDocument.

39 UN General Assembly, Resolution 428(V), "Statute of the Office of the United Nations High Commissioner," December 14, 1950, Article 1, Annex.

40 See for example: UNHCR Handbook, "Voluntary Repatriation: International Protection," 1996, accessed January 13, 2017, http://www.unhcr.org/3bfe68d32.pdf.

41 UN General Assembly, Resolution 428(V), Paragraph 7(c), Chapter 2.

theory, Palestinian refugees who find themselves outside UNRWA's geographical range should be exempt from the exception, and eligible for UNHCR services. In practice, they often fall through the gaps, as has been highlighted by the recent plight of Palestinian refugees fleeing Syria for Turkey, Egypt or Iraq.[42]

The variance between UNRWA and UNHCR has led to claims that there is a "protection gap" in the services available to Palestinian refugees. Randa Farah and Susan Akram both contend that the omission of protection services from UNRWA's mandate means that its activities in this field are insufficient and notably deficient compared to those of UNHCR.[43] The combination of UNCCP's long-term inactivity and the Palestinians' exclusion from UNHCR has left them uniquely vulnerable in this regard.[44] UNHCR's explicit promotion of repatriation only underlines the point.[45]

However, UNRWA management argue otherwise. Lance Bartholomeusz, Chief of UNRWA's International Law Division, claims that the Agency has "a very clear mandate for protection, which it carries out in its activities across the fields.[46] Similarly Karen Abu Zayd, Commissioner-General of UNRWA from 2005-2010, characterized the Agency in public statements as "a global advocate for the protection of Palestine refugees."[47] In 2007, she underlined the argument by appointing a Senior Protection Policy Advisor.

It is certainly the case that UNRWA's work in this area has increased since the beginning of the first intifada in 1987, for example with the appointment of Legal Assistance Officers in the West Bank and Gaza to monitor the trials of refugees.[48] On these grounds Michael Kagan argues that while UNRWA is limited in its ability to push for a political solution to the Palestinian refugee crisis, it does provide protection through its general welfare services, reporting on rights abuses and intervening and communicating with the relevant governments where necessary.[49]

Yet it is undeniable that UNRWA's activities in the field of protection are more limited than those of UNHCR, due to its separate and different setup. Modifications to UNRWA's original mandate over the years have given a new emphasis to development as well as

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42 Mai Abu Moghli, Nael Bitarie and Nell Gabiam, "Palestinian Refugees from Syria: Stranded on the on the Margins of Law," *Al Shabaka*, October 19, 2015, accessed January 13, 2017, https://al-shabaka.org/briefs/palestinian-refugees-from-syria-stranded-on-the-margins-of-law/

43 Susan Akram, "Reinterpreting Palestinian Refugee Rights under International Law," in *Palestinian Refugees: The Right of Return*, ed. Naseer Aruri (London: Sterling, 2011), 165-194. Randa Farah, "The Marginalization of Palestinian Refugees," in *Problems of Protection: The UNHCR, Refugees, and Human Rights*, ed. Niklaus Steiner, Mark Gibney and Gil Loescher (New York: Routledge, 2003), 167.

44 Anne Irfan, "The Unique Vulnerability of Palestinian Refugees from Syria," March 22, 2016, accessed January 13, 2017, http://snpfop.scot/2016/03/the-unique-vulnerability-of-palestinian-refugees-from-syria/

45 UNHCR Handbook, "Voluntary Repatriation: International Protection."

46 Bartholomeusz, "The Mandate of UNRWA at 60."

47 "OPT: Statement by UNRWA Commissioner-General Karen Abu Zayd," reliefweb, January 27, 2009, accessed January 13, 2017, http://reliefweb.int/report/occupied-palestinian-territory/opt-statement-unrwa-commissioner-general-karen-abuzayd.

48 Schiff, "Between Occupier and Occupied," 71; Schiff, *Refugees Unto the Third Generation*, 10.

49 Kagan, "Is there Really a Protection Gap?," 522-523, 529.

relief work, but its responsibility for protection remains implicit at best. The resulting vagueness leaves the UNRWA-registered refugees vulnerable when needing protection, with no clear and equivocal protection service to call upon.

The Lessons for the Syrian Crisis

The distinguishing features of the UNRWA system are thus clear. It is a unique UN Agency mandated to provide welfare and development services to the Palestinian refugees who meet its eligibility criteria. It does not provide protection or engage in the political nature of the refugee issue. The setup of the Agency is theoretically transient, as it has a short-term temporary mandate and is funded solely by government donations. All these features differentiate UNRWA from UNHCR, the UN body responsible for all other refugees. The result is that Palestinian refugees are served by a unique system that brings them both benefits and disadvantages; a higher profile for their cause on the international stage at the UN goes hand-in-hand with exclusion from the entitlements available to all other refugees in the world.

The question remains of what lessons this case study holds for refugee crises today – particularly that of the Syrians, which at least superficially shares many features with its Palestinian precedent. As governments around the world struggle to devise and implement an effective comprehensive response to this unfolding humanitarian disaster, should the option of establishing a new and unique UN agency for Syrian refugees be considered?

The major argument for such an agency is that it could relieve the burden currently placed on Syria's neighboring countries, many of which lack the necessary infrastructure and economies to absorb millions of new residents. In 2014, then Lebanese Prime Minister Najib Mikati warned that the country desperately needs more help from the international community on this front;[50] in 2016 King Abdullah of Jordan similarly argued that his country cannot continue to absorb Syrian refugees without more international support.[51] The establishment of a special UN body would therefore be responding to a palpable and acknowledged need and would potentially provide both reassurance and practical support in this regard.

Yet it would also create its own problems. Arguably the Syrian refugee crisis does not need a higher profile so much as it needs a more effective and efficient international response. It is questionable whether the UNRWA system could be described as either. Its short-term mandate and total reliance on voluntary donations more often engenders inefficiency and temporariness in its planning, neither of which would aid the Syrian refugees. There is a risk that creating a new body on this model would in practice be little more than lip-service to the ideal of shared international responsibility. Meanwhile, modifying the UNRWA system by creating a Syrian-specific agency with a UN budget

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50 Najib Mikati, "My country cannot cope with the Syrian refugee crisis."
51 Michael Holden, "Jordan needs international help over refugee crisis: King Abdullah."

subsidy could fuel calls for the same treatment for UNRWA.

The establishment of a new UN agency for Syrian refugees would also have implications for international policy more broadly. It would require new criteria to determine the circumstances under which refugees should be assigned to particular agencies instead of UNHCR – not to mention how long such agencies should operate for. Critics of the UNRWA set-up sometimes claim it gives the Palestinian refugees an unfair level of attention and an unreasonably high profile compared to other groups.[52] The creation of a new UN body specifically for Syrians might attract similar criticism, in view of the high refugee populations from other countries such as Afghanistan, Somalia and Sudan.

Some of the structural problems facing UNRWA today arguably stem from the short-sightedness that characterized its original establishment. To avoid a repeat of this, serious and detailed consideration needs to be given to any plan to create a similar model today. This is arguably the most important lesson to be taken from the case of UNRWA and the Palestinian refugees. The latter shows how short-term planning and structural flaws can lead to long-term inefficiencies and criticism. As the Syrian refugee crisis continues without either political or humanitarian resolution in sight, ignoring such lessons is especially imprudent.

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52 See for example: Danny Ayalon, "The Truth About the Refugees," December 4, 2011, accessed January 13, 2017, https://www.youtube.com/watch?v=g_3A6_qSBBQ.

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Including the Crime of Terrorism Within the Rome Statute: Likelihood and Prospects

Mateo Corrales Hoyos

ABSTRACT: One of the lessons from September 11, and the more recent wave of terror in Europe, is how latent international terrorism is today, in a world that is increasingly interconnected. This paper analyzes the way that international terrorism is handled from a legal perspective and the reach that the International Criminal Court (ICC) has in terms of jurisdiction on acts of terrorism. The Rome Statute, which gave life to the ICC, excluded the crime of terrorism from its jurisdiction. Two reasons for this exclusion were the opposition from the United States by claiming that this could jeopardize its country's security when it comes to sharing intelligence with an international court, and the fear of highly politicizing the new permanent international court. However, the official position given to the world as to why the ICC did not exercise jurisdiction over international terrorism was the lack of a definition of the concept of terrorism. This paper argues that since the end of the Cold War, a Post-Westphalian order that gives power not only to States but also to International Governmental Organizations and Non-Governmental Organizations, has created a space and precedent to consider the crime of terrorism as *jus cogens*. I argue that with the current pressing situation in Europe and the Middle East on terrorist attacks, having the crime of terrorism within the jurisdiction of the court would cover some existing loopholes, not necessarily because the ICC will prosecute every terrorist, but instead because the crime itself will have universal jurisdiction.

Keywords: *International terrorism, International Criminal Court, international law, post-Westphalian order, crime of terrorism, Rome Statute.*

Introduction

One of the lessons from September 11 and the more recently wave of terror in Europe, is how latent international terrorism is in a world that is every day more interconnected. This paper will focus on analyzing the way that international terrorism is being handled from a legal perspective and the reach that the International Criminal Court (ICC) has in terms of jurisdiction on acts of terrorism. Furthermore, this paper will assess if and what the international community can get by including the crime of terrorism into the Rome Statute of the ICC. Followed by the literature review, Part III will outline the previous attempts that have been made to create a permanent international court, as well as exploring the characteristics of the Rome Statute. As early as 1937, the Convention for the Prevention and Punishment of Terrorism created an international criminal court which had jurisdiction over terrorism. Nevertheless, the Convention never

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entered into force.[1] Just after the end of World War II, a second attempt, this time by the International Law Commission (ILC) was made to create an International Criminal Code. The political situation at the time stalled any progress made by the ILC.[2] It was not until 1989 that a new attempt to have a court with jurisdiction over the most pertaining international threats came into the conversation again. The end of the Cold War, added with the phenomenon of globalization, opened a space for a shift in global governance, giving a more important role to non-state actors.

Part IV will look at the attempts made by the international community in defining terrorism. Analyzing diverse perspectives as to the meaning of terrorism, such as treaty law, United Nations General Assembly (UNGA) Resolutions and Declarations, and the United Nations Security Council (UNSC) action,[3] will give the study the necessary tools to investigate the main question addressed in Part V: can terrorism be categorized as *jus cogens?* Recent precedents do exist to think that international terrorism is becoming a peremptory norm. Terrorists are *"hostis humani generic,* an enemy of all mankind"[4] which is considered a phenomenon that creates legal responses to the needs of the international society to prohibit conducts that shock the conscience of humanity.[5] Part VI will focus on the concerns that the world community has on including terrorism into the ICC jurisdiction. Are there some conditions that need to be satisfied in order to get a consensus on a definition? What role can the existing network of conventions dealing with terrorism play on finding the definition? Finally, Part VII will provide some alternatives as to how the crime of terrorism can be included into the Rome Statute. Two options will be addressed, first, the Statute can be amended in order to extend the jurisdiction of the court and include a specific Article that specifies the conditions under the crime of terrorism. The second option would be to interpret terrorism under the crimes which the Court has jurisdiction on. By coding this crime within the Rome Statute, the international community will be adding universal jurisdiction to the crime. By providing an additional alternative to the traditional bases of jurisdiction (territory, nationality, protection, and passive personality), the performance of obligations *erga omnes* will constitute an obligation for states to either prosecute or extradite individuals involved in acts of terrorism.[6]

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1   Ridarson Galingging, "Prosecuting Acts of Terrorism as Crimes against Humanity under the Icc Treaty," *Indonsesian Journal of International Law* 7, no. 4 (2010): 746.

2   Andrew Novak, *The International Criminal Court: An Introduction* (Fairfax: Springer, 2015), 3.

3   Lucy Martinez, "Prosecuting Terrorists at the International Criminal Court: Possibilities and Problems," *Rutgers Law Journal* 34, no. 1 (2002): 4.

4   Ibid., 41.

5   Thomas Weatherall, "The Status of the Prohibition of Terrorism in International Law: Recent Development," *Georgetown Journal of International Law* 46, no. 2 (2015): 590.

6   Ibid., 621.

Literature Review and Methodology

Previous literature has primarily focused on analyzing the different options that the ICC has when prosecuting acts of terrorism.[7] While this approach has enriched the literature on the field, no work has been focused on investigating the implications of having the crime of terrorism as part of the Rome Statute. Thomas Weatherall has been the closest one, when in 2015 he analyzed recent developments that had "crystalized" the international crime of terrorism in customary international law.[8] While the study of terrorism in international law boomed after the September 11 events, a reduction of the studies on the topic can be seen. Nevertheless, with the wave of terrorism that peaked in the latter part of 2015, the question on how and if acts of terrorism should be codified are again playing an important role. This paper adds to the current literature by providing a rationale on the possible tools that the international community may have with an ICC that can prosecute crimes on terrorism. By holding accountable individuals responsible of terrorism in the ICC, problems such as the Lockerbie case will have a potential neutral court, no state immunity will be granted when the attack is state-sponsored, and universal jurisdiction on the crime will further facilitate the prosecution of terrorists. This study will be using mostly academic sources found in databases, but is also supported by books on international law and the International Criminal Court. Furthermore, the official ICC website, UNGA resolutions and UNSC resolutions have been examined to better understand and strengthen the discussion at hand.

Origins of the International Criminal Court and the Rome Statute

Since the League of Nations, the international community intended to create a permanent international court. However, World War II and the Cold War prevented international organizations from implementing such a court. It was only until the end of the Cold War in 1989, that Trinidad and Tobago campaigned again for the idea of having a permanent international criminal court. In addition, the creation of the International Criminal Tribunal of Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in 1993 and 1994 respectively, evidenced a shift in global governance trends. Until the end of the Cold War the sovereign state was the only relevant player in international relations, but these international criminal tribunals were proof of a shift towards a more interconnected world where the sovereign state was no longer the only actor.[9] As a result, in 1994, the ILC prepared a Draft Statute for an International Criminal Court. This draft did not define

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7   Martinez, "Prosecuting Terrorists at the International Criminal Court"; Galingging, "Prosecuting Acts of Terrorism as Crimes against Humanity under the Icc Treaty"; Antonio Cassese, "Terrorism Is Also Disrupting Some Crucial Legal Categories of International Law," *European Journal of International Law* 12, no. 5 (2001): 993-1001.
8   Weatherall, "The Status of the Prohibition of Terrorism in International Law."
9   Eric K. Leonard, *The Onset of Global Governance: International Relations Theory and the International Criminal Court* (Hampshire: Ashgate, 2005), 190.

the crimes to be prosecuted by the Court, instead, drafters thought that the jurisdiction of the Court should be on crimes defined in international treaties, along with crimes part of the Draft Code of Crimes Against the Peace and Security of Mankind, and those crimes considered part of customary international law.[10]

Recognizing that Trinidad and Tobago raised the issue of bringing in an international court that could prosecute drug trafficking and other transnational criminal activities, the United States approached the first session of the Ad Hoc Committee on a Permanent International Criminal Court with the unique mission of excluding these matters from the jurisdiction of the Court.[11] Washington was concerned that the statute could jeopardize its national security, especially on the prosecution of international terrorists and narcotic traffickers. After extensive deliberation and discussions, on July 17, 1998, the conference adopted the Statute for a permanent international criminal court by a vote of 120 in favor, seven against (including the United States) and twenty-one abstentions.[12] In the end, drug trafficking and other transnational criminal activities, which were the crimes that brought the ICC conversation in the first place, were left out of the jurisdiction of the Court. However, the Rome Conference adopted a Resolution that recommended a Review Conference that would "consider the crimes of terrorism and drug crimes with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court."[13]

The Rome Statute entered into force on July 1, 2002 after 60 states had ratified, accepted, and approved it, pursuant to Article 126. The Statute provides for an International Criminal Court to be based in The Hague, and has detailed provisions on: establishment of the Court; jurisdiction, admissibility and applicable law; general principles of criminal law; composition and administration of the Court; investigation and prosecution; trial; penalties; appeal and revision; international cooperation and judicial assistance; enforcement; assembly of states parties; and financing.[14] In order for the court to prosecute an individual, this individual must meet the following characteristics: (i) the defendant must be either a national of a state signatory of the Rome Statute (*ratione personae)*, have committed the crime in a state part of the ICC (*ratione loci)*, or, the UNSC refers the case to the ICC in the interests of international peace and security; (ii) domestic courts must be inactive, unwilling, or unable to investigate and prosecute the alleged crimes; (iii) the alleged crimes must be of sufficient gravity and must fall within the Court's subject matter jurisdiction (*ratione materiae)*, and; (iv) the crimes must have occurred after July 1, 2002 (*ratione temporis)* or the day that the state party accepted the Court's jurisdiction (a new

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10 Johan D. van der Vyver, "Prosecuting Terrorism in International Tribunals," *Emory International Law Review* 24, no. 2 (2010): 534-35.

11 Ibid., 535.

12 Martinez, "Prosecuting Terrorists at the International Criminal Court," 15.

13 Vyver, "Prosecuting Terrorism in International Tribunals," 539-40.

14 Martinez, "Prosecuting Terrorists at the International Criminal Court," 15.

state is permitted to backdate its acceptance of jurisdiction).[15] The Court focuses on three crimes with universal jurisdiction which are Genocide, Crimes Against Humanity, and War Crimes. Even if the Statute also includes Crimes of Aggression as part of the Court's jurisdiction, a provision with the definition of this crime is still missing.

In order for the Court to claim jurisdiction it has to either have a State or the UNSC refer the case to the Court, and in the case of the UNSC, it refers cases on the basis of threats against international peace and security. A third option which makes the Court more independent but at the same time more controversial is the *proprio motu* power. The Prosecutor, as provided in Article 15, may begin investigations on its own initiative on the basis of information on crimes within the jurisdiction of the Court. However, its power is not total, the Prosecutor must submit to the Pre-Trial Chamber a request for authorization of an investigation. After the Court learns that it has jurisdiction over a case by either one of the three cases explained above, the issue of admissibility enters into play. There are two components to consider: complementarity and gravity. The first component is one of the most essential aspects of the ICC jurisdiction, permitting Court prosecutions only where a country is unwilling or unable to handle a case.[16] Emphasizing how important this component of admissibility is for the court, both the preamble and Article 1 of the Statute declare that the Court shall be complementary to national criminal courts. The second component, gravity, has the main task of limiting the number of individuals that it can prosecute, due to its resource restraints. This component hence, makes the Court focus its efforts to prosecute senior leaders or those most responsible, rather than foot soldiers or low-level perpetrators. Usually, however, these senior leaders are the ones more likely to avoid accountability for their crimes.[17]

Terrorism through the International Community Lens

The term terrorism first emerged during the French Revolution. At the time, terrorism was linked with the notion of state-instigated terror "unleashed on a state's own population as a mechanism of control."[18] This concept has been evolving over time and currently three categories of terrorism can be identified: (i) state instigated policies of terror applied domestically; (ii) domestic or internal terrorism carried out by private individuals or groups; and (iii) international terrorism, including state-sponsored acts of transnational violence.[19] The main reason for terrorists to carry out their actions is because these are "low-cost, relatively low-risk, and yet afford the possibilities of high yield in terms of weakening, penetrating or even gaining control through covert means. Moreover, such

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15 Novak, *The International Criminal Court*, 43.
16 Ibid., 54.
17 Ibid., 57.
18 Tim Stephens, "International Criminal Law and the Response to International Terrorism," *University of New South Wales Law Journal* 27, no. 2 (2004): 457.
19 Ibid., 457.

methods carry far less cost and less risk of escalation than conventional war."[20] As such, terrorist groups can carry out attacks that are intended to coerce decisions or policies that their enemy (states or international organizations) is intending to implement. Given that terrorism is such a politicized activity, the international community has not been able to find consensus on a clear definition. Until the end of the Cold War, the main issue was whether to include or not national liberation movements as terrorist acts or not. Since then, the reaction of the international community has drastically changed to condemn any act regardless of its motives as terrorism. Nevertheless, being a highly political issue has prevented an agreement on what exactly terrorism is. Hence, one of the reasons for not wanting to include the crime of terrorism within the Rome Statute has been this exact fear of having a highly politicized court, which would threaten its primary objective of being independent and being a court of last resort.

While the phenomenon of terrorism is not new and many treaties exist to address specific acts of terrorism, the international community has no consensus on a holistic definition of the term. While the intent of this paper is not to define terrorism, the paper will investigate the different sources that underline the current international views on the meaning of terrorism. The three sources that will be explored are: treaty law, United Nations General Assembly Resolutions and Declarations, and United Nations Security Council action.[21] Afterwards, an examination on how previous *Ad Hoc* international courts have dealt with acts of terrorism will be made.

Treaty Law

In the first intent that the International Community made to have an international court back in 1937, terrorism was defined as "all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public."[22] While the Statute was never ratified and the Court never entered into existence, this first attempt at creating a definition is an important precedent and clear evidence that it was of interest to many states to have a permanent international tribunal that would claim jurisdiction over the crime of terrorism. Starting from the 1960s, the international community began creating conventions that condemned several types of terrorism. To date, some two-thirds of UN Member States have either ratified or acceded to at least 10 of the 16 existing instruments, and there is no longer any country that has neither signed nor become a party to at least one of them.[23] These conventions can be divided into four categories: (i) international civil aviation conventions; (ii) internationally protected persons and hostage-taking conventions; (iii)

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20 Martinez, "Prosecuting Terrorists at the International Criminal Court," 3.
21 Ibid., 4.
22 Ibid.
23 "Counter-Terrorism Commission," United Nations Security Council, accessed May 31, 2017, https://www.un.org/sc/ctc/.

maritime navigation; and (iv) the 'new generation' of counter-terrorism conventions (which include the Terrorist Bombings Convention, Terrorism Finance Convention, and the Nuclear Terrorism Convention).[24]

Even if these instruments are in place, which are currently among the most widely ratified international agreements,[25] there is still not a unified definition of the crime which is allowing for loopholes weakening the existing framework. One example of the existing gaps can be seen in the Lockerbie case in which two Libyan officials were investigated for the bombing of an airplane over Lockerbie, Scotland. While the aircraft was registered in the United States and it was flying over the United Kingdom, the nationals accused were Libyan. This crime then had three different states that could claim jurisdiction in the case. Both the United States and the United Kingdom wanted Libya to extradite the two officials, convinced that they would not get an appropriate punishment if tried in a Libyan court. Whereas Libya insisted that through Article 7 of the Montreal Convention it had the obligation to prosecute or extradite *(aut dedere aut punier)*, stating then that these two officials were going to be prosecuted in Libya. The main lesson of this specific case is that even though the existing counter-terrorism conventions network does give more instruments to the international community to address acts of terrorism, there are still situations in which officials and senior leaders can escape the appropriate punishment. Without the crime of terrorism having universal jurisdiction, some specific events can become extremely hard to deal with.

United Nations General Assembly Resolutions and Declarations

The UNGA adopted unanimously on December 1994 and again in 1996 and 1999,[26] the Declaration on Measures to Eliminate International Terrorism. The General Assembly declared that "[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them."[27] The latter part, describing 'whatever the considerations…' in this declaration, refers to the Cold War, when the General Assembly did not condemn all acts of terrorism, but categorizing them between those committed by national liberation armies and the rest. The shift that the UNGA had since 1989 in its declarations and resolutions that address acts of terrorism, is what the global governance perspective calls the post-Westphalian order. In this new order, there is an increased interdependence and an increased importance of a more pluralistic group of international actors.[28] Not only is the sovereign

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24 Stephens, "International Criminal Law" 467-70.

25 Ibid., 473.

26 Martinez, "Prosecuting Terrorists at the International Criminal Court," 7.

27 UN General Assembly, Resolution 49/60, "Measures to Eliminate International Terrorism," Dec. 9, 1994, http://www.un.org/documents/ga/res/49/a49r060.htm.

28 Leonard, *The Onset of Global Governance*, 183.

state the one imposing policies and negotiating in the international sphere anymore, but also International Governmental Organizations, Non-Governmental Organizations, and Transnational Corporations have a louder voice on the shaping of international norms. This shift in the UNGA's declarations and resolutions is adding to the body of law relevant when trying to define terrorism.

United Nations Security Council Action

The Security Council has adopted resolutions both prohibiting terrorist acts as such and resolutions related to specific terrorist incidents.[29] Drawing again on the Lockerbie case explained above, the Security Council adopted resolution 1192 on August 1998 in which, recalling the three previous resolutions on the case, resolutions 731, 748, and 883, it demanded the Libyan Government to comply with those resolutions.[30] The Council, acting under Chapter VII of the UN Charter, considered this terrorist act as threatening international peace and security. Also, a stronger action was taken by the Council after the September 11 attacks. Resolution 1373 calls on all the Members of the United Nations under Chapter VII, which makes the resolution legally binding, for states to "prevent and suppress the financing of terrorist acts."[31] Furthermore, it created the Counter Terrorism Committee, which had the mission to monitor the domestic implementation of this resolution within the UN Members. These events have also led to think that the intent of having legally binding resolutions on acts of terrorism further strengthens these crimes into becoming peremptory norms. Even without a clear definition, these acts have been recognized all around the world and are continuously coming into focus in international criminal law, and the discussion on whether these acts are indeed *jus cogens* is also becoming more relevant.

Ad Hoc International Tribunals

For the purpose of the investigation, the Nuremberg and Tokyo criminal tribunals will not be discussed (giving the focus to the post-Cold War tribunals). Instead, some general comments on the criminal tribunals in Yugoslavia, Rwanda, and Sierra Leone will be made with respect to their way of addressing terrorist acts. These three international criminal tribunals had the mission to bring to justice those responsible of committing different types of crimes during the cruel wars and genocides taking place during a specific time period and in a specific location. While the ICTY did not explicitly include terrorism under its subject matter jurisdiction, both the Statute of the ICTR and the Statute of the Special Court for Sierra Leone (SCSL) included acts of terrorism. Article 3 of the SCSL and Article 4 of the ICTR called "Violations of Article 3 Common to the Geneva

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29 Martinez, "Prosecuting Terrorists at the International Criminal Court," 7-8.

30 United Nations Security Council (SC), Resolution 1192, Aug. 27, 1998, http://www.securitycouncilreport. org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/ROL%20SRES1192.pdf.

31 SC, Resolution 1373, Sept. 28, 2001, https://www.unodc.org/pdf/crime/terrorism/res_1373_english. pdf.

Conventions and of Additional Protocol II,"[32] made reference to acts of terrorism as one of the components of the jurisdiction of the tribunals. The inclusion of acts of terrorism under these Statutes is yet another precedent that raises the question on whether the crime of terrorism does in fact has universal jurisdiction under international customary law.

The Crime of Terrorism as *Jus Cogens*

Terrorism has been categorized as *hosti humani generis* – an enemy of all mankind and has been considered to be on the same level as slavery, genocide, and piracy. Almost all the states around the world have adopted domestic legislation criminalizing international terrorism.[33] The elements that generally constitute the crime within domestic law are: "(i) an illegal violent act; (ii) intended to terrorize or coerce; and (iii) of an international nature."[34] In addition, one of the most recent conventions, the International Convention for the Suppression of the Financing of Terrorism of 1999, which is ratified by 173 parties has stated a definition of terrorism. The Convention expresses under Article 2 that "[a]ny other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."[35] In addition to both domestic law and conventions, in 2007 Judge Antonio Cassese as President of the Special Tribunal for Lebanon (STL), established a clear legal foundation for the international crime of terrorism under international customary law.[36]

In 2005, sitting Prime Minister Hariri of Lebanon was killed along with 22 others. In a negotiation between the United Nations and the Lebanese government, a tribunal was established on May 2007, under a Security Council Resolution acting under Chapter VII of the UN Charter to prosecute those responsible for the killings.[37] The Special Tribunal of Lebanon was mandated to judge according to the Lebanese Criminal Law, but it could apply international customary law and treaty law when considered necessary. Thus, based on its review of state practice and indicators of *opinio juris*, the Appeals Chamber of the court declared that there actually existed a definition of terrorism in customary international law, consisting of:

> The following three key elements: (i) the perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act; (ii) the intent to spread fear among the population (which would generally entail the

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32 See United Nations, "Statute of the International Criminal Tribunal for Rwanda," (1994), and United Nations, "Statute of the Special Court for Sierra Leone," (2002).

33 Weatherall, "The Status of the Prohibition of Terrorism in International Law," 590.

34 Ibid., 592.

35 United Nations, "International Convention for the Suppression of the Financing of Terrorism," 1999, http://www.un.org/en/sc/ctc/docs/conventions/Conv12.pdf.

36 Weatherall, "The Status of the Prohibition of Terrorism in International Law," 600-01.

37 SC, Resolution 1757, May 30, 2007, http://www.un.org/press/en/2007/sc9029.doc.htm.

creation of public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; (iii) when the act involves a transnational element.[38]

With this definition, the old slogan "one man's terrorist is another man's freedom fighter" has been rejected by the post-Westphalian order. The claim that national liberation fighters could justify their acts of terrorism seems to no longer stand in global governance.

Just few weeks after the STL issued the definition on terrorism, the French Court of Cassation released a decision assuming the *jus cogens* status of the prohibition of terrorism in international law.[39] In a 2013 Appeal Decision in the England Court against *Gul,* the judgment clearly declared a prohibition of terrorism in international customary law. The *Gul* case is the judgment of a United Kingdom national born in Libya, which divulgated terrorist videos on the internet, including websites such as YouTube. The Court underlined that such a violation constituted an international crime imputing individual responsibility.[40] The three recent precedents listed should be taken into consideration when thinking whether the crime of terrorism has universal jurisdiction today. Having confirmation of the existence of a peremptory norm through international judicial organs provides the most authoritative indication of its emergence.[41] The STL already considered it to be part of customary international law and became the first international tribunal to claim jurisdiction through this means. Shortly after both French and English courts considered that the crime of terrorism was indeed a peremptory norm.

Finding Consensus on the Definition of Terrorism

A lack of consensus on the definition of the crime of terrorism is not an obstacle for the ICC to exercise jurisdiction over terrorists. Nevertheless, the lack of consensus does leave loopholes as have been outlined. Even if the discussion of having a permanent international criminal instrument was brought by Trinidad and Tobago's concern on drug trafficking and other transnational criminal activities, these crimes were left out of the Rome Statute. The biggest advocate against including these crimes, the United States, is not even a party to the Statute. The problem with this kind of crimes, as has been the case with the inclusion of Crime of Aggression, is the fear of having a highly politicized Court. The ILC Draft Statute that was presented to the delegates in Rome originally included terrorism within the jurisdiction of the Court. Furthermore, countries like Algeria, India, Sri Lanka, and Turkey, when they understood that having terrorism as part of the Court's jurisdiction was not possible, proposed to include terrorism expressly within the definition

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38 Michael P. Scharf, "Special Tribunal for Lebanon Issues Landmark Ruling on Definition of Terrorism and Modes of Participation," *American Society of International Law* 15, no. 6 (2011).

39 Weatherall, "The Status of the Prohibition of Terrorism in International Law," 600-01.

40 Ibid., 605-09.

41 Ibid., 591.

of "Crimes Against Humanity."[42] There are three characteristics that would make any act of terrorism fall into "Crimes Against Humanity," these are: (i) no need to find a nexus with a war; (ii) there has to be a widespread or systematic attack against a civilian population; and (iii) there needs to be knowledge of the attack (from the perpetrator).[43] Therefore, regardless of whether an individual can be labeled as a terrorist, anyone who commits a crime falling within the jurisdiction of the Court, falls within the jurisdiction of the Court.[44]

Given the fact that almost every state recognizes and punishes acts of terrorism, in addition to the intents made to have a definition of the term, it would be plausible for the international community to look at the conglomerate of counter-terrorism conventions if it intends to find a consensus on the definition. In addition, as this paper has been investigating, different events and instruments that have made terrorism an issue concerning every state, should also be taken into consideration. With the redistribution of power in international relations in the past 25 years, more pressure is being put on states to become more responsible actors. The political nature of terrorism, personified in the slogan "one man's terrorist is another man's freedom fighter" is no longer accepted throughout the civilized nations of the world. While it is true that currently the ICC must focus on other pressuring issues such as recent statements made by South Africa in which it intends to withdraw from the Court, as well as a plan inside of the African Union in which African States signatories to the Rome Statute are intending to withdraw in masse, the conversation on giving the Court jurisdiction over the crime of terrorism should not be left aside.

Including the Crime of Terrorism on the Rome Statute

This paper has limited its reach to exposing the existing records that can give the crime of terrorism universal jurisdiction, thus it is not the intent here to propose a holistic solution as to how to overcome the existing loopholes. Nevertheless, I will expose two ways in which the crime of terrorism can be included within the Rome Statute. The first option would be to amend the Statute in order to create a new Article that would focus on the specific crime of terrorism, specifying the conditions to be met. This would then become a fifth crime in which the ICC could exercise jurisdiction on. Nevertheless, if an amendment is made to the Statute, it will only be binding to those State Parties that accept it.[45] Article 121 states that after seven years from the entry into force of the Statute "any State Party may propose amendments."[46] The first review conference took place in Kampala, Uganda in

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42 Martinez, "Prosecuting Terrorists at the International Criminal Court," 18-19.
43 Galingging, "Prosecuting Acts of Terrorism" 757.
44 Ibid., 761.
45 Ibid., 750.
46 United Nations, "Rome Statute of the International Criminal Court," (1998), https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf. 79.

2010. There was a recommendation since the Rome Conference to review the possibility of including drug crimes and the crime of terrorism within the Statute, however, the recommendation was not taken into consideration during the conference. The second way to include terrorism within the Court's jurisdiction would not need to amend the Statute, but by interpreting acts of terrorism as crimes that fall under the definition of one of the crimes already within the ICC competence.[47] Contextualizing this, there are little possibilities for the Court to interpret acts of terrorism under Genocide, but there is a possibility, however, for these acts to be categorized under War Crimes or, even more feasible, under Crimes Against Humanity.

Conclusion

Acts of terrorism are not a new phenomenon, but the term has been continuously evolving since the times of the French Revolution. The international community has been trying to fight these crimes mostly by creating counter-terrorism conventions that are intended to tackle specific aspects of terrorism such as aircraft security, maritime security, protected persons and financing. In addition to treaty law, there has been a shift in the way that both the United Nations General Assembly and Security Council deal with terrorism. Prior to the end of the Cold War, these organs attempted to differentiate between acts of terrorism and similar acts made on behalf of national liberation movements, but since 1989, tolerance for any act of terrorism no longer exists. The post-Westphalian order has been treating acts of terrorism as a crime at the same level as slavery, genocide, and piracy, which indicates that is becoming part of customary international law. Therefore, further research should focus their efforts on assessing if the different sources of law presented here, in addition with the current global governance context have converted the crime of terrorism into a peremptory norm.

Additionally, almost every nation state today has domestic law codifying and criminalizing international terrorism. Two examples of how local courts (French and English) had recently considered international terrorism as *jus cogens* under customary international law have underlined how close this crime is to being considered a peremptory norm. Although it is not impossible to prosecute terrorists under the ICC, the lack of a definition of the term creates loopholes that protect terrorists. To address this issue, the ICC has two options, it can amend its Statute in order to exercise jurisdiction over the crime of terrorism, or, it can interpret terrorism as part of War Crimes or Crimes Against Humanity. While giving the Court jurisdiction over this crime will not bring every terrorist to justice, this option would more adequately address the issue and provide the international community with universal jurisdiction, which as a result could unify the broad network of counter-terrorism conventions and eliminate the existing gaps in the prosecution of terrorists.

47 Galingging, "Prosecuting Acts of Terrorism," 746.

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Islamist Forces, Political Reordering of Libya and Exiles in Cairo

Jie Wang

ABSTRACT: An inevitable outcome of modern warfare and a contemporary political punishment, exile is also a political process aiming at returning to the home country, and even at reacquiring a share in the political arena. For the hosting government, exiles could be ready instruments and a bargaining chip in its domestic and international political competition. In understanding Libya's post-2011 political dynamics and possible future scenarios, this paper directs the attention beyond the geographical boundaries to Libyan political exiles in Cairo, examining their presence and activism, as well as Egypt's policy toward them from 2012 to 2015, a time period when Egypt itself was in the midst of political transformation and constitutional reform, and the political landscape of North Africa at large was witnessing a new wave of Islamist revival prompted by the Arab Spring. Heavily drawing on firsthand materials, this paper adopts an interdisciplinary approach (mainly of political anthropology and political discourse analysis), and proceeds surrounding three clusters: the political exiles' existential contour within the Cairene Libyan transnational migrant community; the pendulum of their fate alongside Egypt's political landscape changing; and a meso-level case study of the LPNM's activism in exile.

Keywords: *Activism, media politics, North Africa, political reconciliation, transnational migrant community.*

Introduction

Muammar Qaddafi's violent demise on 20 October 2011 signals the institutional collapse of the *Jamahiriya* regime. Instead of a scenario accompanied by peaceful democratic transition as the February revolutionaries and many observers envisaged, post-Qaddafi Libya witnesses armed power struggle, mainly between Islamist-military alliances, secular forces, town- and city-states, and tribes. To understand the complexity of such a chaotic episode, most of the scholars fixate on the local actors and factions that once allied as the February revolutionaries and were led by the National Transitional Council (NTC) in ousting the *Jamahiriya* regime, in addition to regional (non-)state actors backing each respectively. Few, if any, address the (possible) role of the *fulul* (the remnants of the *Jamahiriya* regime) in the configuration of the country's current domestic political dynamics. This is not surprising, given the fact that the political purge by means of adopting lustration legislation,[1] and personal revenge

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1   Immediately upon its assumption of power, the NTC, and later its successor the General National Congress (GNC) had passed and enacted political isolation law, aiming at annihilating the *fulul's* presence in post-Qaddafi's Libyan arena, producing new homogeneous political community, and

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occurring within Libya due to the *fulul*'s affiliation with the former regime's patronage network have forced the majority of them to take refuge overseas since 2011.

However, seeking and being in exile should not be hastily understood as indicative of the *fulul*'s political extinction, nor of an inevitable end to their domestic political career. While an outcome of modern warfare and a "contemporary political punishment,"[2] exile is also a "political process,"[3] whose activism, aiming at their returning to the homeland, and even to the domestic political arena, could be ready instruments and a bargaining chip for the Libyan political groups in their mutual competition on the one hand, and on the other, for the hosting governments to intervene in the affairs of their enemies.[4] Then, how could the narratives of political exile, which are upheld by a tripartite connection between the two domestic political competitors of the Tobruk-based House of Representatives (HoR), the Tripoli-based GNC, and the regional actors, contribute to our understanding of Libya's post-2011 political dynamics and possible future scenarios?

As a response, this paper provides an empirical study, directing the attention beyond the geographical boundaries to Libyan political exiles in Cairo, and examines their presence and activism, and Egypt's policy toward them from 2012 to 2015, a time period when Egypt itself was in the midst of political transformation and constitutional reform, and the political landscape of North Africa at large was witnessing a new wave of Islamist revival prompted by the Arab Spring. The research question is: which of the political values do the Libyan political exiles present for the Egyptian government's domestic governance and regional strategic deployment, and how does Egypt's policy toward them affect Libya's post-2011 domestic political dynamics? It is argued that albeit the resilience of the legacy of the *Jamahiriya* regime and of the *al Fateh* revolutionary ideology in post-2011 Libya, the Libyan political exiles' fate is determined by the value which Egypt, as the host state, could exploit in the favor of its own political interests. Their presence in exile was the ready instrument and bargaining chip in Egypt's domestic and international political competition. Their activism, in particular against the militant Islamist forces since 2011, while constituting a quest for survival and a strategic maneuver in their power struggling for a share in the post-Qaddafi Libya's political reordering, functions as Sisi government's proxy propaganda tool for the latter's state security maintenance. My localizing the Libyan exiles in Egypt is based on Egypt's capacity as the most influential (Arab) state player in the Libyan crisis,[5] the host country for the largest Libyan community

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strengthening the revolutionary system.

2   Edward W. Said, "The Mind of Winter: Reflections on Exile," *Harper's Magazine* 269 (1984): 50-1.

3   Anthony Glees, *Exile Politics During the Second World War: the German Social Democrats in Britain*, (Oxford: Clarendon press, 1982), 3.

4   Yossi Shain, *The Frontier of Loyalty: Political Exiles in the Age of The Nation-State*, (Ann Arbor: University of Michigan Press, 2005), xiv.

5   European Council on Foreign Relations, "A Quick Guide to Libya's Main Players," accessed 12 December, 2016, http://www.ecfr.eu/mena/mapping_libya_conflict.

overseas,[6] the contemporary home for most of the *fulul*,[7] the primary geographical base for main Libyan exile political groups, and the transit hub for pro-*Jamahiriya* forces' transnational political activism.

In the interest of fully exploring the research question, three sub-questions are proposed. First, what is the existential contour of Cairo's Libyan political exiles? This inquiry deals with the most basic concern--who are they? The problem of developing the discussion begins with definition. Researchers conduct theoretical delimitation of political exile differently in constructing their own argumentation and analysis. While reflecting the discipline with which they work, putting the definition clarification first as an intellectual foundation fails to capture the complex, and sometimes even contradictory spectrum of this identity, which matters in analyzing the Libyan case. My observations in the field indicate several mobile spaces of betweenness with which the identity of political exile involves simultaneously. Hence, instead of presenting a definitive description, I place this (conceptual) group in dialogue with the broader Cairene Libyan transnational migrant community, to underline the latter's agent in Libyan political exiles' identity recognition, expression and practice in their attempt to regain a share of power in post-2011 political reordering.

As asylum seeker in the host country, exiles hold no *carte blanche* to direct their fate--the survival and success of their political activism depend on the extent of their political value, to which the Egyptian authorities could take benefit from in its political competition, both domestically and internationally. Therefore, the second sub-question treats exile as passive subject, braiding the pendulum of its fate with the narrative of Egypt's alternation of regimes, in particular the Islamist political force's ups and downs in it. How does Egypt's political landscape change since the Egyptian revolution of 2011 affect Libyan political exiles' fate? Then, I choose the Libyan Popular National Movement (LPNM), the first pro-*Jamahiriya* political organization in exile, as a case study, to explore how the LPNM's activism contributes to the Egyptian government's national and regional interests. This meso-level scrutiny sheds light on the resilience of the *Jamahiriya* regime's legacy in the post-Qaddafi era's Libyan political arena.

This paper adopts an interdisciplinary approach (mainly of political anthropology and political discourse analysis), drawing heavily on primary sources, which comprise the LPNM's official statements and documents, its internally circulated 470–pages conciliation proposal, interview scripts on Internet forums, records of several Libyan political exiles' Facebook posts, two audio clips and one video in which the *Jamahiriya* regime's spokesperson Moussa Ibrahim speaks about the LPNM, 38 videos of political television programmes in which the LPNM's then-spokesperson Asaad Zahio participated, copies

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6   "*Munāshida limuhajirīn al-lībiyīn bimasr*," SoundCloud, posted by "Moussa Ibrahim," accessed December 28, 2014, https://soundcloud.com/moussa-ibrahim/mke5bgi523df.

7   From my personal conversation with Dirk Vandewalle on 22 January, 2015 in Amsterdam.

of Libya Resolutions No. 36, 37, 17 and 13 issued by the NTC and the GNC respectively, and field notes of my direct observation on the Cairene Libyan community. The collection of these firsthand materials was done in 2014 and 2015 through two channels: 1) a 14-week Cairo-based anthropological fieldwork; 2) a two-year online tracing, on a daily basis, of the LPNM's activities, the continuity and changes of its political discourse, and several of the leading Libyan political exiles' Facebook page updates. The secondary sources include English language monographs, academic essays, and online news reports in Arabic. They offer historical context and conceptual framework to probe political exiles' activism, and the LPNM's maneuver of media politics.

Political Exile and the Transnational Migrant Community

Identity Recognition among the Community

Pre-2011 Libya was not a migrant sending country. Apart from dissidents taking exile in the 1970s and 1980s, most of the Libyans living abroad were business sojourners. The 2011 Libyan civil war interrupted this transnational population movement tradition. Many people were forced to leave their home country since then, escaping the war. Consequently, Egypt, one of the closest neighboring countries to Libya, witnessed a noticeable population expansion of the Libyan transnational community from fewer than 30,000 in 2006 to 825,000 by 2012.[8] Pre-migration association with Egypt, mainly including Egyptian intermarriage, established businesses, and ownership of real estate, is the first and foremost pull factor that accounts for the Libyan migrants' prioritizing Egypt as their destination to flee to and specifically to settle.

Following a similar trajectory, political exiles are among this conflict-generated transnational community. By 2013, the Libyan government had identified a total number of 88 *fulul* residing in Egypt for extradition and trial.[9] Ascribing the identity label of political exile solely to judicial categorization overlooks the complex property of the revenge culture in post-2011 Libya. In reality, many migrants off this list dare not to return to Libya because of the risk of being revenged, a personal affair which inextricably involves, to different extents, their political association with the former regime's patronage network for governance. In addition, the word "exile," as an identity label, malfunctions in micro-level Libyan cases from time to time. For example, Moussa Ibrahim, the *Jamahiriya* regime's spokesperson during the 2011 civil war, took exile in Germany, his wife's home country, and was formerly wanted on Interpol's list.[10] In February 2015, Interpol's red

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8 "Egypt," Migration Policy Centre, http://www.migrationpolicycentre.eu/docs/migration_profiles/Egypt. pdf. "Liqā'u qanāt al-āṣima maʿa ali al-ṣalābiyy," YouTube video, 42:30, posted by "LibyaChannel," on 3 June, 2012, https://www.youtube.com/watch?v=UcJvhbpTsvw.

9 "*Manṣūr al-Qadhāfi wa māriya fi sijni biṭarābulus baʿda taraḥurīhimai min maṣr*," al-sharq al-Awsat, 27 March, 2013, http://archive.aawsat.com/details.asp?section=4&article=722347&issueno=12538#. VRm4sPnLcfs.

10 In the time of attending the LPNM's conference in October 2014, Moussa Ibrahim was on Interpol's red list. However, Interpol's red notice on him has been withdrawn in February 2015.

notice on him has been withdrawn. Zahio, the then spokesperson of the LPNM and the Secretary-General of the Libyan National Assembly, a Tunisia-based oppositional political organization, had been in exile for four years or so, active in Egypt, Tunisia, and Oman. However, in 2015, with clandestine arrangement from within Libya, he was able to return to the homeland, although staying for only a few days for political initiatives.

Given the fluidity of political exile identity's reference in the Libyan case, it is both impossible and unnecessary to attempt to put this identity and the individuals in accurate and full correspondence. Instead, Libyan political exiles are treated as one segment of the transnational migrant community in which their existence is personified through two interlocked mechanisms: tribal kinship and organization. By 2016, there have been at least three Egypt-based political organizations established and led by the *fulul* who are also on the list of wanted persons issued by the GNC: the Association of Libyan Brothers in Egypt (ALBE), founded in 2013 by Ali Ahwal, the sheikh of al Warfalla tribe, the second largest (pro-Qaddafi) tribe after Tarhuna; the LPNM, established in February 2012, and under a collective leadership which is composed of at least 400 elite members of the former regime; and the Libyan National Struggle Front (LNSF), the Coordinator of Political Affairs and Foreign Relations of which is Ahmed Qaddaf al Dam, the cousin of Muammar Qaddafi, and the former coordinator of Libyan-Egyptian relations.

Identity Practice of the Divergent Political Exile Groups and Collective Memories

Like a pride of lions splitting into various dens, there have been divergences emerging among exiles and exile groups, with each tendency having its own scheme of socio-political activities. As Moussa Ibrahim admitted, the LPNM is one part of a wider "green resistance [implying to the supporters of the *Jamahiriya*]."[11] In the absence of a single powerful figure or the binding force of a state, the interests of exiles converge and diverge, a process largely occurring behind a veil of secrecy. However, the multi-layers, which have existed among Egypt's Libyan political exiles due to the variety of their political relevance, all have intersection with the wider Libyan transnational migrant community in Egypt (as well as in other countries) in terms of collective memory.

As aforementioned, the 2011 Libyan civil war has turned Libya into a migrant sending country. The forced migration is reminiscent of the one which took place when Libya was an Italian colony. During the period from 1911 until 1943, anti-colonial resistance, alongside with disease, starvation, and thirst, had forced over 250,000 Libyans to go into exile in neighboring countries.[12] One demographic consequence is that the population

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11 "Dr Moussa Ibrahim's first public address since Nato's War on Libya in 2011," YouTube video, 4:13, posted by "Tri Continental," on 17 January, 2015, https://www.youtube.com/watch?v=KdwJcqA-AhI&app=desktop.

12 Ali Abdullatif Ahmida, *The Making of Modern Libya* (New York: SUNY Press, 1994), 1.

of Libya in 1911 was roughly the same as in 1950.[13] The second collective memory is fresher and nostalgically-framed: four decades of stability in Qaddafi's *Jamahiriya* in contrast to Libya's present chaos.

It is these "histories" that the Libyan political exiles most immediately avail of binding their existence and activisms of different types in exile with the interests of assumingly all Libyan people—Libya's national interest, which constitutes part of their strategy of claiming political legitimacy among the Libyans. The LPNM's media manipulation by invoking Libyan people's nostalgia for the Qaddafi regime in its articulation of anti-Islamism presents a typical example (I further probe this aspect in section three of this paper). Compared to the LPNM's straightforwardness in pronouncing its political aspirations, Ali Ahwal seems much more low-key, devoting to the social issues of the migrant community. His ALBE focuses on solving Libyan migrants' daily problems in Egypt, such as working to facilitate Libyan students' enrollment in Egyptian universities. While the ALBE claims to welcome all Libyans and serve all Libyans, people perceive of and judge it based on tribal affiliation of Ali Ahwal and several other senior organizers. The tribe, as an informal organizational unit in the Libyan society, remains a cohesive role in the internal stratification of the community.

Extradition versus Political Reconciliation

October 2011 – June 2012: Conciliatory Outlook during the Power Vacuum Period of Egypt

On 8 May 2013, the GNC passed the Political and Administrative Isolation Law (Legislation No. 13), detailing the scope of those Libyans who are targeted in political purge by listing 22 categories that are intended to define a representation of the Qaddafi regime's patronage network.[14] This legislative measure has been interpreted by many observers as a derailment of Libya's democratic transition. In fact, the Islamist-military alliance, which had been strictly oppressed under Qaddafi's four-decade reign, played a vital role in the February revolutionaries' overthrowing the former regime, and continues, after 2011, to exercise a dominant influence on the the NTC and later the GNC. The Islamist forces hold a zero tolerance policy from the very beginning toward the *fulul*'s participation in post-Qaddafi transitional arrangement. Illustratively, the violent pressure Libya's Islamist forces, the most well-known of which is the Muslim Brotherhood-affiliated Justice and Construction Party, imposed to the government leads to a series of diplomatic and legislative actions. As early as directly after Qaddafi's demise, in October 2011, the NTC had made a request to the Egyptian authorities of prohibiting the departure of some *fulul* who had fled to Egypt, and of freezing their property and other assets held

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13 Ibid.

14 Lisa Anderson, "Demystifying the Arab Spring: Parsing the Differences between Tunisia, Egypt, and Libya," *Foreign Affairs,* 90 (2011): 2.

in Egypt.[15] The same month, the Libyan Crisis Management Committee led by Abdul al Aziz al Husadi, then the attorney general, was established, working on identifying the overseas whereabouts of the *fulul*, for legal document preparation for extradition and trial.[16]

In stark contrast, Egypt's initial reaction toward the political exiles seemed moderate and procrastinative. This is not surprising, since on the one hand, historically-rooted ideological affinities of the 1910s's Pan-Islamism and the 1950s and 1960s's Pan-Arabism let Egypt be sympathetic to the *fulul* and to their political aspirations in exile,[17] and on the other hand, Egypt was itself in a messy political transition, being led by the Supreme Council of the Armed Forces (SCAF). In this power vacuum period, it was not until the Libyan government's pronouncement of its first lustration legislation to which Egypt had presented a qualitative reaction. On 2nd May 2012, the NTC approved Legislation No. 36, indirectly giving some indications about the scope of the list of wanted persons. A total of 241 persons, including Qaddafi family members, are on the list, and their properties in Libya have been confiscated.[18] Legislation No. 37, issued the same day, designates as a crime the propagandization and gloryfication of Qaddafi or his sons, as well as his regime and his ideas, during the eight months of warfare in 2011.[19] On 13 May 2012, the issue of conciliation between Libyan factions was discussed at a meeting of the Arab Affairs Committee under the People's Assembly of Egypt, with the resulting decision to establish a parliamentary committee functioning for conciliation.[20] As a progressive player attempting to fill the political vacuum created by the Egyptian 2011 revolution, al-Azhar Chiefdom agreed to engage in the conciliation process.[21]

On 26 May 2012, the first round of negotiations to attempt conciliation between Ali

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15 "*Al-nāi'b al-a'm abdu al-a'ziz al-ḥuṣādiyy yuqadim linazīrihi al-masriyy mustanadāt i'dāna azlām al-niẓām al-sābiq wa taslīmihim lilsulṭāt al-lībiyya,*" Government of Libya, 1 March, 2012, http://www.pm.gov.ly/news/item/305.

16 "*Lajna lībiyya khāṣa tulāḥiq rumūz al-niẓām al-sābiq bilkhārij,*" Libya al-Mostakbal, 1 April, 2012, http://libya-al-mostakbal.org/news/clicked/20788.

17 When Italians invaded the Ottoman Libya in 1911, aiming at incorporating Libya as Italy's fourth shore, the common Islamic religion had inspired a Libyan-Egyptian alliance, including the military involvement of Egyptian volunteers, press campaigns in Egypt and anti-Italian demonstrations in Alexandria and Port Said, for anti-colonial resistance in the context of widespread Pan-Islamism. Naturally, the NATO-led military intervention to Libya in 2011 was bound to carry historical resonance in Egypt. In addition, Gamal Abdel Nasser, one of the towering figures of Egypt's 20th century, is also regarded as the "father" of Libya's *al Fateh* revolution. His advocacy of Pan-Arabism produced far-reaching influence on Qaddafi and the ideology of his 42-year regime.

18 "*Bila'smā'i: qa'ima al-lībiīna al maṭlūb tajmīd a'mwālihim fi masr,*" Shaffaflibya, 4 February, 2012, http://www.shaffaflibya.com/index.php?option=com_content&view=article&id=1267:g--------&Itemid=199.

19 "*Qānūn raqmi 37 lisana 2012 bisha'ani tajrīm tamjīd al-ṭāghiyy,*" National Transitional Council of Libya, http://www.ntc.gov.ly/index.php?option=com_k2&view=item&id=27.

20 Narmīn Abdu al-Ẓāhir, "a*l-a'zhar uwāfiq a'lai al-mushāraka fi lajna al-muṣālaḥa al-lībiyya .. wa musai'da al-khārijiyya a'mām nuwāb al-shaa'b: al-jānib al-lībiyy umāṭil fi taḥsīn al-a'lāqāt wa ḥal mushkilāt al-u'māla..wa mumathil lībiya yerud: 'al-quwaw al-ā'mila' masū'la a'n al-azma,*" youm7, 13 March, 2012, http://www.youm7.com/story/2012/5/13/.

21 Ibid.

al Sallabi,[22] the (self-proclaimed) representative of the NTC, and five Libyan political exiles took place in Cairo under the sponsorship of the Al-Azhar Chiefdom and Arab Affairs Committee of the People's Assembly of Egypt, the chairman of which is Mohamed Saeed Idris.[23] Dramatically, the NTC later denied the legitimacy of Ali al Sallabi as its representative.[24] By the same token, the LPNM, which was reported to be one party in this meeting, denied its participation, and clarified that the negotiation was held "between the Libyan Muslim Brotherhood representative Ali al Sallabi and members of the former regime, who only pursue guaranteeing themselves, and cannot represent anyone in Libya."[25] This episode, while demonstrating al-Azhar Chiefdom's positive role as a conciliatory agent, highlighted the existence of fissures not only between different factions, but *within* the same Libyan political entity.

Political actors from several other countries were also concerned with the existence of Libyan exile groups in Egypt. During the first half of 2012, the former Italian Prime Minister Romano Prodi sent a delegate to Egypt, as well as to other countries in which the Libyan exile community exists, approaching the exiles with an intention to mediate between Libyan factions.[26] Operating under the same rationale, the French government established contact with some members of the LPNM.[27] Noteworthy, Rashid al Ghannushi, himself a political exile in Europe for decades before returning to Tunisia in 2011, and co-founder of the Tunisian moderate Islamist political party Ennahda Movement (in government 2011-14), also proposed to sponsor the conciliation. However, his efforts met with no noticeable success.

July 2012 – June 2013: Morsi's Economic Expediency in Transition Management

In June 2012, Mohamed Morsi, the Muslim Brotherhood candidate, won the presidential election. While closing post-Mubarak Egypt's power vacuum, Morsi's one year presidency failed to lead the state's transitional period toward an inclusive direction. The Morsi government adopted several means, including the enactment of the political isolation law and the insertion of the Muslim Brotherhood members into key official positions,[28] to

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22 He is a Libyan Muslim cleric, religious scholar and Islamist politician.

23 "*Mubāda'a lilḥiwār baina al-thawra wa al-inqilāb*," Democratic Arabic Center, 24, accessed 16 March, 2015, http://democraticac.de/. These five political exiles are Ahmad Qaddafi al Dam, Ali al Ahwal (from Warfalla tribe, the chairman of the Association of Libyan Brothers in Egypt, and the chairman of Libyan tribes in the *Jamahiriya*), Abd al Hamid Bezan (the vice chairman of the Association of Libyan Brothers in Egypt, and once one of Qaddafi aides), Mohamed Jibril al Arifi (in the *Jamahiriya*, he was the chairman of *shu'ūnu al-naqābāt wa al-itiḥādāt wa al-rawābiṭ al- mahaniyya*, and the assistant secretary of the LPNM's Executive Committee), and Omra Bukraa.

24 Ibid., 241.

25 Ibid., 24.

26 Ibid., 23.

27 Ibid.

28 Abdel Monem Said Aly and Karimi Elkady, "The Good, the Bad, and the Ugly of Egypt's Political Transition," Crown Center for Middle East Studies, 3-4.

consolidate the Islamist's dominant presence in the state apparatus. This political culture of exclusion and Morsi's tendency of replacing the system with an Islamist one deepened the ideological rift among Egyptian political groups, and in particular deteriorated the long-lasting tense relations between the Muslim Brotherhood and al-Azhar.[29] Therefore, it is no surprise to see the latter's discontinuing the conciliation efforts between Libyan Islamists, nationalist-seculars and the Egyptian authorities.

In spite of his ambition of strengthening the Muslim Brotherhood's foundation in the Egyptian political arena, as well as of his pleasure to see the growing influence of Islamist forces in Libya, Morsi did not respond to his Libyan counterpart's requirement of extradition in a partisan way. This is apparent through a brief comparative overview of several countries' responses. Al Baghdadi al Mahmoudi (the former prime minister, 2006-11) was extradited from Tunisia on 24 June 2012; and Abdullah Senussi (the former director of military intelligence and the husband of Gaddafi's sister-in-law) from Mauritania on 5 September 2012. Similarly, Egypt returned two Libyan exiles. This result could hardly satisfy the Libyan authorities, given that Egypt accommodates the largest Libyan exile group, and the total number of the wanted persons on the Libyan government's list for extradition from Egypt had reached 88 by 2013.

Furthermore, a scrutiny of the Egyptian case of extradition reveals a dramatic detail, which demonstrates the volatile nature of the Morsi government's stance on the issue of Libyan political exile. On 19 March 2013, the Egyptian forces arrested Ahmad Qaddaf al Dam, Mohamed Ibrahim Qaddafi (the brother of Moussa Ibrahim), and Mohamed Amin Maria (the former Libyan Ambassador to Egypt), acting in accordance with Interpol's demands. Whereas Mohamed Ibrahim Qaddafi and Mohamed Amin Maria were returned to Libya before long, the Egyptian authorities officially claimed that they would not extradite Ahmad Qaddaf al Dam until he had first stood trial in the Cairo Criminal Court,[30] even though Libyan authorities were apparently ready to pay up to two billion dollars for the extradition.[31] It is not certain whether the transactional analysis was inaccurate, because the deal soured, or because Egyptian internal politics interfered. After nine months of detention and when Abdel Fattah el-Sisi came to power, Ahmad Qaddaf al Dam was acquitted and released by the Egyptian court.

Morsi treated the Libyan political exile as bargaining chip in Egyptian-Libyan relations, which he availed of ameliorating Egypt's economic problems. The extradition constituted a transaction, with Egypt receiving in return an agreement with the Libyan Oil Corporation for the refinement of one million barrels of oil on a monthly basis to supplement diesel consumption inside Egypt. Moreover, Libya also agreed to make a deposit of two billion

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29 For a systematic overview of its relations, please refer to http://www.mideasti.org/content/grand-sheikh-and-president.

30 "*Manṣūr al-Qadhāfi wa māriya fi sijni biṭarābulus ba'da taraḥurīhimai min maṣr*," http://archive.aawsat.com/details.asp?section=4&article=722347&issueno=12538#.VRm4sPnLcfs.

31 Ibid.

dollars in the Central Bank of Egypt to support the Egyptian economy.[32] Still, Ahmad Qaddaf al Dam's case spanned Morsi's and Sisi's governments, and that the extradition of him did not finally occur indicates the existence of political forces which Morsi was feeble to overcome or circumvent in coping with the Libyan political exile issue.

June 2014 – 2015: From Official Impartiality to pro-Exile

On 15 February 2015, the Islamic State of Iraq and the Levant (ISIL) released a video in which it claimed to have kidnapped and beheaded 21 Egyptian Coptic Christians working in Libya, in vengeance for "the kidnapping of Muslim women by the Egyptian Coptic Church."[33] On the next day, the Egyptian military conducted airstrikes on locations alleged to be used for ISIL training and weapons stockpiles in Derna and Sirte, two reported ISIL bases in Libya.[34] This is "the first time Egypt has acknowledged any kind of military intervention" in Libya since the 2011 armed conflict.[35] Since then, for the state's domestic and regional security interests, Egypt supports Tobruk-based HoR in fighting against the Islamist militants in Libya, becoming the most influential regional actor in the Libyan issues. The Libyan political exiles, due to their advocacy of Libya's nationalist-secular forces (the HoR), received Sisi's acquiescence of their activism in exile.

Before the determined opposition of the Sisi government to letting Islamist forces play any important role was assured by the Egyptian Coptic incident, Egypt presented officially an impartial stance on the Libyan political exile issue. This is self-evident in an event that became public on 26 October 2014. After three years out of the spotlight,[36] having taken exile in Germany, Moussa Ibrahim attended the LPNM's First General Conference which was held clandestinely in Cairo's downtown on 25 October 2014. The reemergence of Moussa Ibrahim, publicized through the broadcasting of Libya's satellite TV channel SOUT Al Qabael, drew substantial attention from the HoR. On 29 October, Libya's then minister of interior Omar Salem Ramadan issued an official letter to his Egyptian counterpart Mohamed Ibrahim,[37] requesting the extradition of Moussa Ibrahim to Libya for either judicial prosecution or to serve a prison sentence.[38] Soon after, the Egyptian authorities asked Moussa Ibrahim to leave the country,[39] instead of arresting

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32 Ibid.

33 Zeinab El-Gundy, "Islamic State Publishes Report on Coptic Egyptian Workers Kidnapped in Libya," *Ahram Online*, 12 February, 2015, http://english.ahram.org.eg/NewsContent/1/64/122903/Egypt/Politics-/Islamic-State-publishes-report-on-Coptic-Egyptian-.aspx.

34 "Egyptian Air Strikes in Libya Kill Dozens of ISIS Militants," *the Guardian*, 17 February, 2015, http://www.theguardian.com/world/2015/feb/16/egypt-air-strikes-target-isis-weapons-stockpiles-libya.

35 Ibid.

36 In exile times and before attending the Conference, he posted political messages on his Facebook page, uploaded audio clips to SoundCloud as well, but did not step into the spotlight, neither accepting English-language media interview, nor attending occasions held in public.

37 Alfars News Network, Facebook post, October 31, 2014, https://www.facebook.com/69Alfars/photos/a.1402423443343108.1073741828.1402417656677020/1508685096050275/.

38 Interpol, accessed December 22, 2014, http://www.interpol.int/notice/search/wanted/2012-1454.

39 "Former Gaddafi Spokesman Expelled from Egypt-State Newspaper," *Reuters*, October 31, 2014, http://www.reuters.com/article/2014/10/31/egypt-gaddafi-spokesman-idUSL5N0SQ43O20141031.

him for extradition, which was the fate of his brother Mohamed Ibrahim in March 2013.[40]

"In order to protect the host's own political interests," as Yossi Shain reminds us, "a partisan stance [on the political exile]" is always hidden behind the host state's official impartiality.[41] This is true for Sisi's Egypt. Since the Egyptian army deposed Morsi, narratives casting the Muslim Brotherhood in a negative light have been a mainstay of government discourse under Sisi.[42] Sisi has been quoted as saying that "the Muslim Brotherhood is the origin of all Islamic extremism."[43] The presence of powerful Islamist tendencies in Libyan politics is seriously detrimental to the interests of the Sisi government and its sense of the security of its borders. In dealing with the Libyan Muslim Brotherhood, Sisi kept distance from them. In December 2014, a delegation of three prominent Libyan advocates of the Libyan Muslim Brotherhood travelled to Cairo, meeting a high official of the *Jamahiriya*. This is "the first time that these representatives ask those supporting the Muslim Brotherhood by means of money, tribes, and regions, to start a conversation with the polar opposites represented by the 'Gaddafi regime' and the 'new parliament'."[44] This delegation, through an intermediary, expressed their desire to meet with Egyptian authorities, but the Egyptian side responded in an indirect fashion, stressing that "as regards the Libyan leadership, which rejects extremism and wants to withdraw from its alliance with the Muslim Brotherhood, it should at least take practical action on the ground before it knocks at the door of Egypt."[45]

Egypt did not cease its participation in conciliation. On 13 April 2014, the first preparatory committee meetings for the initiative of the Libyan national dialogue were held in Malta. Attendees included Maltese former health minister John Dalli, former NTC Libyan health minister Fatima Hamroush, representatives of the LPNM, and delegates from the Egyptian foreign ministry and Tunisian moderate Islamist Rashid al Ghannushi. What drives the Egyptian officials to accept the Libyan political organization in exile and the LPNM to be one party of the multilateral conciliation dialogue is their assessment of Egyptian state security issues, a question on which Islamist forces are a central issue. Noteworthy, during these meetings, the LPNM advised attendees that the next preparatory committee meetings would take place in Egypt.[46] This implies that the Libyan political exiles have successfully approached several key political players from the Egyptian side.

40 "*Manṣūr al-qadhāfi wa māriya fi sijni biṭarābulus baʿda taraḥurīhimai min maṣr*," al-Sharq al-Awsat, March 27, 2013, http://archive.aawsat.com/details.asp?section=4&article=722347&issueno=12538#. VRm4sPnLcfs.

41 Shain, *Frontier of Loyalty*, 122.

42 Ibid.

43 "Egypt President Sisi: 'Muslim Brotherhood is the Origin of all Islamic Extremism,'" *Pamelageller*, accessed March 22, 2015, http://pamelageller.com/2015/02/62975.html/

44 Abdul Sattar Hatita, "*ijtimāʿt lībiyya siriyya fi al-qāhira liʿzli jamāʿa al-ikhawān wa mīlīshiyātiha*," al-Sharq al-Awsat, December 2, 2014, http://archive.aawsat.com/details. asp?section=4&article=796672&issueno=13153#.VQgr4vmUe4Q. My translation.

45 Ibid.

46 "*Badaʾu al-jalasāt al-taḥḍīriyya lilḥiwār al-waṭaniyy al-lībiyy bimāliṭa bihuḍūr al-muhajirīn wa al-nājiḥin*," al-Hadathu al-Ajwādiyy, 14 April, 2014, http://h-azawad.com/ar/?p=17005.

LPNM and the Host Government's anti-Islamist Extremism

LPNM and the Jamahiriya: a Mitigated Claim of Continuity

The LPNM officially announced its establishment on 12 February 2012 through reproducing its Founding Statement in different languages on several web pages, including the Russian communist political newspaper *Pravda* (in English), the Italian NGO Centro di Iniziative per La Verità e la Giustizia (CIVG) (in Italian), the LPNM's Wikipedia page (in English), and pro-*Jamahiriya* WordPress blog page "Libya 360°Archive" (in Arabic). As the then only publicly announced political opposition to the GNC and western intervention in Libya, and being led by the *Jamahiriya*'s advocates, some of whom were on the list of wanted persons by Interpol or the Libyan authorities, the LPNM is isolated by the international community, with only a few countries allowing its presence,[47] the best known of which is Egypt. Politically, the LPNM can be conceived as a direct continuation of the *Jamahiriya* regime in three aspects: collective leadership components, alliance with tribes inside Libya, and continuing *al Fateh* Revolution practice.

The LPNM's collective leadership is composed of at least 400 elite members of the *Jamahiriya*, active politically, economically, or intellectually, most of whom fled the country over the course of the 2011 conflict.[48] On account of the high confidentiality under which the organization operates, only the identities of a few leading members had been officially made public before 2016.[49] Although then incarcerated in Libya, Saif al Islam Qaddafi, as a "captive Mujahid,"[50] has also been appointed by the LPNM as the Deputy Secretary-General.[51]

In terms of recruiting new members, the LPNM's policy demonstrates its attempt to maintain ideological purity by the use of gatekeeping to restrict its membership to members of the *Jamahiriya* social and political elite. Prior to the suspension of the LPNM's official website by WebHostingPad in the middle of December 2014, in theory anyone could have applied to join the LPNM by submitting an online application form, which is composed of a set of compulsory questions indicating the selective nature of the recruiting policy--dependence on interpersonal trust. In addition to six mandatory profile

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47 Alexandra Valiente, "*al-nāṭiq al-rasmiyy bismi al-haraka al-shaʿbiyya al-waṭaniyya al-lībiyya lilshurūq*," Libya 360 Archive, 15 June, 2012, https://libyadiary.wordpress.com/2012/06/15/.

48 "*Ḥadīth ductūr mūsai ibrāhīm ḥawla al-haraka al-waṭaniyya al-shaʿabiyya 31/08/2013*," SoundCloud audio, 7:00, August 31, 2013, posted by "Moussa Ibrahim ," https://soundcloud.com/moussa-ibrahim/31-08-2013.

49 These public members include Captain al Khuwaildi al Hamidi, the LPNM's then Secretary-General and a former member of 12-person Libyan Revolutionary Command Council (RCC); Mustafa al Zaidi, the then coordinator of the LPNM's Executive Committee and a former health minister; Ali Sulaiman Kanna, the then secretary of the Executive Committee and former commander of Ali Kanna Brigade; al Saqr Mukhtar al Saqr al Sahuli, ex-secretary assistant of the Executive Committee and a former senior executive of Libyan investment company in Egypt; and Mohamed Jibrilal Arifi, the then secretary assistant of the Executive Committee.

50 "Communique 8 From the Libyan Popular National Movement," https://libyadiary.wordpress.com/2012/05/20/communique-8-from-the-libyan-popular-national-movement/

51 Ibid.

items (i.e. the applicant's full name, date of birth, occupation and skills, current country of residence, e-mail address, and social status), the applicant is prompted to mention at least one LPNM member that s/he knows in person.[52] In this manner, closeness to former power and elite social class are monitored and assured to a considerable degree.

As a political body operating outside Libya, the LPNM keeps in touch with its domestic roots through its sustained connection with the Council of Libyan Tribes and Cities (CLTC), a social organization which has been active inside Libya since the 2011 Libyan civil war. These two groups are under the same leadership of 622 political figures inside and outside Libya, and operate in cooperation with each other.[53]

The LPNM's practice of its nationalist responsibility complies to the *Jamahiriya*'s nationalist version of Libyan history. First, the real and popular pro-Qaddafi support within Libya has been accentuated in the LPNM's account of the 2011 civil war. For many Libyans, after 19 March 2011, the foreign intervention meant that the 2011 civil war could be understood as a Libyan struggle of resistance against foreign military attack. According to the LPNM's Conciliation Proposal, millions of people joined a peaceful march in Tripoli on 1 July 2011 in support of Qaddafi, and similar marches were organized on 8 July as well in Sabha and other cities.[54] In the view of the LPNM, the evolution of the situation in Libya indicated that the overthrow of Qaddafi had been plotted in advance. On this account, Libya's *al Fateh* revolution and wealth made the country the object both of enmity for resisting Western domination and covetousness as a country of substantial resources.

Second, by declaring itself as being "proud of Qaddafi's persistence, courage and contributing his soul to Libyan affairs and its independence,"[55] the LPNM grants Qaddafi the same historical status as Omar al Mukhtar, setting him up as Libya's nationalist symbol, and adopting the *al Fateh* Revolution as its political inspiration. In other words, to justify its legitimacy of being the representative of *all* Libyans, the LPNM creates an equation between national identity and loyalty to, and continuation of, the *al Fateh* Revolution.

LPNM's Activism

Compared to any other kind of external assistance provided by the host country, the asylum granted by Egypt is of critical necessity for the political organization of Libyan

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52 This requirement was mentioned in the LPNM's membership online application form. However, since the suspension of its official website in the middle of December 2014, no source of this piece of information is accessible.

53 "Dr Moussa Ibrahim's first public address since Nato's War on Libya in 2011," YouTube video, 4:00, posted by "Tri Continental," on January 17, 2015, https://www.youtube.com/watch?v=KdwJcqA-AhI&app=desktop.

54 "*Mubāda'a lilḥiwār baina al-thawra wa al-inqilāb*," 11-3.

55 Alexandra Valiente, "Communique 1 From The Libyan Popular National Movement," *Libya 360 Archive*, February 16, 2012, https://libyadiary.wordpress.com/2012/02/16/communique-1-from-the-libyan-popular-national-movement/.

exiles,[56] in that a precondition of the LPNM's territorial base for activities in exile, rather than just being a refugee sanctuary, has been guaranteed. As being domestically isolated and internationally marginalized, the LPNM struggles for legitimizing its being one party to Libya's national dialogue mainly through two strategies: seeking ideological alliance globally and conducting media politics.

Seeking Ideological Alliance Globally

Taking advantage of the legacy of the *al Fateh* Revolutionary ideology, the main tenets of which include Arab nationalism, the Third Universal Theory, pan-Africanism, positive neutrality, socialism, direct democracy, *jihad*, and *Jamahiriya*, the LPNM seeks rapprochement and ideological alliance both inside and outside Arabic countries.

On 28 October 2012 in Egypt, the LPNM's base, Ahmed Shartil, then the LPNM's officer in charge of refugee issues, attended the press conference of "Strategic Dimensions of the New Middle East Project and the Role of NATO and its Repercussions on the Arab National Security" organized by Palestine and the Normalization Resistance Committee of Arab Lawyers Union in Cairo.[57] On that occasion, through Shartil's sharing of the disastrous situation of his fellows Tawergha people,[58] the Libyan experience is incorporated into the discourse of anti-imperialism and Pan-Arabism. On 17 February 2015, in his Cairo office, Mustafa al Zaidi met with the secretariat members of the Arab Youth Union after its re-founding.

In addition to borrowing elements of rhetoric and forging alliances with Pan Arabism, *jihad* and direct democracy discourses of the Arab world and non-Arab countries, the LPNM uses discourses on anti-imperialism from the decolonial Third World camp. On 14 March 2015, the first annual anti-imperialist Malcolm X Film Festival was held in Belfast. The themes were of civil rights and black power, global unity and internationalism, legacy, continuities and challenges. As one of the speakers, Moussa Ibrahim gave a speech, via webcam, on "Libyan resistance,"[59] in which he elaborated the *Jamahiriya*'s contribution in pursuing Africanism, a good example of which was Libya's role as "driving force" in the foundation of the Africa Union. He praised Qaddafi as the "true son of Africa."[60] He also made the claim, frequently encountered in Libya, that one of the main reasons behind the West's unseating Qaddafi was his insistence on a united currency in Africa based on the gold standard, which supposedly would have constituted a threat for the West.[61] In his

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56 Shain, *Frontier of Loyalty*, 120.

57 "*Itiḥād al-muḥāmīn al-arab uhājimūna al-thawra al-lībiyya*," YouTube video, posted by "shabaka raṣdi," on 28 October, 2013, https://www.youtube.com/watch?v=ZaxTjOxXs3E.

58 Tawergha is assumed by many Libyans as a pro-*Jamahiriya* city in Libya. The people from Tawergha has faced genocide and forced migration since the 2011 armed conflict.

59 "First Annual Malcolm X Film Festival," Facebook Post, by the Malcolm X Movement, https://www.facebook.com/events/373869066125833/.

60 "Malcolm X Film Festival-Belfast Moussa Ibrahim," YouTube video, 6:50, posted by "2Pakr," March 17, 2015, https://www.youtube.com/watch?v=2HCBQ41dlRc.

61 Ibid.

speech, he positioned Libya's anti-imperialist struggle as being part of the global legacy of Malcolm X.[62]

Similarly, on 27 February 2015, Mustafa al Zaidi was interviewed in English, appearing on the Latin American TV channel TeleSUR. As a public TV channel sponsored by several Latin American governments, its objective is to provide information promoting the integration of Latin America. On 19 November 2013, through the facilitation of the Greece-based Libyan non-governmental organization Libyan Observation for Human Rights Alrassed Alliby, the LPNM delegation joined the London Workers revolutionary party anti-imperialist rally. On 12 January 2015, Moussa Ibrahim addressed, again via Webcam, the UK's Houses of Parliament on an event organized by the TriContinental organization. His subject was "NATO's untold story." These sorts of alliances and appearances have an opportunistic side, but they also illustrate the wide variety of narratives which can incorporate the perspectives of the LPNM narrative into their view of NATO militarism and imperialism imposing a permanently unjust world order under the ideological cover of democracy.

Media Politics and Egypt's Proxy Propaganda Tool

For the LPNM, media politics is an important mechanism which it has utilized since its establishment in the pursuit of its overall political vocation. Its Resolution No.8, concerning the designation of the High Command, specifically states that one of the High Command's missions is "to determine the quality of discourse on the media and speak on behalf of the movement [the LPNM], and to deliver its voice to the world."[63] Zahio actively sought this position, becoming LPNM's mouthpiece in press conferences, news releases, and TV programs. In total, until 12 November 2014 and before his quitting the position, he participated in ten news-related TV programs produced and broadcast by four Arabic-language satellite TV channels frequently,[64] giving commentary and analysis on Libyan political events and issues.

In an overview of the ten TV programs in which Zahio participated, amounting in total to twenty-nine episodes, the program structure is found to be similar, operating as a dialogue. Half of the dialogues are structured in a question and answer format in which Zahio, as the sole invited guest, takes part in a one-on-one interview with the anchor, while the rest are conducted in a multilateral dialogue and/or debate model, whereby Zahio and other Libyan political analysts present their different points of views surrounding the

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62 Ibid.

63 Valiente, "Communique 8 From The Libyan Popular National Movement." My translation.

64 According to my review of all the programmes, Zahio's participation consists of two appearances on France 24 Arabic's *al-niqāsh* (Discussion), and three on *wajha liwajhi* (Face to Face); two on Iraqi Al Hadath's *niqāt sākhina* (Hot Points) and four on *madārāt yuwmiyya* (Daily Orbits); three on Emirati Al Ghad al Arabi's *milafāt* (Files), one on *baina al-nās* (Between the People), and four on *aḥāddth maghāribiyy* (Maghrebi Talks); and three on Lebanese Al Mayadeen's *ḥiwār al-sā'* (Hot News Dialogue), two on *al-akhbār al-masāiyya* (Evening Newscast), and five on *ākhir ṭaba'* (Latest Trace).

same Libya-related political topic, subject to the moderation of the anchor.

There are two major features in Zahio's TV exposure. Contextually speaking, there are always competitive moments either between Zahio and the anchor, or Zahio and other Libyan analysts invited by the same TV program. According to my observation, during the one-on-one interview program episodes, "a primary mode of political engagement" in Geoffrey Baym's eyes,[65] the anchor raised an either "what" or "how" question, both functioning as enquiries into Zahio's comments regarding the news event introduced in the beginning of the program. Instead of challenging or even criticizing the analysis offered by Zahio, the anchor continued the interview by either asking for further elaboration on certain points which Zahio had briefly mentioned in his last analysis, or by raising a new question--which had little to do with his previous answer. Without exception, when Zahio was answering *each* question, the anchor had to interrupt him at some points, by repeating explicit words, such as "*wasal fikra* (your idea has been conveyed)," "*waadih* (your idea has been clearly expressed),"[66] so that Zahio would stop talking, and the anchor could continue with his or her prepared questions. Zahio's verbose and unceasing talk demonstrates that he was striving to gain more time to speak on the program, in order to benefit from televisual resources to the largest extent. In the programs which were structured as multilateral dialogue, this sense of tension, sometimes even of antagonism, was perceivable in the interactions between Zahio and other Libyan analysts, principally due to their conflicting perceptions of the characteristics and import of the 2011 civil armed conflict and its aftermath.[67]

In terms of the structure of Zahio's propaganda discourse, it is deliberately linked with a clear institutional ideology and objective, which aims at providing "the audience with a comprehensive conceptual framework for dealing with social and political reality."[68] This appears to be salient through the lens of topics and local semantics respectively.

For a propagandist, that picking topics is not in his control might seem problematic. But this is not the case for Zahio. A complete examination of his responses to all the sixty-six questions reveals another set of foci to which he shifted, depending on which time period (past, present, or future) had been broached. In commentary on the past, he consistently reminded of the safety and security under the *Jamahiriya*, which supports his argument of

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65 Geoffrey Baym, "Political Media as Discursive Modes: A Comparative Analysis of Interviews with Ron Paul from Meet the Press, Tonight, the Daily Show, and Hannity," *International Journal of Communication* 7 (2013): 507.

66 "*Asa'd zahuw al-nāṭiq bismi al-haraka al-waṭaniyya al-lībiyya al-sha'abiyya fi barnāmij wajha liwajhi biqanāt faransa 24,*" YouTube video, 10:46, posted by "adham ali," accessed December 15, 2014, https://m.youtube.com/watch?v=a3aZ-EZwGmc.

67 For example, on the occasion of the 2nd anniversary of Qaddafi regime's downfall, on 23 October 2013, France 24 Arabic's *Face to Face* brought Zahio (based in Cairo) and Mahmoud Ismail (a Libyan political activist based in Tripoli) together via camera interview, discussing the achievements, if any, in the last two years. In this eighteen-minute episode, the two guests launched into a severe verbal attack on each other twice, each of which lasted for at least thirty seconds in spite of the anchor's moderation.

68 Paul Kecskemeti, "Propaganda," in *Handbook of Communication*, ed. Ithiel de Sola Pool (Chicago: Rand McNally, 1973), 849-850.

the supposedly conspiratorial nature of the 2011 armed conflict; for the present situation, mass exodus, the tragic situation of an ongoing civil war, the penetration and danger of terrorism etc.; and for the future, the necessity of a countrywide nationalist dialogue. By executing these shifts, the fact that he was given time to speak on TV becomes more meaningful than what he was expected to answer based on the content of the questions. Usually, Zahio first answered the question quickly and in a perfunctory way, then shifted to the topics and discourse that he had pre-prepared. For instance, on 6 March 2014, Qaddafi's fourth son Saadi al Qaddafi was extradited from Niger to Libya. The anchor asked Zahio whether "the extradition of Saadi Qaddafi was a transaction, and [if so,] between which two sides?"[69] After a few words stating, "We cannot know the details of the transaction," Zahio immediately gave his utterances a more general turn, saying, "But what we know is that nowadays Libyans have been sold and bought around the world."[70] By the same token, when being asked to give comments on the shutting down of the Tunisian embassy in Tripoli on July 2014, Zahio said, "What I have been made aware of is the same as what you have reported just now."[71] Following this brief and direct answer, he continued to enumerate the foreign companies and international organizations that have withdrawn from Libya due to security reasons. Then, he ascribed the fault for this decline solely and unambiguously to the non-legitimacy of the GNC.

Regarding the local semantics, Zahio's utterance shows clearly that, as in much political discourse, "all information that is detrimental to the ingroup will tend to remain implicit, and information that is unfavourable to the outgroup will be made explicit and vice versa (our negative points and their positive points will remain implicit)."[72] From his consistent utterances, one gains insight into the biased conceptual model which ideologically controls Zahio's speech patterns regarding the situation of Libya.[73] As predicted by this model,[74] functional relations of generalization and specification, as well as of contrast and example are employed by Zahio.

These two pairs of functional relations share the same borderline drawn by Zahio. He selects as his positive baseline the *Jamahiriya*, juxtaposing it with a negative proposition and situation, namely the state of Libya after the 2011 civil armed conflict. The examples he most frequently uses are the security situation and the difficulties of forced migration, both factors substantiating Libya's present instability in contrast with the (nostalgically-

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69 "*Liqā'u asa'd zahuw ḥawla jarīma taslīm al-muhandis al-liwā'i al-sā'adi muamar al-qadhāfi wa al-a'ḥdāth fi lībiya*," YouTube video, 00:26, posted by "libya libya," accessed January 23, 2015, https://m.youtube.com/watch?v=n-LN-r7lPZs [translated by the author].

70 Ibid., 00:48 [translated by the author].

71 "*Liqā'u asa'd zahuw a'lai qanāt al-mayādīn al-juz'u al-thāni 2014/7/19,*" 03:06 [translated by the author].

72 Teun A. van Dijk, "Discourse Analysis as Ideology Analysis," in *Language and Peace*, ed. Christina Schäffne, and Anita L. Wenden (New York: Routledge, 2005), 27.

73 Ibid., 26.

74 More about this model, see van Dijk, "Discourse Analysis as Ideology Analysis," 26-7; Van Dijk, "What is political discourse Analysis?," 32.

framed) stability in the *Jamahiriya*. Zahio sticks to this fact, attributing all the negative realities of today's Libya to the reason of instability and thus creating a generalization which elides any specific nuances. It also becomes a tool Zahio uses in his argument. For example, when confronting accusations from other politicians about how autocratic Qaddafi was over the past four decades, Zahio defends himself by presenting a pair of figures: during the *Jamahiriya*, the Libyans who were forced into exile numbered in the hundreds, whereas now, millions of Libyans have had to leave their home country because of the civil war.[75]

Pan-Arab satellite TV channels constitute the LPNM's main medium for the advancement of its particular rhetoric regarding Libyan politics, society and history. As a general rule, LPNM's public pronouncements ascribe the "grave crisis" in Libya to the Muslim Brotherhood,[76] Operation Libya Dawn, etc. Hence, these Islamist groups, like al Qaeda, are designated as Islamist extremists and terrorists from the LPNM's standpoint. The GNC's employment of Islamist militias had become one of the main avenues for LPNM rhetorical attacks. Therefore, despite being a source of tension in the Egyptian-Libyan bilateral relationship, the LPNM does not represent a security threat for Egypt, but a welcome presence in strengthening Egypt's narrative of opposition to Islamist extremism, and decimating Islamist militants' political power.

Conclusion

A direct outcome of the 2011 Libyan civil warfar and an immediate manifestation of the political punishment, for many *fulul* of the *Jamahiriya* regime, being exile is also a political process heading toward their future of returning to the home country's political arena. In Egypt (and quite likely also in other host countries for Libyan exiles), the Libyan political exiles' existential contour and activism diverge structurally, discursively and operationally, with each tendency having its own political capitals, survival strategies and scheme of sociopolitical activities. While indicative of the fracturing of their interests in the absence of a single powerful figure or the binding force after Qaddafi's demise, this heterogeneity, emergent among one homogenous (vis-à-vis the February revolutionaries and post-2011 main political actors in terms of identity labeling) segment of the broader conflict-generated Libyan transnational community in Cairo, demonstrates the resilience of the legacy of the *Jamahiriya* regime and of the *al Fateh* revolutionary ideology, in particular Libyan fidelity to tribal kinship ideologies and Pan-Arabism respectively, in the *fulul*'s struggling for a share in post-Qaddafi Libya's political reordering, as has shown the case study of the LPNM in its seeking ideological alliance globally and doing media politics through the Arabic satellite TV channels.

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75 "*Liqā'u al-a'kh asa'd zahuw a'lai qanāt al-ghad al-arabiyy fi barnāmij maghārībiyāt 20/2/2014*," 15:49.

76 "Egyptian Air Strikes in Libya Kill Dozens of ISIS Militants," *the Guardian*, accessed Apil 1, 2017, http://www.theguardian.com/world/2015/feb/16/egypt-air-strikes-target-isis-weapons-stockpiles-libya.

However, the Libyan political exiles' fate is determined by the host state; and to be precise, by the value which Egypt could exploit in the favor of its own political interests. Al-Azhar perceived sponsoring the conciliation between the exiles, Libyan Islamists, nationalist-seculars and the Egyptian authorities as a process leading toward its re-emergence as an influential player in Egypt's power vacuum. Thus, while Egypt was being led by the SCAF, under al-Azhar sponsorship, Libyan exiles were accepted by the Egyptian officials and several other regional actors in the multilateral conciliation dialogue. The Morsi government's political culture of exclusion deteriorated the long-lasting tense relations between the Muslim Brotherhood and al-Azhar, resulting in the latter's discontinuing the conciliation effort. Instead of an opportunity to strengthen the Muslim Brotherhood's alliance with Libyan Islamist forces, in his response to the Libyan authorities' requirement of extradition, Morsi treated the Libyan political exile as a bargaining chip which he availed of ameliorating Egypt's economic problems--an economic expediency in the Muslim Brotherhood's transition management. Since Sisi's taking power, Libyan political exiles turned to be a welcome presence. Their activism, in particular of media politics, functions as Egypt's proxy propaganda tool in strengthening the state's narrative of opposition to Islamist extremism, and decimating Islamist militants' political power, which is a central issue in the Egyptian authorities' assessment of the national and regional security maintenance. Sisi is likely to continue the pro-exile policy, as long as Islamist extremism remains a threat, both ideologically and operationally, to the state.

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From Immigrants to Sex Offenders: The Case of a Failed Integration System in Norway

Elisa Chavez

ABSTRACT: Since the turn of the millennium, evidence has proven two parallel growing trends in Western Europe. Namely, the influx of immigrants from Middle Eastern and North African countries as well as the rising numbers of reported rape cases. Whether there exists a causation between these two trends however remains a highly controversial topic, lacking established literature. By using the case study of Norway, this paper will attempt to begin preliminary research of establishing the validity of such a claim, and more importantly, the broader context around the reasons for why this is the case. Rape reports from the Norwegian Police indicate that there is indeed a higher frequency of relative numbers, though not a higher absolute number, of rape assailants coming from the Middle Eastern and North African immigrant group than any other immigrant group and the Norwegian-born population. The main analysis of this paper is to investigate the context in which these statistics are higher from this immigrant group. Accounts will be made for the immigrant experience of MENA immigrants to Western Europe, including assessments of the cultural differences at hand, general societal attitudes towards the immigrant group, and how the role of the media can narrate public discourse. Overall findings indicate how part of the reason for these statistics is in fact due to a failed integration system in Norwegian society.

Keywords: *Muslim immigrants, discrimination, rape, integration, Norway, Western Europe.*

Introduction

Since the turn of the millennium, Western Europe has been faced with two emerging societal challenges, which some have begun to consider having a cause-and-effect relationship. Namely, the influx of immigrants and the increasing incidence of sex crimes. Across all the Nordic countries, and the vast majority of Western Europe, there has been an increasing tendency to blame immigrants for the parallel increase in national rape statistics, specifically those from Middle Eastern and North African countries. At the end of 2015, headlines titled "Norway is offering Classes To Teach Muslim Immigrants Not To Rape,"[1] "Norway Offers Migrants a Lesson on How to Treat Women,"[2] "Refugees to be given lessons in 'Western sexual norms' in Norway"[3] circulated the world press

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1 Chuck Ross, "Report: Norway Is Offering Classes to Teach Muslim Immigrants Not to Rape," *The Daily Caller*, December 20, 2015, http://dailycaller.com/2015/12/20/report-norway-is-offering-classes-to-teach-muslim-immigrants-not-to-rape/.

2 Andrew Higgins, "Norway Offers Migrants a Lesson in How to Treat Women," *New York Times*, December 19, 2015, http://mobile.nytimes.com/2015/12/20/world/europe/norway-offers-migrants-a-lesson-in-how-to-treat-women.html?referer&_r=0.

3 Jake Alden-Falconer, "Refugees to Be Given Lessons in 'Western Sexual Norms' in Norway,"

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as Norway was establishing a sexual education program in their immigrant integration system. In Cologne, Germany, 2016's New Year celebrations were severely hampered by a mass attack of sexual assaults – seemingly coordinated – on nearly one hundred women. During a press conference in the aftermath, Cologne Police Chief Wolfgang Albers said the suspects were "'Arab or North African' in their appearance."[4] The police chief's remarks reflect the widely-assumed notion in Western Europe that the first place to direct suspicions and blame for new sex crimes should be towards Middle Eastern and North African immigrants. This research paper will investigate the validity of such a claim by using recent official statistics to set the scene for how the percentages of rape assailants from immigrant groups vary from other groups. Second, and more importantly, the investigation will take a holistic approach and examine the context of what those numbers show. If there is a higher percentage of rape assailants from the Middle Eastern and North African immigrant group, *why* is this so? The hypothesis is that this is largely due to a weak integration system.

To narrow down the research framework, Norway has been chosen as a case study among the Western European countries. The first research objective is to establish the validity of directing initial suspicions and blame for newly reported rapes towards Middle Eastern and African immigrants (hereafter: MENA). It is not the intention of this paper to be a quantitative study, so to establish whether MENA immigrants actually commit more sex crimes in absolute numbers, it will simply look at the country-background breakdowns of rape assailants in the most recent Norwegian official rape statistics. Clarifying the statistics for the first research objective will set the scene for the second and more extensive research objective, which is to investigate the immigrant experience of MENA migrants to Norway. The obvious cultural differences cannot, and should not, be ignored or left out in an analysis trying to understand MENA's immigrant experience in a Western society. However, the problem assumed to be the case by similar analyses is not the exclusion of the cultural clash discussion as a part of the reason, but rather the limitation of it as the only possible explanation to why MENA immigrants tend to have higher criminal records of rape. Other relevant factors include the treatment of immigrants by the media and society, and the immigrants' response to this treatment. Analyzing mainstream racial prejudice and societal exclusion is important for drawing conclusions on whether the lack of integration is due to a possible failed public policy integration system in Norway. The goal is to gain a better understanding of how their immigrant experience can be related to higher rape statistics. Expected findings are that no specific immigrant group is responsible for a higher absolute number of sexual assaults

Independent, January 9, 2016, http://www.independent.co.uk/news/world/europe/norway-refugees-given-classes-on-sexual-norms-a6803666.html.

4   Claire Lampen, "#Rapefugees Trending on Twitter after Cologne Nye Attacks," *Mic,* January 7, 2016, https://mic.com/articles/132020/rapefugees-trending-on-twitter-after-cologne-nye-attacks-and-the-rhetoric-is-spreading#.qoccdCIuY.

than any other group in Norway, due to the obvious size difference between this group and, for example, the Norwegian-born population. If this is the case, the popular trend of first directing blame or suspicion towards MENA immigrants for new assault rape cases can be interpreted as a socially constructed view, created by some high numbers – although *not* the highest absolute numbers – of rape assailants from this immigrant group. Such a socially constructed view would mirror society's prejudiced treatment of this specific immigrant group, a view that is also believed to be further escalated by a negative narrative generated by the mainstream media. This would in turn largely reflect a failed integration system for immigrants in Norway.

It is worth noting that the timeline at hand only stretches back for little over a decade, thus existing literature on this topic is generally limited, and switching the locus between Norway and other Western European countries is an effort to strengthen the analysis, as this method might fill in for paucity in the existing literature. For example, drawing on data from other Nordic and Western European countries regarding their mainstream attitudes towards sexual culture as well as trends on rape and immigration would be relevant, as Norway generally shares the same cultural norms surrounding gender and sexuality. Additionally, it will be valuable to look at recurring media headlines and trends for two reasons. First, to understand the narrative that the media has produced in this debate, but also, as a potential source filler for setting the scene of what the mainstream attitudes are, where literature is lacking. The lack of established literature on this topic further underlines the importance of continuing to add research to it, as the subject very much remains a moving target and is continuously triggered by controversy and conflict.

Literature Review

A good selection of literature on increased rape trends in Norway is also lacking, as the issue remains relatively new. The media coined the term *rape wave* in 2007, and headlines such as "Wave of Rape Shocks the Big Cities: Assaults in downtown Oslo"[5] and "Rape Wave in the media: New police report shows strong correlation between media headlines and police reports"[6] have commonly appeared throughout the past decade, but besides these recurring headlines, the number of non-media publications remains restricted. However, a few government and police research initiatives depict the Norwegian authorities' heightened interest for knowledge on the rape trends. In 2011, the National Criminal Investigation Service, the Norwegian Police Service's special agency commonly known as Kripos, published the first of a new annual series called *The Rape*

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5   Olav Røli, Jorun Sofie F. Aartun and Ann Kristin Hanssen, "Voldtekstbølge Ryster Storbyene: Overgrepene I Oslo Sentrum (Wave of Rape Shocks the Big Cities: Assaults in Downtown Oslo)," *VG,* February 14, 2007, http://www.vg.no/nyheter/innenriks/voldtekstboelge-ryster-storbyene/a/152245/.

6   Bjørn Åge Mossin, "Voldtektsbølge I Mediene: Ny Politirapport Viser Sterk Sammenheng Mellom Medieoppslag Og Anmeldelser (Rape Wave in the Media: New Police Report Shows a Strong Correlation between Media Headlines and Police Reports)," *journalisten*, October 9, 2012, http://journalisten. no/2012/10/voldtektsbolge-i-mediene.

Situation (Voldtektssituasjonen). According to the police, the purpose of these reports was to contribute more detailed knowledge on reported rapes in Norway. In the 2015 annual report, it is documented that every year between 2011 and 2014, there was an approximate 10 percent steady annual increase in reported rapes. In 2014, there was a small decline, but in 2015, the increase was back at 12 percent, again reaching unprecedented rates. Similarly, in 2012, the Norwegian National Research Center on Violence and Traumatic Stress (Nasjonalt Kunnskapssenter for vold og traumatisk stress – NKVTS) was mandated by the government to make a research profile, a so-called knowledge-status, on men in Norway who commit rape crimes or other serious sexual harassments.[7] In a research project titled *Violence and Rape in Norway: A national study of violence in a lifetime*, Thoresen and Hjemdal report that their study results reflected a decline in violence on minors in Norway compared to adults, but that a similar declining trend was not found in the statistics trends on rape of young women.[8] Although the established literature on a rape increase in Norway is narrow, these publications as well as official government and police interests indicate an increased demand for research and attention drawn to this topic as an emerging pressing matter.

Since the literature on the general rape situations in Norway remains limited, so does the research on who is actually responsible for most of these rape cases and more importantly, *why*. The purpose of this research paper is to add to the preliminary research framework of such literature, in relation to the widespread discussion about its high prevalence in the MENA immigrant group. One of the most favored arguments supporting the popular Western European narrative of a direct link between the influx of MENA immigrants and an increase of rape cases in Western Europe, is the cultural differences in gender roles and sexual behavior from Muslim societies compared to Western European ones. Nader Ahmadi compares sexual norms in a Muslim society with those of a Scandinavian one, pointing out gender roles in the normative sexual dyad of both societies as a central difference. "Because of the dominating patriarchal structure of Muslim societies in general, it is not the mutual pleasure of both genders but rather that of the male that is prioritized in reality."[9] Liz Fekete also touches upon this gender norm and cultural clash, "[Western European] generalized suspicion of Muslims, who are characterized as holding on to an alien culture that, in its opposition to homosexuality and gender equality, threatens core European values."[10] Maggie Ibrahim (2005) echoes the Western European discriminatory

7   John-Filip Standmoen and Kristin Skjørten Anja Emilie Kruse, "Menn Som Har Begått Voldtekt - En Kunnskapsstatus (Men Who Have Raped - a Knowledge Status)," *Nasjonalt kunnskapssenter om vold og traumatisk stress (National Research Center on violence and traumatic stress)* (2013): 3.

8   Siri Thoresen and Ole Kristian Hjemdal, "Vold Og Voldtekt I Norge: En Nasjonal Forekomststudie Av Vold I Et Livsløpsperspektiv (Violence and Rape in Norway: A National Study on Violence During a Lifetime)," *Nasjonalt Kunnskapssenter om vold og traumatisk stress (National Research Center on violence and traumatic stress)* (2014): 134.

9   Nader Ahmadi, "Migration Challenges Views on Sexuality," *Ethnic and Racial Studies* 26, no. 4 (2003): 2.

10 Liz Fekete, "Enlightened Fundamentalism? Immigration, Feminism and the Right," *Race & Class* 48,

narrative of Muslim MENA immigrants and their culture, especially regarding gender and sexual norms: "A worldview based on 'us,' that is based on Western civilization, in contrast to 'them,' the barbaric, and uncivilized nature of natives."[11]

Miriam Ticktin explores this Western narrative even further, suggesting that the debates over immigration, national security, and a Europe-wide growing Islamophobia, in context with sexual violence, can be directly explained by the fact that it has become the discourse of European border control and policies. "[T]hrough a discourse against sexual violence, men of North African and Muslim origin are excluded as barbaric and uncivilized, and now as violators of women's human rights. […] an example of 'fighting sexism with racism.'"[12] When investigating such a claim, i.e. Europe fighting sexism with racism, it becomes important to look at the layers of discrimination and racism towards MENA immigrants in Western Europe, and in this case specifically Norway. Only after investigating the layers of discrimination and racism, one can hope to properly analyze the MENA immigrant experience, and start drawing conclusions on why there might be a higher percentage from this immigrant group in the rape statistics.

Lastly, when analyzing racial prejudice in context with immigration and integration, it is important to have a clear definition of race. This research paper will lean on the Chicago School of Sociology's definition of race and 'race-relations cycle' as outlined by Michael Omi and Howard Winant.[13] Race here is defined as a socio-cultural, and even political, concept. The Chicago School of Sociology's race-relations cycle has four stages, which are; contact, conflict, accommodation and assimilation. As the abovementioned literature shows by exemplifying different kinds of discriminatory and racist attitudes in Western European mainstream societies towards MENA immigrants, it seems that this particular immigrant group is stuck between the second and third stage of these race relations – conflict and accommodation.

The Rape Wave in Norway

It is a fact that the unprecedented rates of reported rapes in Norway have had a parallel growth rate with the influx of immigrants from the MENA region. In addition to the already assessed police statistics from the Norwegian Police's *Rape Situation* statistics, Amnesty International reported in 2010 that, "[t]he number of reported rapes [in Norway] has increased steadily in the new millennium, from 599 in 2001 to 840 in 2006."[14] Furthermore, "Violence researcher Ragnhild Bjørnebekk, at the Police Academy in Oslo,

no. 2 (2006): 2.

11 Maggie Ibrahim, "The Securitization of Migration: A Racial Discourse," *International Migration* 43, no. 5 (2005): 171.

12 Miriam Ticktin, "Sexual Violence as the Language of Border Control: Where French Feminist and Anti-Immigrant Rhetoric Meet," *Journal of Women in Culture and Society* 33, no. 4 (2008): 864-65.

13 Michael Omi and Howard Winant, *Racial Formation in the United States* (New York: Routledge, 2014).

14 Swedish, Danish, Finnish and Norwegian Sections of Amnesty International, "Case Closed: Rape and Human Rights in the Nordic Countries," (March 2010), 124.

believes rape is on the increase and refers to general societal developments […]."[15] The Norwegian media, has even coined the term *rape wave*, in which the 'wave' could insinuate an illustration of large numbers of new immigrants. But the imperative question here is if the increased rape trends indeed have a direct cause-and-effect relationship to the influx of immigrants from the MENA region, or if there is a fallacy in such a conclusion due to an unrelated external variable. Before taking a closer look at Norwegian rape breakdown statistics and the immigrant experience of MENA migrants in Norway, to properly analyze an answer to this question, it is first important to establish a clear definition of *rape*.

When researching conditions and factors around rape, it is important to distinguish between the different types and settings in which rape can occur – because they can differ greatly. In the Norwegian Police's 2015 annual report on the rape situation in Norway, they organize police rape reports into five different categories. These are the following; *assault rapes*, *party-related rapes*, *relationship rapes*, *vulnerability rapes*, and *other*. The last category contains cases which are impossible to categorize within any of the first four. An example of the type of case that can be found in this fifth category is when the victim came into contact with the assailant through an online platform or through other kinds of technological channels. In 2011, a man was even found guilty of the rape of multiple minors, in which all the crimes were committed through a cellphone.[16] But when looking at rape statistics in this paper, assault rape statistics should be the main area of concern – to the extent possible – as the image often painted alongside the popular claim of the cause-and-effect relationship between the rise of MENA immigrants and rape cases in Western Europe is an innocent European girl/woman being raped by a malicious Muslim boy/man that she does not know. Although the Norwegian Police publishes country backgrounds on the convicted rape assailants in Norway, they do not publish the breakdown of these country backgrounds in the five different rape categories used. One can speculate if this is to refrain from feeding into the prejudice public discussion of blaming MENA immigrants for increased rape trends, especially in assault rapes. However, the Norwegian research institute NKVTS (National Research Center for Violence and Traumatic Stress) seems to have gotten access to these numbers, as they write in their 2013 report that those with Norwegian country-background makes up the largest group of assailants in three categories; party-related rapes, vulnerability rapes, and 'others'. Regarding relationship rapes, it is those with an Asian country-background who make up the largest group of assailants, and as for assault rapes, it is both people with African and Asian country-background who make up equally the largest groups of assailants for this category. Although the research is limited, this hints at some validity to the popular claim that MENA migrants engage in more assault rapes than any other

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15 Ibid.

16 The Norwegian Police/Kripos, "Voldtektssituasjonen I Norge 2015 (the Rape Situation in Norway 2015)," April 2016, 14-16.

group of people. A point of speculation on these increasing rape trends is that part of the reason for the increase might also come as a result of another global trend; the rise in feminism, women's empowerment, and stronger legal frameworks for reporting rapes. One should not exclude the alternative that an increase in reported rape cases could reflect how victims today, particularly women, decide to actually report the rape when it happens to them, more than ever before. However, that is an entirely different research paper and not within the scope of this research frame, although it is important to keep in mind for future research to keep testing the validity of a causal relationship between an increase in reported rapes and the influx of immigrants.

In 2015, the Norwegian Police reported that 99 percent of all rape assailants are men, and generally belong in the age group between 15-30 years.[17] These gender and age characteristics match the picture often painted in Norwegian society of an average rape assailant – a relatively young male. In respect to country background, Kruse, Standmoen and Skjørten found that the majority of rape assailants in Norway since the beginning of the twenty-first century have been Norwegian citizens. In 2011, the percentage of convicted rape assailants with Norwegian citizenship was 61.9 percent.[18] That same year, the breakdown of country citizenship outside of Norway was 14.8 percent from African countries, 13.6 percent from Asian and Middle Eastern ones, 9 percent from other European countries, and 0.6 percent from the Americas. The police's 2015 report numbers indicate that 80 percent of rape assailants in Norway in 2015 had Norwegian citizenship, but only 64 percent of them were actually born in Norway.[19] After the Norwegian-born at 64 percent, the following groups by percentage are, Asian-born at 15 percent (includes the Middle East and Turkey), African-born at 10 percent, the rest of Europe at 9 percent, the Americas at 2 percent and Oceania at 0.1 percent. From these numbers it is evident that in 2015, immigrants from Africa and Asia, which encompasses the MENA region, were held responsible for a total of one quarter of all rapes reported in Norway in 2015, and that this statistical breakdown of country background was similar in 2011. By dividing the numbers of convicted rape assailants who are immigrants to Norway with birthplace in Africa and Asia on the total immigrant population in Norway from Africa and Asia,[20] the percentage results in 1 percent meaning that approximately 1 percent of immigrants to Norway, who are born in either Africa or Asia, gets convicted for rape. When dividing the numbers of convicted rape assailants born in Norway on the total Norwegian-born population, however, the percentage results in 0.015 percent. This means that approximately 0.015 percent of those born in Norway will get convicted for rape. These numbers indicate a clear overrepresentation of rape assailants convicted in Norway coming from the African and Asian immigrant populations in comparison

17 Ibid., 19-20.
18 Anja Emilie Kruse, "Menn Som Har Begått Voldtekt," 55-56.
19 Police/Kripos, "Voldtektssituasjonen I Norge 2015," 21.
20 Statistics Norway, "Immigrants and Norwegian-Born to Immigrant Parents, January 1, 2016."

to the Norwegian-born population. To clarify, the overrepresentation means that there is a disproportionately large percentage of convicted rape assailants from the particular category of 'immigrants from Africa and Asia to Norway,' than from any other category listed. Although Asia and Africa are two of the largest continents in the world, composed of many countries that extend beyond the Middle Eastern and North African regions, *Statistics Norway*[21] – the Norwegian government office of statistics in Norway – reports that immigrants specifically from Somalia, Iraq and Iran have higher percentages of criminal records than immigrants from for example India, China and the Philippines. However, note that these country-background breakdowns in criminal statistics from Statistics Norway are only on general criminal activity, as Statistics Norway – like the Norwegian Police – does not offer country background breakdowns on specific crimes. In any case, it offers insight into the prevalence of criminal activity among immigrants from different African and Asian countries, which is valuable for this research.

Norwegian Immigration: Brief History and Current Dynamics

Before looking at the specific dynamics around the immigrant experience of MENA migrants to Norway, to better understand the overrepresentation of this group in being criminally convicted for rape, a brief assessment of the immigrant history, cultural dynamics, and social problems in the country should first be assessed, to better understand the society at hand. At the turn of the millennium, Norway had just surpassed the 40,000 mark in the number of annual immigrants. Within a decade, this figure has doubled.[22] "In 2009, Norway had 4.8 million inhabitants, of whom 10.6 percent are recognized as immigrants, defined as 'a person born abroad with two foreign born parents'. […] In Oslo, immigrants made up 26.4 percent of the population in 2009."[23] Rogstad and Vestel describe the 2009 Norwegian immigrant scene, pointing out that the two largest immigrant groups came from Pakistan and Somalia. As per January 1, 2016,

> Those with Pakistani parents made up the largest group of all Norwegian-born to immigrant parents, with 16 500. Norwegian-born to Somali were the second largest group (11 800). […]Immigrants accounted for 13.4 per cent of the total population in Norway as per 1 January 2016, while Norwegian-born to immigrant parents accounted for 2.9 per cent.[24]

MENA immigrants in Norway are generally categorized as permanent migrants coming either for economic reasons or as refugees, depending on their exact country of

21 Rita Karlsen, "2015: Voldtektssituasjonen I Norge (2015: The Rape Situation in Norway)," *Human Rights Service*, April 20, 2016, https://www.rights.no/2016/04/2015-voldtektssituasjonen-i-norge/.

22 Statistics Norway, "Migrations, 2015."

23 Jon Rognstad and Viggo Vestel, "The Art of Articulation: Political Engagement and Social Movements in the Making among Young Adults in Multicultural Settings in Norway," *Social Movement Studies* 10, no. 3 (2011): 248.

24 Norway, "Immigrants and Norwegian-Born to Immigrant Parents," January 1, 2016.

origin and year of arrival.

Why MENA immigrants choose to migrate to Western Europe, despite the initial vast cultural differences, is not difficult to imagine. Since 2010, the MENA region has experienced much instability – some are continuous conflicts from decades back, and some have seen an intensification of hostilities, such as the notorious *Arab Spring*. In contrast, Western European countries have long now been recognized as stable and peaceful societies. Nordic countries are also well-known for their favorable welfare systems, "[t]he Nordic social democratic model of welfare is characterized by universal social benefits, emphasis on full employment, relatively even income distribution and gender equality."[25] Fangen and Paasche analyze the Norwegian labor market by describing the cultural and societal structure in Nordic countries as one that emphasizes opportunities for all – regardless of class, gender or any other background. However, despite Nordic countries' emphasis that the welfare system and labor market are egalitarian for all who live in their countries, it is not what seems to be the common practice. Several immigrant groups, the MENA immigrant group more than any other, will be disappointed and perhaps frustrated to find this out upon arrival. The benefits of the *welfare state,* as Norwegians affectionately call their country, does not necessarily extend to all immigrants coming to Norway:

> Norway is often recognized as a high-trust society, where the rate of corruption is low and the level of inclusion high, and the citizens enjoy a welfare system which aims to ensure equal rights and inclusion of all regardless of background. In contrast to this ideal, however, discrimination, racism, low-skilled jobs and social status are keywords in grasping the relationship between the majority population and the minorities [...] especially those belonging to the Muslim community.[26]

Rogstad and Vestel describe an existing paradox in the supposedly egalitarian Norwegian society, when it comes to the continuous discrimination against Muslim immigrants. Also Fangen and Paasche underline how labor market participation is regarded as a key indicator of integration by all the European Union states,[27] and how the prevalence of unemployment is significantly higher among certain groups of immigrants than others. "[U]nemployment among non-western immigrants completing higher education in 1997-1999 in Norway was found to be almost twice as prevalent than among ethnic Norwegians."[28] "It is doubtlessly harder for people from particular ethnic backgrounds to get work than others. Across Europe, we see a tendency for greater skepticism towards Muslims, Africans and Middle Easterners than towards Eastern Europeans, South Americans and South-East Asians."[29] It becomes evident that in regards to labor market

25 Katrine Fangen amd Erlend Paasche, "Young Adults of Ethnic Minority Background on the Norwegian Labor Market: The Interactional Co-Construction of Exclusion by Employers and Customers," *Ethnicities* 13, no. 5 (2012): 609.
26 Vestel, "The Art of Articulation," 243-44.
27 Paasche, "Young Adults of Ethnic Minority Background on the Norwegian Labor Market," 608.
28 Ibid., 616.
29 Ibid., 614.

participation as a key to proper societal integration, immigrants from the MENA region struggle more than any other immigrant group to obtain work and therefore properly integrate into Norwegian society. However, even the mere fact of getting employment is still no guarantee of complete inclusion, as other factors like ethnic prejudice and racism by colleagues, employers and customers, are all further serious signs of an institutional failure of immigrant integration which need to be accounted for.

One of the most discussed social challenges in Western European countries today, Norway included, is indeed the thorough integration of immigrants. Ever since Western Europe stabilized after a detrimental Second World War and a lengthy Cold War, it has seen a steadily increasing rate of immigrants. A stabilized Europe combined with the intensification of instability and hostilities in the Middle East and continuous violence in several African countries, has led to immigrant numbers from these regions reaching unparalleled levels since the turn of the millennium. "In policy discourses across Europe, the 'crisis of multiculturalism' is increasingly tied to gender equality concerns, which have come to the forefront of European political debates on immigration and integration in recent years."[30] With the cultural clash between these predominantly patriarchal, conservative and Muslim regions, and a predominantly gender equal, liberal and secular Western Europe, it is not difficult to imagine arising obstacles for a smooth integration process for the MENA immigrants.

MENA Immigrants and Integration Issues in the Western World

In the statistics reported by the Norwegian Police and the Central Statistics Bureau, Statistics Norway, there is indeed an overrepresentation of rape assailants and criminals convicted in Norway from the MENA immigrants group. Now, the important question that arises here is *why* this is so. As mentioned in the introduction, the popularly assumed reason for such a correlation is cultural differences, including those surrounding sexual norms. Ahmadi explores some significant cultural differences between a Middle Eastern Islamic society, Iran, and a Scandinavian secular society, Sweden. The findings of this exploration and comparison can be highly relevant for a case study on Norway, seeing that the Scandinavian societies have close to identical sexual norms. Ahmadi describes Iranian immigrants to Sweden as having, "[…] moved from a religious society with an extremely patriarchal sexual culture to a modern secularized society where a liberal view of sexuality prevails."[31] One of his interviewees further describes the norm in Iran, "It was disrespectful to refer to sexuality; everybody pretended that the issue simply didn't exist."[32] From these descriptions, it is not hard to imagine the cultural shock for immigrants from Iran, or other Islamic patriarchal sexual cultures, when arriving and trying to integrate into

30 Birte Slim and Hege Skjeie, "Tracks, Intersections and Dead Ends: Multicultural Challenges to State Feminism in Denmark and Norway," *Ethnicities* 8, no. 3 (2008): 322-23.

31 Ahmadi, "Migration Challenges Views on Sexuality," 685.

32 Ibid., 690.

a Scandinavian secular and liberal society, where openness and comfortableness around sexuality for men *and* women is not taboo but common practice. "Within the traditional Islamic-Iranian discourse on virginity, body and symbol are intertwined to serve men's power, interests, and privileges. Virginity is exploited by men in order to exercise control over women."[33] Ahmadi's description of how sexuality in Iran is dealt with as a means of exercising power by men over women also matches the Norwegian Police's description[34] of rape as a crime in which the assailant seeks to exercise power, and abuses that power over another individual.

From Ahmadi's study, it becomes quite evident how large and intricate the cultural gaps in sexual norms and gender roles are between MENA countries and Western European ones. Nonetheless, is it as straightforward as the Western critical conservatives want to depict it as; the reason why MENA immigrants rape more than other immigrant groups is simply because they became overwhelmed and frustrated by cultural differences when trying to live in a Western society? That they are unable to accept how it is characterized by a much more liberal sexual culture and higher gender equality? The obvious cultural differences cannot and should not be ignored nor left out in an analysis trying to answer this question. However, when these analyses have been previously made, whether in Norway or other Western European countries, the problem assumed to be the case is not the exclusion of a cultural clash discussion as a part of the reason, but rather the limitation of it as the only possible explanation to why MENA immigrants tend to have higher criminal records of rape. Therefore, a more holistic assessment of the MENA immigrant experience is necessary to expand the current scope of explaining why MENA immigrants have on average higher criminal rates than other migrants, and perhaps then gain a better understanding of it in order to work towards a solution.

When the influx of MENA immigrants to Norway started at the end of the twentieth century, cultural clashes began growing small seeds of prejudices in the mainstream society. These seeds grew exponentially after 2001 in the post-9/11 era. Fekete describes the immigration and integration discourse that has been trending in Europe in the post-9/11 era:

> Anti-immigration, Islamophobic and extreme-Right electoral parties mesh with the security agenda of the European Union (EU) and are braided into the policies of Conservative and Liberal governments throughout its member states. […] integration measures imposed by governments reinforce the Islamophobia of the extreme Right. […] Central to such a process is a generalized suspicion of Muslims who are characterized as holding on to an alien culture that, in its opposition to homosexuality and gender equality, threatens core European values.[35]

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33 Ibid., 700.
34 Police/Kripos, "Voldtektssituasjonen I Norge 2015," 3.
35 Fekete, "Enlightened Fundamentalism?" 2.

Ibrahim seconds this by explaining a mainstream attitude of, "A world-view based on 'us,' that is based on Western civilization, in contrast to 'them,' the barbaric, and uncivilized nature of natives."[36] It is not difficult to imagine that these described attitudes in the mainstream society of Western European countries could severely hinder a healthy and successful integration of certain immigrant groups. An example of these attitudes in Norway having a direct effect on the integration process of migrants, is the current Minister of Migration and Integration, a politician from the most extreme right-wing political party, *Progress Party*. This ministerial post was only created by the government in December 2015, in response to the vast need for more resources in this area. As is traditionally done by politicians from extreme right-wing parties, the current Minister has taken a hardline approach towards the acceptance and integration of immigrants in Norway. High-level Western European public policy discourse today continues to distance mainstream societal values and norms from MENA cultures, leaving such a large immigrant group feeling excluded.

Role of the Media

Around 2006-2007, the Norwegian media began taking note of the rapid increase in number of assault rapes. VG, Norway's most read online newspaper, reported that the police districts in Norway's three most populous cities – Oslo, Bergen and Trondheim – had registered a 'dramatic increase in the number of assault rapes.'[37] By then, the Norwegian media had already coined it the *rape wave* (voldtektsbølgen). The media's power to narrate public discourse has since been used extensively in the case of criticizing MENA immigrants in Norway, as well as other Western European countries;

> Crisis awareness is generally raised in combinations of lobbying and dramatic media coverage of individual stories of suffering, which in turn place demands on the political system to act more systematically to prevent violations of women's rights. It is, however, remarkable how these new policies, in both Norway and Denmark, are set apart from traditionally broad gender equality agendas, and largely remains contained within a 'crisis' frame.[38]

Slim and Skjeie describe the dramatic media coverage in Norway and Denmark, feeding into the negative mainstream society discourse on blaming immigrants for the increasing numbers of sexual assaults on women in these countries. Ibrahim also depicts this, "As a node in the network of relations, the press has played its part repeating and creating a migrant-as-a-threat discourse. For states, excluding migrants is an attempt to manage the risk they pose."[39] Ibrahim also explains how this trend has increased in recent years

36 Ibrahim, "The Securitization of Migration "171.
37 Røli et al., "Voldtekstbølge Ryster Storbyene."
38 Slim and Skjeie, "Tracks, Intersections and Dead Ends," 323.
39 Ibrahim, "The Securitization of Migration,"183.

due to new technological channels, which she describes as hindering immigrants proper chance at integration into European societies, "States around the world are responding to migrants in a similar repressive manner with the technologies of exclusion taking a global form. Through this discourse, migrants have been bound by the chain of the new security agenda."[40] Other specific examples of press outlets disrespecting or discriminating against minorities in Western Europe – and especially Muslim immigrant groups – is perhaps the series of caricatures published on the Prophet Mohammad, first in Denmark and then later continued by the infamous French Charlie Hebdo magazine.

Rogstad and Vestel describe how social tensions manifest themselves in mainstream society as a repercussion of misusing public platforms and power to discriminate and exclude minority groups:

> At the local level, these debates constitute a turmoil which manifests itself as social tensions between the majority and minority groups. At the transnational level, these tensions reflect or merge into a wider debate on cultural rights in terms of recognition of diversity. In these processes, the media, as well as opportunistic politicians, have helped fan the flames in this highly politicized landscape.[41]

They even draw parallels between Norway today and the historical problems of African Americans in urban, low-class neighborhoods in New York, and elaborate on how Muslim immigrants in Norway today have adapted some of the same coping mechanisms by the excluded minority in New York – namely resorting to *hip hop* as a channel of expressing frustration and calling out the sociopolitical injustice. Several second-generation MENA immigrants in Norway have become widely popular hip hop artists, rapping overwhelmingly about immigrant problems while criticizing certain political and social attitudes in Norway. Most notably is perhaps *Karpe Diem*, a duo of a second-generation Moroccan and a second-generation Indian, who in 2010 won *Spellemannsprisen* which is the equivalent to the American Grammy Artist of the Year award in Norway. Karpe Diem's repertoire includes songs like *The Negro from the West Coast, Nigga, Get Out!, Gold & Glitter* (a satire of Norway's welfare system), and *Identity That Kills* – the latter containing lyrics like,

> He is half Norwegian – he is half Egyptian, […] He eats brown cheese (Norwegian delicacy), falafel and shawarma, […] He speaks Arabic – he speaks Norwegian, but he's brown, hey please: he is white!, He celebrates Christmas, its holiday during Eid, […] and here at home they call him a foreigner, and over there, they call him a foreigner, […] identity easily kills by the lines that are drawn […]" (translated into English).

The immigrant hip-hop scene in Norway, which are largely sentiments of the younger

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40 Ibid., 183-84.
41 Vestel, "The Art of Articulation," 244.

MENA immigrants, and the second-generation, manifests the common feelings being discriminated against or excluded by the Norwegian mainstream society. In regards to the media picture, it is worth noting how these first or second generation immigrant rap and hip hop artists have been able to take advantage of the already established spotlight on the MENA immigrant group, and used this public outlet to vent and voice their frustrations against the mainstream. They often include lyrics to set the record straight regarding stereotypes and their tired sentiments of discrimination and racism.

Alimahomed describes a similar current scenario in the United States, of the first second-generation of MENA immigrants, having already integrated into the mainstream where they were born, but still being severely hindered by the predisposition of prejudice towards them. She coins this *Generation Islam*. "This research concludes that Generation Islam has embraced a nonwhite stance in relation to the onslaught of systemic racism they continue to endure in U.S. society."[42] As seen through the abovementioned rap lyrics and research findings by Rogstad and Vestel, second-generation MENA immigrants in Norway have often also taken this stance of distancing themselves from the mainstream society, as a response to the continuous discrimination towards the MENA immigrant group. "A vast literature details coping strategies and responses to racism and perceived discrimination, such as stress reactions like depression and withdrawal, drug use, flight into religion and aggression […] getting violent."[43] Fangen and Paasche explain how immigrants, whether first or second generation, conceptualize and act on being discriminated against in Norway. This can establish a connection between MENA immigrants being the most discriminated group in Norwegian society, and being overrepresented in criminal behavior.

Conclusion

As seen in the rape statistics, an overrepresentation exists of African and Asian immigrant rape assailants in Norway. Moreover, according to the Central Norwegian Statistics Bureau, Statistics Norway, there is a higher prevalence of crime rates among immigrants specifically from MENA countries than for example Southeast Asia, or other regions in Africa and Asia. It is however important to keep stressing that the connection between increases in MENA immigrants and rape statistics, as is seemingly a main focus of many mainstream media outlets, political agendas and public discussions, these ratios are not higher in absolute numbers – only in relative ones. Put in context, the relative numbers are the result of dividing the numbers of MENA immigrants who are convicted of rape on the whole immigrant population they can be categorized in. There is, for example and in contrast, an overwhelmingly higher absolute number of rapes committed by the Norwegian-born population than any other migrant group. This disproves the commonly held view in Western Europe/Norway that the rise in rape cases – or the rape wave – is

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42 Sabrina Alimahomed, "'Generation Islam»: Arab American Muslims and Racial Politics after September 11," *Race/Ethnicity: Multidisciplinary Global Contexts* 4, no. 3 (2011): 395.

43 Paasche, "Young Adults of Ethnic Minority Background on the Norwegian Labor Market," 611.

primarily to be blamed on the MENA immigrant's influx to Western societies. Nonetheless, it is important to ask *why* does there exist a disproportionately large percentage of rape assailants from the category of MENA immigrants in Norway?

When trying to understand the reason for this overrepresentation, some important nuances have come to light that cannot be overlooked. First, there is the obvious cultural clash between sexual norms and gender roles between the predominantly patriarchal, conservative and Muslim regions, and the predominantly gender equal, liberal and secular Western Europe. Second, there is also an overwhelming feeling of society's discrimination and exclusion of the MENA immigrant community in Norway. This holds true for several other Western European countries as well. Even those who were born and raised in Norway to immigrant parents, testified being subject to a significant extent of discrimination in multiple layers of the society, as seen in the examples of labor market experiences, access to welfare system benefits, and so forth. Reactions to such discrimination, can be a trigger to violent behavior as outlined by Fangen and Paasche"[44] The authors echo this statement by generalizing from another study made about racism in the workplace in the United States,

> Plumme and Slane (1996) found that, when comparing the coping behaviors of white and black Americans in stressful situations, the latter use significantly more emotion-focused strategies. This finding is generalizable to youth of ethnic minority background who experience much maltreatment as stemming from the customer's ethnic prejudice, thus making it more humiliating.[45]

If racism and discrimination is occurring, or any other kind of maltreatment towards an ethnic minority, it will often stir social tensions. Regardless if it is happening at the workplace, at a top-down level in society such as any kind of public platform, or at a bottom-up level such as mainstream's stereotypes and notions, it could provoke increased crime rates. This could be particularly relevant for rape crimes, as these crimes are often judged to be crimes in which the assailant seeks to exercise power or control[46] – a logical reaction to humiliation. Last, but not least, the media and political public discourse's frequent use of anti-immigrant rhetoric has also contributed greatly to shaping society's prejudice view on MENA immigrants. Even his Majesty King Harald of Norway acknowledged these social tensions when celebrating his twenty-fifth year on the throne in September of 2016, by feeling the need to specifically address Middle Eastern and North African immigrants and include them as part of the Norwegian mainstream society, "Norwegians have immigrated from Afghanistan, Pakistan, […], Somalia and Syria. […] Norwegians believe in God, Allah, everything and nothing. […] My greatest hope for Norway is that we will be able to take care of one another. […] That we will feel that we

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44 Ibid.
45 Ibid., 618.
46 Police/Kripos, "Voldtektssituasjonen I Norge 2015," 3.

are – despite our differences – *one people*."[47]

In conclusion, immigrants from MENA countries rape more than any other immigrant group and the Norwegian-born population based on relative, albeit not total numbers. A growing theory is that part of the reason for this goes beyond a simple response to the cultural clash they experience when arriving in Norway. Building off of the assessed immigrant theories on how coping strategies and responses to racism and discrimination are often stress reactions, such as aggression and violence, it can be argued that part of the reason as to why specifically MENA immigrant communities have higher percentages in committing rape is that they are the most discriminated immigrant group, and should accordingly have much higher rates of stress reactions as a response to that discrimination. Also as outlined above, this theory especially applies to rape crimes, since rape is widely considered to be a crime in which the assailant has a need to exercise and abuse power over another individual. To reiterate, Norway today is failing to successfully integrate MENA immigrants, more than any other immigrant group, both on a higher political and lower societal level. If MENA immigrants can get more stability in terms of employment, less discrimination in the workplace and in other layers of society – needed from top-down and bottom-up channels – perhaps they can experience a stronger sense of belonging. To reiterate, significant investments must be made to facilitate and improve the integration of MENA immigrants. If necessary attention and efforts are drawn towards eliminating the sense of discrimination and exclusion in their immigrant experience, overrepresentation in crime rates and rape for MENA immigrants in Norway should significantly drop.

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47 Nicole Puglise and Jon Henley, "King of Norway Reigns on Facebook after Diversity Speech," *The Guardian,* September 7, 2016, https://www.theguardian.com/world/2016/sep/06/king-harald-norway-diversity-speech.

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GATS-Minus Trade Agreements:
Why the Managerial School Does not Apply

Gordon Gatlin

ABSTRACT: It is accepted wisdom that the great majority of preferential trade agreements that include services do not comply with one or more of the GATS requirements. As trade in services becomes more important to global economic growth and efficiency, these agreements are actively undermining the World Trade Organization's rules that are meant to increase global trade. Individual nations seek to include protectionist elements in agreements that violate WTO rules for internal political reasons. However, why a partner nation would accept such GATS-minus provisions can only be explained by geopolitical strategies or factors related to the managerial school, which proposes that the ambiguity of the WTO rules and lack of capacity to understand and/or implement the rules leads to GATS-minus agreements. However, this argument appears unfounded based on analysis of agreement configuration; the three major economies of the globe are partner to many of these agreements. Clearly, the managerial school does not apply when the leading nations of the WTO are complicit in agreements that undermine its rules. Instead, balance of power struggles between rising and/or revisionist powers provides the impetus for status quo and revisionist powers alike to conclude agreements that threaten the legitimacy and institutional integrity of the WTO.

Keywords: *World Trade Organization, trade agreements, balance of power, USA, China, Japan.*

Introduction

The proliferation of preferential trade agreements (PTA) since the conclusion of the Uruguay round and the subsequent creation of the World Trade Organization (WTO) has been astounding. Nearly every nation in the world is now member to some form of preferential agreement, the umbrella term covering all agreements concluded under Article XXIV, the Enabling Clause of the General Agreement on Tariffs and Trade and service agreements under Article V of the General Agreement on Trade in Services (GATS).[1]

Recent scholarship, however, has begun to question how effective these agreements are in lowering barriers to trade, and specifically trade in services. For developed nations, which tend to have a comparative advantage for complex services, lower barriers to trade in services represent opportunity while developing nations stand to benefit from improved

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1 "Regional Trade Agreement Database," The World Trade Organization, accessed June 1, 2016, https://www.wto.org/english/tratop_e/region_e/region_e.htm.

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financial, healthcare and education services along with their own comparative advantage for lower skilled service work. The growth in trade in international services has easily outstripped goods trade growth in the last two decades.[2]

PTAs that include services have also become more and more common. However, according to experts at the WTO, the great majority of these PTAs do not comply with one or more requirements the GATS lays out in Article V.[3] These GATS-minus PTAs (GMPTA) exist among partner nations of varying development and across regions. Scholars have presented numerous causes for both the creation of PTAs, which are well established, and the creation of GATS-minus PTAs, which remain controversial.

PTA creation is the result of a complex interaction of domestic, international, and institutional forces. Literature to date recognizes economic, domestic political and international security concerns as the primary independent variables with explanatory power on the creation of PTAs along with the existence of multilateral trade negotiations (MTN). However, the causal mechanisms behind the creation of GMPTAs are less established and it is, therefore, not surprising that the existing literature offers simply potential variables that may explain why so many GMPTAs have come into existence without making theoretical or empirical judgments on the validity of each independent variable. Instead, scholars have offered the same variables as those in the literature on compliant PTAs along with the arguments proposed by the managerial school epitomized by Chayes and Chayes.[4]

This paper focuses on PTAs that fall short of the rules for service sector agreements because of the growing importance of services to the global economy and also because of the large library of literature on GMPTAs that has succeeded in describing the phenomenon, but failed to adequately explaining its cause.[5] Despite this paper's more narrow focus, it is worth noting that a recent study found that 44 percent of goods sector agreements also fail to meet WTO requirements.[6] A literature review will present the major findings of this research, which shall be followed by an analysis of the efficacy of the causal mechanisms in explaining the creation of GMPTAs. In particular, the managerial school

2   UN Conference on Trade and Development, *Handbook of Statistics,* (New York: United Nations Publications, 2015).

3   Rudolf Adlung and Sebastien Miroudot, "Poison in the Wine? Tracing GATS-Minus Commitments in Regional Trade Agreements," (working paper ERSD-2012-04, World Trade Organization Economic Research and Statistics Division, 2012).

4   Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization* 47, 2 (1994).

5   Carsten Fink and Martin Molinuevo, "East Asian Preferential Trade Agreements in Services: Liberalization Content and WTO Rules," *World Trade Review* 7, 2008; Bernard M. Hoekman and Aaditya Mattoo, "Liberalizing Trade in Services: Lesson from Regional and WTO Negotiations," (EUI working papers, RSCAS 2013/34, European University Institute, Badia Fiesolana, 2013); Adlung and Miroudot, "Poison in the Wine?"; Adlung and Morrison, "Less than the GATS: 'Negative Preferences' in Regional Services Agreements," *Journal of International Economic Law* 41 (2010).

6   Weiwei Zhang, "Tracing GATT-Minus Provisions on Export Restrictions in Regional Trade Agreements," *Global Trade and Customs Journal* 3 (2016).

argues, generally, that non-compliance is the result of legal ambiguity, lack of capacity and/or socio-economic changes over time rather than intentional defection. In the case of GMPTAs these factors are either unconvincing or already covered by the control variables, meaning economic, domestic political and security concerns, on the creation of compliant PTAs. The analysis presents the case that developing nations enter into GMPTAs in order to satisfy domestic political and economic actors, and major economies, like the US, China and Japan, enter GMPTAs knowingly sacrificing potential economic gains in order to improve their international security position.

Literature Review

Scholars looking at PTAs that are non-compliant have focused primarily on analyzing the agreements to find examples of non-compliance and then have considered whether non-compliant PTAs create even more stumbling blocks for MTN in the Doha round than compliant PTAs.[7] Causal explanation of the creation of GMPTAs has been less important for researchers and they have instead listed potential explanations, economic motives, internal political pandering, external security concerns or lack of capacity to comply, without arguing for or against the salience of the variables.[8] Technical arguments that either positive listing, meaning listing all sectors covered in an agreement, or negative listing, meaning only listing the sectors not covered in an agreement, are better at producing compliant PTAs have been discredited.[9]

As arguments on the technical options for scheduling as creating GMPTAs have been brushed aside, the managerial school's basic premise that non-compliance is not the result of intentional defection has been put forward as a prominent causal mechanism.[10] Rather than intentional violation, GMPTA creation is instead caused by ambiguity in the legal code, lack of capacity especially among developing nations and socio-economic changes over time that make compliance irrelevant or impossible.[11]

Overall GMPTAs, at a basic economic level, present lesser potential for gains from trade and increased capacity to protect politically sensitive sectors. The motivation to protect more industries is clearly an internal political and economic concern, but the motivation for partner nations to enter into GMPTAs that allow for such protectionism, which is clearly against their baseline economic interests, can only be explained by geopolitical strategies or factors related to the managerial school. The existence of GMPTAs across regions and among nations of all stages of development suggests that either the entire world is confused by the ambiguity of the WTO rules and lacks the capacity to understand

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7 Adlung and Morrison, "Less than the GATS."

8 Ibid.

9 Fink and Molinuevo, "East Asian Preferential Trade."

10 Fink and Molinuevo, "East Asian Preferential Trade"; Hoakman and Mattoo, "Liberalizing Trade in Services"; Adlung and Miroudot, "Poison in the Wine?"; Adlung and Morrison, "Less than the GATS."

11 Chayes and Chayes, "On Compliance."

and/or implement the rules, or that balance of power struggles between rising and/or revisionist powers is leading to "economic confrontations"[12] that threaten the legitimacy and institutional integrity of the WTO.

Besides the controversy over whether PTAs in general help or hurt the cause of global reforms towards greater liberalization through MTN, the existence of GMPTAs that go unchallenged by the WTO itself, as well as by the member states, raises worries that the WTO is less institutionally powerful than scholars often credit it with. The existence of PTAs in relation to the larger global MTN has been likened to termites eating away at the foundation of the international trade system.[13] GMPTAs are described as having even more negative effects unless they are able to reform to the guidelines of Article V of the GATS within the timeline of implementation as required by WTO rules.[14]

This paper argues that GMPTAs are the result of intentional actions, desire for greater protectionism on the part of developing nations and the desire for increased political ties on the part of developed nations, which undermine the Dispute Settlement Mechanism (DSM) so praised by scholars in favor of strict enforcement of international treaties.[15] Nations, both large and small, are able to skirt the rules as this kind of behavior has become so common because external security concerns among the major powers dominate foreign economic policy. This, then, allows partner nations to negotiate in protectionist measures based on domestic political considerations.

An Analysis of the Causes of GMPTA Creation

The creation of PTAs is a complex interaction of domestic, international and institutional forces that results in an agreement that adheres to the institutionalized rules of the WTO as described in Article XXIV, the Enabling Clause and Article V of the GATS. They allow member states to violate the most-favored nation (MFN) principle of the WTO only in the belief that the near elimination of trade barriers between the PTA member states outweighs the inefficiency created by violating MFN.

Scholars have focused on three primary independent variables when analyzing the creation of PTAs, but have also recently included multilateral trade negotiations as another independent variable. However, directional causality in this case is controversial. Does the failure of the Doha round lead to PTA creation or did the PTAs already in force and in negotiation doom the MTN from the start? Scholarship on this question abounds, but is frankly unimportant when considering the cause of GMPTA creation. It is certainly possible that GMPTAs could be particularly insidious stumbling blocks to MTN progress,

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12 Michael Matsudano, "Preserving the Unipolar Moment: Realist Theories and U.S. Grand Strategy after the Cold War," *International Security* 21 (1997).

13 Jagdish Bhaghati, *Termites in the Trading System* (Oxford: Oxford University Press, 2008).

14 Rudolf Adlung and Peter Morrison, "Less than the GATS: 'Negative Preferences' in Regional Services Agreements," *Journal of International Economic Law* 41 (2010).

15 Pretty Elizabeth Kuruvila, "Developing Countries and the GATT/WTO Dispute Settlement Mechanism," *Journal of World Trade* 31 (1997).

however they could just as easily be an overreaction to the failure of the Doha round. As the scholarship focused on this particular question remains controversial, for this study MTN and PTA creation will be assumed to be endogenous, meaning the existence of MTN and GMPTA influence one another. The remainder of this section will cover how the literature to date has explained PTA creation as based on economic, domestic political and international security concerns. These factors influence on GMPTA creation is also analyzed.

Economic Factors

Economists and international relations scholars are in agreement that economic gains from lowering barriers to trade, domestic political concerns, meaning protectionist rent-seeking, and international security concerns are the primary indicators of PTA creation. Still, economists tend to focus primarily on the first two variables, while international relations scholars often focus on the larger strategic issues at play. At its simplest, however, PTA creation is an economic-focused state behavior.

Economically, forming a PTA only makes sense if the agreement generates more new trade than it diverts.[16] PTAs generate new trade by eliminating nearly all barriers to trade among member nations. However, the elimination of barriers to trade among member nations means that non-members are now at a disadvantage and trade is diverted away from non-members to PTA-members. If trade creation outweighs trade diversion then a PTA has created greater efficiency and will lead to economic gains from trade. Baier and Bergstrand successfully demonstrated that economic concerns alone predicted 83 percent of all PTAs.[17]

The economic predictors of PTA creation are based on the Hecksher-Ohlin theory of comparative advantage when considering the labor and capital make-up of two countries. Generally speaking, capital-rich countries make the best PTA partners for labor-rich countries as one nation can supply excess capital in exchange for excess labor; it is worth noting here that the most common GMPTA configuration is between developed and developing nations.[18]

Natural barriers to trade, primarily geographic distance, is also an important factor best described by the gravity model of trade. According to this model two countries that are close to one another, but isolated from the rest of the world would make the best PTA partners. Conversely, nations that are separated by great distances and have many closer nations that could serve as trading partners would make the worst PTA partners. It is important to keep in mind that economists do also include control variables related to culture and geopolitical strategy including previous colonial relationships, linguistic

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16 Scott L. Baier and Jeffrey H. Bergstrand. "Economic Determinants of Free Trade Agreements," *Journal of International Economics* 64 (2004).
17 Ibid.
18 Adlung and Miroudot, "Poison in the Wine?".

affinity, political affinity in terms of regime type and the existence of military alliance or relationship. However, in economic studies these control variables are relevant but rarely central to the analysis.

The above models work well for explaining PTAs, but are also based on trade models that for the most part ignore institutional factors. Economists often assume that a PTA fully eliminates all barriers to trade for the purpose of modeling while being well aware that PTA creation simply requires the elimination of *substantially* all barriers to trade, not all barriers to trade. In reality this means that states enter into a horse-trading negotiation of concessions. It is certainly possible that a state may be willing to accept a certain level of protectionist behavior in its PTA partners, even to a degree that violates the rules of the WTO, so long as significant reductions are made on the whole.

There are a variety of ways in which a PTA may be GATS-minus. One PTA member may offer less coverage in scheduling than was previously promised in the GATS schedule of concessions.[19] Here, theoretically, one or more states are accepting less coverage in certain sectors, but in return receive greater liberalization on the whole than would have existed without a PTA. There is clearly an economic reason to allow a state to increase protectionism in one area but increase liberalization across other areas. This, however, is generally not the case, at least among PTAs among Asian nations and their partners, which according to Razeen Sally of the London School of Economics, are "very weak and have resulted in hardly any net liberalisation."[20]

The literature on compliance has repeatedly tested and shown that while developing nations may lack the capacity to adhere to the rules of the WTO, developed nations do not.[21] Therefore, while states may be entering into GMPTAs for economic gains, there is little reason to believe they are ignorant of the non-compliant provisions. Additionally, while a GMPTA might lead to overall lessening of barriers to trade, certainly, at least the developed nations realize that they would receive greater economic benefits if the agreement complied with WTO requirements. Despite this fact the US, Japan and China are all party to these types of deals.[22] It appears as though these nations are not negotiating more thoroughly to receive the full market access they are allowed under the WTO rules. Instead, they are leaving economic gains on the table in order to secure an agreement that is more politically palatable to their partners.

While the economic gains from trade from even a GMPTA may be higher than simply going by the WTO concessions, developed nations are clearly purposefully not pursuing the market access, not only entitled to them, but, in fact, required for PTA creation under the WTO rules. Developed nations are routinely offering developing states GATS-minus

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19 Adlung and Morrison, "Less than the GATS."

20 Razeen Sally, "Regional Economic Integration in Asia: The Track Record and Prospects," *ECIPE Occasional Paper* 2 (2010).

21 Kuruvila, "Developing Countries."

22 Adlung and Morrison, "Less than the GATS."

provisions in order to secure agreements. The fact that states have repeatedly left economic gains on the table suggests that for many of these agreements economic gains is clearly not the only objective; perhaps not even the primary objective.

Domestic Political Concerns

Treaties related to trade and commerce, like PTAs, are particularly important to governments because they affect domestic firms and labor directly. Regardless of the political structure of a state, all governments require a strong level of political support either from economic elites or the laboring masses, or, ideally, from both. Within an economy, trade liberalization along the lines that PTAs require can be a boon as gains from trade increase general welfare. This does not mean, however, that PTAs are always economically beneficial for the state and it certainly does not mean that they are beneficial across all industries and social classes.

Firms naturally seek to control more market share as a way to control supply and therefore pricing. Tariffs and other trade barriers keep foreign competitors at bay. Yet, even within this same economy some other firms may rely more on foreign markets and could derive real benefits from trade barrier elimination in a PTA partner's economy. Laborers can also either gain or lose out on a PTA based on their level of skills, their industry and whether that industry in their nation is more or less competitive than that of the partner nation.

The Grossman-Helpman model on endogeneous protection, meaning the interaction between rent-seeking and political support, hypothesizes that governments are most concerned with retaining incumbency and that liberalization leads to general welfare increases.[23] Therefore, governments will only allow for protectionism because those firms, labor organizations or individuals that gain from protectionism are able to provide sufficient political support to counteract the lost support from general welfare gains. This model has been demonstrated to be accurate in its depiction of rent-seeking and political contributions in both democratic and authoritarian regimes and developed and developing nations.[24]

The creation of PTAs is therefore dependent on a political and economic climate where those who can gain from protectionism are either marginalized and unable to use political influence to block liberalization or are powerful enough to have their sector or sub-sector be exempt from eliminating barriers to trade. Again, the WTO only requires

23 Gene Grossman and Elhana Helpman. "Foreign Investment with Endogeneous Protection," *(working paper No. 4876, National Bureau of Economic Research,* Cambridge, MA,1994).

24 Pinelopi Koujianou Goldberg and Giovanni Maggi, "Protection for Sale: An Empirical Investigation," *(working paper No. 5942, National Bureau of Economic Research*, Cambridge, MA, 1997); Kishore Gawande and Usreee Bandyopadhyay. "Is Protection for Sale? Evidence on the Grossman-Helpman Theory of Endogeneous Protection," *The Review of Economics and Statistics* 82 (2000); Devashis Mitra, Dimitrios D. Thomakos, and Mehmet Ulubasoglu, "'Protection for Sale' In a Developing Country: Democracy vs. Dictatorship," *The Review of Economics and Statistics* 84 (2002).

that substantially all barriers to trade be removed, even in compliant PTAs many barriers to trade remain and these are most easily and accurately explained by domestic political motivations.

Maintaining or increasing the level of protectionism for one or more sectors is clearly the motivation behind GMPTA creation as opposed to an agreement that was more liberal and complied with the WTO. Though liberal economic theory holds that the elimination of trade barriers brings increased efficiency, productivity, consumer choice and also leads to lower prices, again, this does not mean that all parts of society benefit. Those industries that receive protection from foreign competition are able to secure rents, meaning higher than normal profits, because of man-made barriers to trade. Politicians have every reason to protect industries so long as these industries are able to provide political support that makes up for lost support over general welfare gains.[25]

Political support from protected industries provides the motivation for individual states to pursue GMPTAs, but it provides no insight into why partner nations would accept such agreements. As discussed above, agreeing to a PTA that allows partners to protect certain industries beyond what is allowed under the WTO requires means that states are losing out on market access they are both entitled to and essentially required to have. It makes little sense for states to leave economic gains they are entitled to on the negotiating table unless non-economic factors are at work.

Security Concerns

Like the economists who recognize foreign policy strategic elements in PTA creation, international relations scholars also understand the economic variables and yet emphasize the geopolitical struggle of great powers. These scholars routinely argue that economic factors alone are not sufficient in explaining the growth in PTA creation since the end of the Cold War.[26] Others have argued that there has been too little research into the trade-security nexus both generally and in relation to PTA creation.[27]

The argument that security policy is the driving force behind economic policy, and PTA creation in particular, is based primarily on the central tenant of realism that all economic and material gains in the end are an expression of actual or potential military hard power. Matsudano argues that, "we should expect a state that pursues political confrontations

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25 Grossman and Helpman, "Foreign Investment."

26 Seungjoo Lee. "The Emergence of an Economic-Security Nexus and the Diversity of FTA Linkage Strategies in East Asia," *The Korean Journal of Policy Studies* 27 (2012); Yul Sohn and Min Gyo Koo. "Securitizing Trade: the Case of the Korea-US Free Trade Agreement," *International Relations of the Asia-Pacific* 11 (2011); Mike M. Mochizuki. "Political-Security Competition and the FTA Movement: Motivations and Consequences," in M. Solis et al., *Competetive Regionalism* (New York: Palgrave Macmillian, 2009).

27 Matsudano, "Preserving the Unipolar Moment."; Ann Capling, "Preferenctial Trade Agreements as Instruments of Foreign Policy: an Australia-Japan Free Trade Agreement and Its Implications for the Asia Pacific Region," *The Pacific Review* 21 (2008).

with a revisionist state to also pursue economic confrontations."[28] If status quo states, meaning those states agreeable to the current international hierarchy, fear that a rising state intends to upend the balance of power, these states will react aggressively to ensure access to scarce materials and market access.[29] However, commercial liberals also tend to believe that institutionalized commercial ties between states can breed mutual trust.[30] Lastly, liberal and realist visions combine to argue that in a balance of power struggle states will seek political influence in neutral and non-aligned states.[31]

The elephant in the room is obviously China. Although it has a relatively well-developed market economy, it remains politically authoritarian. Its increasing economic clout has raised questions the world over as to what its intentions might be given its new found great power status. Even economically, latent state intervention through state owned enterprises, particularly banks that control financing for major investment projects, puts China at odds both politically and economically with the US and its major westernized market economy allies in Europe, East Asia and parts of Latin America.

This paper is not intended to argue either for or against the idea of a balance of power struggle between China and the West. Rather, the literature clearly shows that security issues, especially between the US, its allies and China, are a driving force behind PTA creation. Min Gyo Koo has argued that China is using economic forums rather than security forums alone to assuage ASEAN fears of its growing economic and military clout and that the US has similarly been using PTAs to bolster long-standing security alliances.[32] Seungjo Lee has emphasized that Chinese and Japanese economic policy is profoundly influenced by the perception of increased security competition.[33]

While the balance of power struggle appears most stark within East Asia because of China's geographic presence and US historical presence since the end of World War II, other regions also show signs of economic competition in relation to security concerns. China has been busy concluding commercial deals with countries throughout South America offering loans for infrastructure projects to be built by Chinese companies. The US has responded by reemphasizing trade relations with its closest allies in the region, Colombia, Peru, and Chile. Chinese interests in building an inter-oceanic canal in Nicaragua to rival the Panama Canal also raise red flags for policymakers in Washington and other western capitals.

The trade-security nexus analysis does not mean that economic factors are unimportant or that domestic politics can be ignored. Instead, scholars have argued that PTA creation and economic policy more broadly cannot be fully understood without including the larger

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28 Matsudano, "Preserving the Unipolar Moment."
29 Ibid.
30 Mochizuki, "Political-Security Competition."
31 Ibid.
32 Min Gyo Koo, "US Approaches to the Trade-Security Nexus in East Asia: From Securitization to Resecuration," *Asian Perspective* 35 (2010).
33 Lee, "The Emergence of an Economic-Security Nexus."

geopolitical strategies states engage in. Matsudano has stated that, "foreign economic policy depends on the position of the state in the international economic structure and the international security structure."[34] States pursue economic gains as a baseline for economic policy, but this is done within a larger geopolitical framework dominated by security concerns and with the understanding that states have their own internal political battles that affect PTA creation.

Strategic concerns offer a clear causal mechanism for leaving economic gains on the negotiating table and for allowing partner nations to flaunt the WTO rules in order to protect certain politically sensitive sectors. Matsudano has argued that when the international environment is more stable and less threatening to the dominant power, ie. in a unipolar security arrangement, states are able to pursue economic and security policies on separate tracks. However, when the international hierarchy is in flux, nations pursue strategies that combine security and economic policy often with the latter taking a back seat.[35]

The largest economies of the world are allowing developing nations to include GATS-minus provisions despite the economic gains left behind. Clearly, some non-economic factor is making up for this. International relations scholars are in agreement that the most recent spurt of PTA creation has been drive by security concerns.[36] The fact that so many PTAs are in fact less liberalizing than they appear and frequently fail to comply with WTO rules furthers their argument. Developed states are willing to forgo economic gains in order to secure political cooperation during a period of perceived balance of power maneuvering.

Why the Managerial School Does not Apply

Before concluding that GMPTA creation is primarily the result of domestic pressure for protectionism and the international security competition, it is important to consider the managerial school's position that legal ambiguity, lack of capacity and socio-economic changes over time are primarily responsible for all violations of international law. The prescription to cure unintentional violations is to provide dispute resolution, technical assistance and to increase transparency.[37] The primary criticism of the managerial school has been to argue that states are overall compliant with international law because states are not entering into deep cooperation that actually requires adjustment of state behavior.[38] Critics of the managerial school in general have accepted that compliance is generally quite high, but that this is simply because international law describes state behavior rather

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34 Matsudano, "Preserving the Unipolar Moment."

35 Michael Matsudano, "Economics and Security in Statecraft and Scholarship," *International Organization* 52 (1998).

36 Koo, "US Approaches."; Capling, "Preferential Trade Agreements."; Mochizuki, "Political-Security Competition."

37 Chayes and Chayes, "On Compliance."

38 George W. Downs, David Rocke, and Peter N. Barsoom. "Is the Good News About Compliance Good News for Cooperation?" *International Organization* 50 (1996).

than dictates it.

GMPTA creation, however, is not a case of infrequent or rare examples of violation. The literature presents GMPTA creation as something of an epidemic accounting for the majority of agreements.[39] States of all shape and size are violating the WTO rules consistently and are not facing any sanction despite the capacity of WTO member states to request action.[40] Still, adherents to the managerial school believe that ambiguity, lack of capacity and socio-economic changes are the reason the entire world seems to be engaged in GMPTA creation.[41]

There is no doubt that the WTO rules are complex and there remains a good deal of ambiguity when it comes to defining what the requirement that PTAs cover substantially all trade means in practice. However, there is no reason to believe that vague language in the legal code is more of a hurdle for service related provisions than goods sector provisions.[42] Scholars have attempted to explain GATS-minus provisions as the result of "interpretation problems" because of inexperience.[43] Others have argued that states suffer from "informational obstacles," that they should learn through time and that mistakes in PTA creation might help states learn how to properly integrate multilaterally further down the line.[44] However, GATS-minus provisions that might be explained by misunderstandings, lack of capacity and lack of experience in the first GMPTAs have become even more prevalent over time.[45] Rather than learning from past mistakes and correcting them, states have continued to create GMPTAs.

Another issue raised by the managerial school is that developing states' "regulatory frameworks are inadequate to manage unrestricted entry and competition."[46] Here GMPTAs are the result not of politically motivated protectionism, but because developing states do not have the regulatory capacity to enforce a PTA that liberalizes substantially all service sectors. Developing states therefore need technical assistance in order to build capacity.[47]

This idea ignores the fact that developing and developed states are both including GATS-minus provisions.[48] This also ignores the fact that these same states are opening up a great deal of their service industries to international competition without apparent difficulties in building regulatory capacity. No explanation is given as to why only certain

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39 Adlung and Morrison, "Less than the GATS."; Hoakman and Mattoo, "Liberalizing Trade in Services."; Adlung and Miroudot, "Poison in the Wine?".

40 Adlung and Morrison, "Less than the GATS."

41 Fink and Molinuevo, "East Asian Preferential Trade."; Hoakman and Mattoo, "Liberalizing Trade in Services."; Adlung and Miroudot, "Poison in the Wine?".

42 Adlung and Miroudot, "Poison in the Wine?".

43 Adlung and Morrison, "Less than the GATS."

44 Fink and Molinuevo, "East Asian Preferential Trade.".

45 Adlung and Miroudot, "Poison in the Wine?".

46 Hoakman and Mattoo, "Liberalizing Trade in Services."

47 Ibid.

48 Adlung and Morrison, "Less than the GATS."

industries would require increased regulatory capacity but not others. The same authors that argue for increased technical assistance readily admit that it is often already embedded in the GMPTAs, though they argue it is insufficient.[49] Lastly, GMPTAs are most frequently created between developing and developed partners.[50] It may be possible that developing nations do not have the regulatory capacity to adequately follow a compliant PTA, but there is no reason to believe that the major powers of the world lack the expertise and resources to realize that they are agreeing to PTAs that violate the WTO rules.

Scholars supporting the managerial school have also pointed to time-constraints and simple error as explanations for GMPTA creation. Adlung and Miroudot have suggested that states may have simply forgotten to add in certain concessions or may have mistakenly deleted them.[51] If GMPTAs were the exception and not the rule there might be more to this idea, but considering that there are dozens if not hundreds of GMPTAs this is exceedingly unlikely to be a major cause of GMPTA creation. The same could be said for time-constraints.[52] States set their own deadlines for negotiations and while external political concerns may force negotiators to pick up the pace, "from a merely technical perspective, it would be relatively easy to eliminate any GATS-minus commitments."[53] Error and time-constraints cannot explain the existence of GMPTAs across regions and economic development stages.

The managerial school also argues that socio-economic changes over time may cause states to violate international law either unintentionally or intentionally.[54] Scholars looking at GMPTAs in particular have argued that developing states may have been overly ambitious when setting concessions levels during the Uruguay round.[55] This argument has more explanatory power than the idea that the legal code is too ambiguous even for the most developed and experienced states or that states lack the capacity to adhere to the WTO rules. Yet, this last point by the managerial school is already explained by the control variables well established in the literature. There are obvious socio-economic reasons for states to pursue protectionist policies that have already been discussed. It makes sense for states to want to reverse their generous promises if given the chance.

Why Developed Nations Sign GATS-Minus Trade Agreements

There are clear and obvious internal political motives for a nation to want to include GATS-Minus provisions, but why would major economic powers agree to such provisions that do not benefit them economically? Given that it is fair to assume that the three largest economies in the world, the US, Japan and China, all have the expertise and resources

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49 Hoakman and Mattoo, "Liberalizing Trade in Services."
50 Ibid.
51 Adlung and Miroudot, "Poison in the Wine?".
52 Adlung and Morrison, "Less than the GATS."
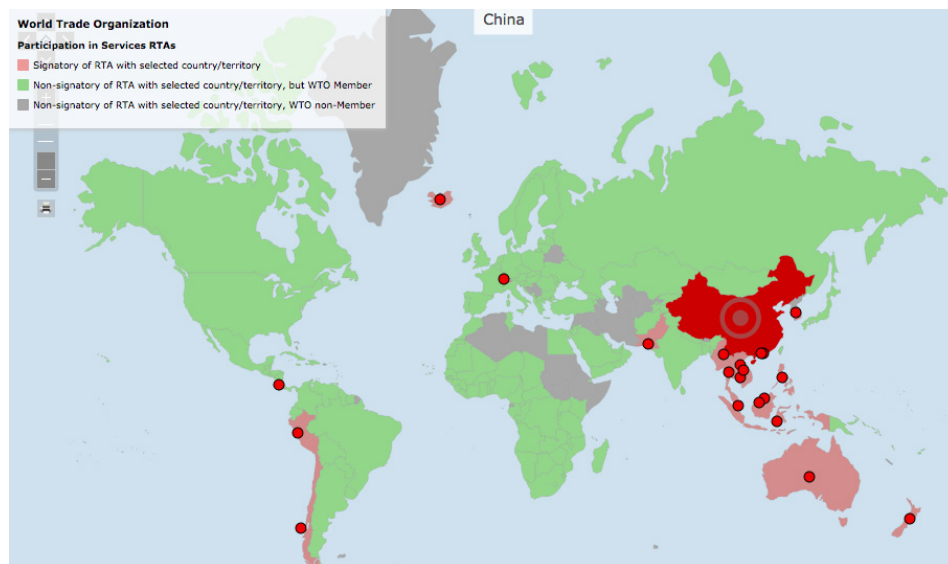53 Adlung and Miroudot, "Poison in the Wine?"
54 Chayes and Chayes, "On Compliance."
55 Adlung and Morrison, "Less than the GATS."

to conclude trade agreements inline with WTO rules, why are they repeatedly doing the opposite? According to a WTO in-house study in 2012, the great majority of agreements concluded by these three economic giants are GMPTAs.[56] All of China's agreements analyzed, with the exception of that concluded with New Zealand, violated some WTO rule regarding PTA creation. While Japan's agreements faired better comparatively, the majority of their agreements were also in violation. For the US, nine out of ten agreements were in someway GATS-Minus.[57]

More interestingly, there is a great deal of overlap in the partners these nations have chosen to sign PTAs with, many of them GMPTAs. Figures 1, 2 and 3, from the WTO Regional Trade Agreement Database, show the service agreement partner nations for each of the three major economies. China and Japan clearly have a great deal of overlap, especially in SE Asia. However all three have agreements with Australia, Singapore, Peru and Chile. Clearly all three have major interests, both economic and strategic, in the Pacific Rim.

The simple fact that these three powers have overlapping trade agreement partners could be innocuous. Given the larger security context, however, this seems unlikely. Sally has argued that, "Foreign-policy motives have loomed large, though with justifications that are all too vague," and is not the first to acknowledge "bitter nationalist rivalries" that exist in East Asia.[58] As stated earlier, this paper is not intended to argue one way or another whether there is a balance of power struggle in East Asia, but the perception that it exists and the clearly tense relations between these three nations is undeniable.

Figure 1 – China's Service Agreements.
Source: WTO Regional Trade Agreement Database.

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56 Adlung and Miroudot, "Poison in the Wine?".
57 Ibid.
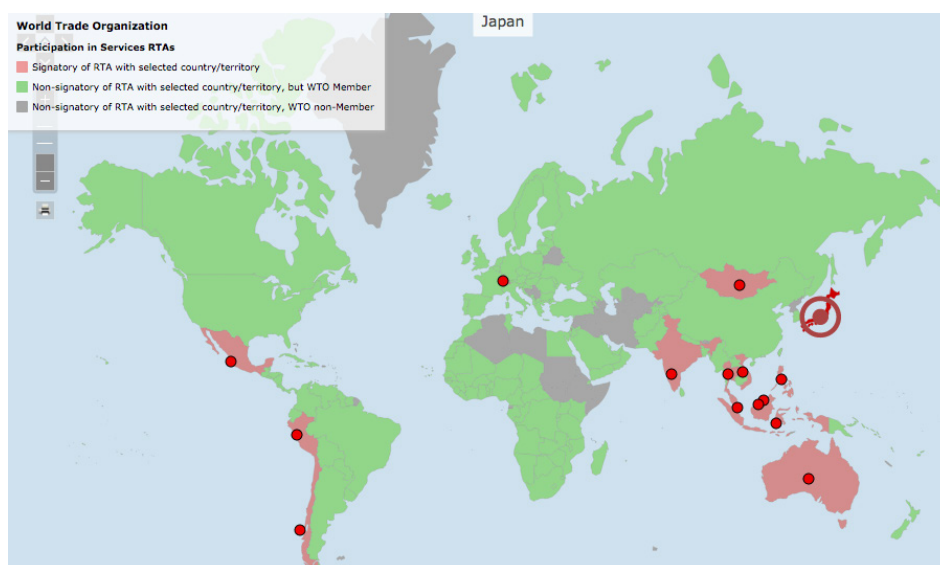58 Sally, "Economic Integration."

Figure 2 – Japan's Service Agreements.
Source: WTO Regional Trade Agreement Database.
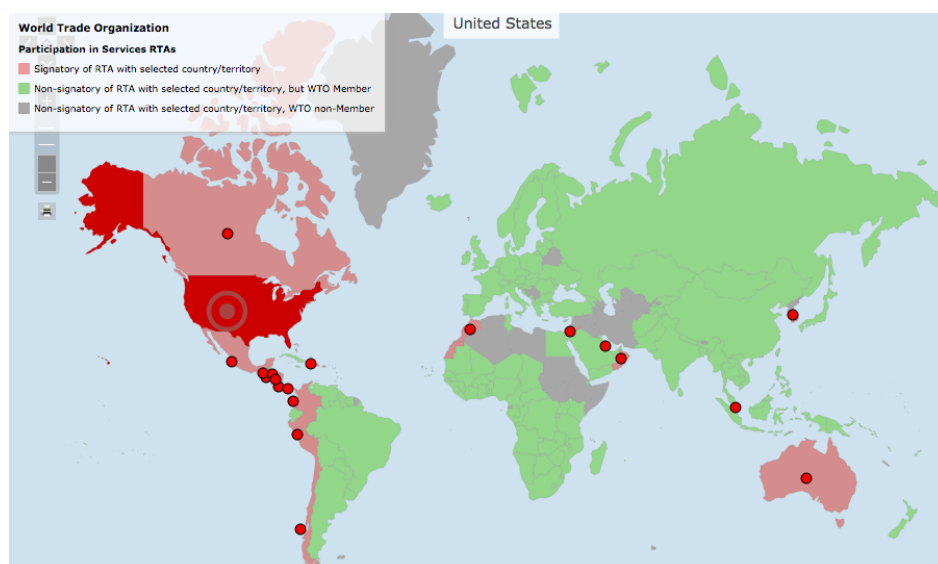
Figure 3 – The United States' Service Agreements.
Source: WTO Regional Trade Agreement Database.

Conclusion

GATS-minus PTAs exist among partner nations of varying development and across regions.[59] The most common GMPTA is between a developing and a developed state.[60] The managerial school has argued that legal ambiguity, lack of capacity and socio-economic changes over time are the primary cause of GMPTA creation. However, even these scholars allow for the idea that other non-economic factors and specifically geopolitical strategies may also play a role in GMPTA creation.[61] Scholars are clinging

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59 Adlung and Morrison, "Less than the GATS."
60 Adlung and Miroudot, "Poison in the Wine?".
61 Fink and Molinuevo, "East Asian Preferential Trade."; Hoakman and Mattoo, "Liberalizing Trade in Services."; Adlung and Miroudot, "Poison in the Wine?"; Adlung and Morrison, "Less than the GATS."

to the managerial school when more clearly understood and obvious factors could justify GMPTA creation.

The managerial school is overstating the role ambiguity plays given the fact that most GMPTAs involve at least one developed state. The idea that even the most experienced and developed nations cannot deal with the legal ambiguity in the GATS is not a credible argument. Research has shown that developing nations often lack the capacity to both understand international law and enforce it.[62] However, in the case of GMPTAs developing nations are not the only states guilty of involvement. Lastly, socio-economic changes over time as a variable is not unique to the managerial school's argument and is in fact already included in PTA creation models.

While the managerial school emphasizes unintentional violations, in the case of GMPTAs states have clear motivation to protect politically sensitive sectors. Scholars are ignoring or downplaying the most obvious cause for violation and instead suggest that developing states are backward and ignorant and in need of paternalistic aid from developed nations. Rather than belittle developing nations as incompetent, it would be wise to consider all nations as rational actors. Additionally, the managerial school provides no insights into why developed nations would accept and sign agreements that violate international law.

The motivation for a state to protect certain industries despite being in violation is quite clear. The motivation for partner states to accept GATS-minus provisions is less so. However, unless we are to believe that even the architects of the WTO are confused by its legal code and lack the capacity to enforce the rules, another explanation must exist. It is very unlikely that developed states are consistently making clerical errors when developing treaties of such importance. By negotiating treaties that leave economic gains that are not only allowed but required in order to comply with the WTO, developed and developing nations alike are demonstrating that economic gains from trade are certainly not the only concern at hand and likely a secondary concern to geopolitical strategies and increased political cooperation between PTA partners.

The analysis in this paper points to domestic political concerns as the primary motivation for states to seek GATS-minus provisions and international security concerns as the primary motivation for other states to accept such provisions. The US, Japan and the west more broadly are clearly concerned with the rise of China and, either as a response to western suspicions, or because of its predetermined intentions, China is also concerned with securing political influence in Asia and beyond. Whether China actually has intentions of reshaping the international order is essentially irrelevant. The perception is there and both the major powers and lesser powers are seeking political influence over economic gains when formulating economic policy as part of a larger strategic agenda.

This is particularly problematic for the WTO and the international economic order

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62 Kuruvila, "Developing Countries."

that was forged in the wake of World War II and that the US claims to protect. Along with worries that GMPTAs will function as stumbling blocks to progress in the Doha round, the existence of numerous GMPTAs that are going unchallenged undermines the institutional reputation of the WTO. GMPTA creation has become so prevalent that it seems unlikely that any state will bring a challenge to the dispute settlement mechanism for fear of creating a backlash of disputes against its own GMPTAs. If all states are complicit in violating international law then the world cannot look to states to rectify the situation. The WTO as one of the most institutionally powerful international organizations should increase its vigilance, if nothing else than for fear of becoming irrelevant.

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A Presumptive Right to Exclude: From Imposed Obligations To A Viable Threshold

Benedikt Buechel

ABSTRACT: In "Immigration, Jurisdiction and Exclusion", Michael Blake develops a new line of argument to defend a state's presumptive right to exclude would-be immigrants. His account grounds this right on the state as a legal community that must protect and fulfill human rights. Although Blake's present argument is valid and attractive in being less arbitrary than national membership and in distinguishing different types of immigrants' claims, I dismiss it for being unsound due to a lack of further elaboration. The reason for my rejection is that there is a fundamental problem with the third premise as it stands now. Therefore, I contend that Blake's argument cannot justify a general exclusion of well-protected would-be immigrants. However, in the final part, I will try to defend a modified version of Blake's argument from imposed obligations by contending that a state has a presumptive right to exclude if the human rights obligations that are imposed on its residents go beyond a viable threshold.

Keywords: *Immigration, right to exclude, global justice, human rights, Michael Blake.*

Introduction

The emergence of a global infrastructure and the increasing inequality in wealth, power, and security between nations have resulted in new waves of migration to affluent countries. This trend and its implications have turned many political theorists' attention to the question of immigration. While some have argued for open-borders,[1] others have defended the state's presumptive right to exclude would-be immigrants.[2] Theorists on both sides have done so for different reasons. Joseph Carens made one of the first cases for open borders. He has argued that if one wants to be consistent with the three most prominent liberal approaches to political theory, namely

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1   See Arash Abizadeh, "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders," *Political Theory 36*, no. 1 (2008): 37-65; Joseph Carens, "Aliens and Citizens: The Case for Open Border," *Review of Politics 49*, no. 2 (1987): 251-273; Chandran Kukathas, "Why Open Borders?" *Ethical Perspectives 4* (2012): 649-675; Kieran Oberman, "Immigration as a Human Right," in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (Oxford: Oxford University Press, 2016), 32-56.

2   See Michael Blake, "The right to exclude." *Critical Review of International Social and Political Philosophy 17* (2014): 521–37; David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge Massachusetts: Harvard University Press, 2016); Ryan Pevnick, *Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty* (Cambridge: Cambridge University Press, 2011); Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983); Christopher Wellman, "Immigration and Freedom of Association." *Ethics* 119, no. 1 (2008): 109-141.

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the Rawlsian, the Nozickian, and the utilitarian, there is little justification for preventing people from immigrating to another state. Other pro-open border proponents like Arash Abizadeh, and Kieran Oberman have focused on democratic theory and human rights instead.

The proponents of a presumptive right to exclude, on the other hand, generally divide into three categories. Political theorists in the first category, like Michael Walzer and David Miller, develop a theory that seeks to justify the right to exclude on the basis that it is necessary to guarantee the social and cultural stability of political communities. Theorists in the second category, in comparison, make arguments for this right on deontic grounds. While Ryan Pevnick's argument is based on the protection of collective property rights, Christopher Wellman has argued that the right to freedom of association requires that states have a right to exclude those with whom they do not want to associate.

Michael Blake also supports the claim for a presumptive right to exclude would-be immigrants. Pointing out some flaws of the previous accounts, however, he adds a new line of argument that is grounded on the state as a legal community that must protect and fulfill the human rights of everyone being within its territory. In this essay, I will first present Blake's argument and then show why I think it cannot, without further elaboration, justify a general exclusion of well-protected would-be immigrants. After having considered a possible response to my criticism in the final part, I will try to defend a modified version of Blake's argument form imposed obligations by contending that a state has a presumptive right to exclude if the human rights obligations that are imposed on its residents go beyond a viable threshold.

Blake's Argument

Blake is a 'statist'. His argument starts from the assumption that states not only have commonly accepted characteristics but also that their existence is justified.[3] He defines the state as an institution that has a permanent population and an effective government to rule over a jurisdictional domain.[4] This definition implies that states are entitled to establish a system of rights and laws on their territory but not beyond. Besides the rights that are exclusively given by the state to its residents, there is a set of rights that is granted to everyone on the territory by virtue of being human. These latter so-called human rights impose three distinct obligations on states: to respect, to protect, and to fulfill.[5] The state's jurisdictional boundary does not, however, apply to all those human rights obligations. The first one is exceptional because it also extends to people outside of a state's territory.[6] It entails that states must refrain from violating the human rights of people who reside

3   Michael Blake, "Immigration, Jurisdiction, and Exclusion," *Philosophy & Public* Affairs 41 (2013): 109.
4   Ibid., 109-10.
5   Ibid., 110.
6   Ibid., 110-111.

outside its borders.

However, Blake's argument focuses on the second and third obligations which relate only to those who are within a state's jurisdiction. He points out that these two positive obligations have important implications. The protection and fulfilment of human rights demand some active effort on the side of states, namely the establishment of a variety of political institutions that can monitor the human rights situation, investigate violations, and educate people (*Premise 1*).[7] But states cannot do it alone; their residents are obliged to support them in protecting and fulfilling the human rights of everyone within the territorial boundaries (*P2*).[8] Hence, by setting foot on the jurisdictional domain of a state, immigrants also impose positive obligations on its current residents (*P3*).[9] Blake, however, thinks that the imposition of obligations needs to be justified because people generally have a pro tanto right not to have their freedom be infringed upon without giving consent (*P4*).[10] He assumes that the imposed obligations necessarily eliminate a set of options available to the current residents. In other words, residents cannot enjoy certain activities and fulfill their obligation towards immigrants at the same time.[11] This leads to a situation in which people's right to immigrate stands against the residents' rights to freedom of choice. Blake elaborates on this condition by referring to Judith Jarvis Thomson's example about a needy violinist. Although the violinist and would-be immigrants have different characteristics and there are good reasons to condemn the former that do not apply to the latter, the analogy still shows that although people have a strong right to be protected, they are not free to choose who should fulfill that right.[12] If their rights are already protected by the home state, there is no justification for infringing upon the freedom of another state's residents.[13] The conclusion from all this is that states have a presumptive right to exclude would-be immigrants in order to prevent them from imposing positive human rights obligations on their residents as long as there is no good reason to do otherwise (*C*).

In the final part of the essay, Blake considers two partly correct objections, namely the argument from federalism and the argument from oppression, that provide two conditions for when the presumptive right to exclude immigrants is defeated. The first objection tries to extend Blake's argument from the state to its federal subunits. Blake rejects this extension, however, by pointing out that although the federal subunits might exercise partial jurisdiction they are bound to the central government's legal framework.[14] But this response allows two lines of criticism that think of the state, in analogy to the federal

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7   Ibid., 11.
8   Ibid., 114.
9   Ibid.
10 Ibid., 115.
11 Ibid.
12 Ibid., 116.
13 Ibid., 117.
14 Ibid., 122.

subunit, as a subject to a greater authority. The stronger version argues that a global political community has evolved which prohibits the exclusion of immigrants. However, Blake dismisses this argument as well because it is implausible to assume that there are sufficient state independent institutions on the global level.[15] This is not the case for the weaker version. It provides the first condition for when the presumptive right to exclude is defeated. Blake acknowledges that are in fact transnational political communities, e.g. the European Union, that have the means to restrict their member state's' right to control the movement across their borders.[16]

The second objection is based on the argument from oppression. It notes that states cannot justify restrictions against insufficiently protected would-be immigrants.[17] Although Blake concedes to strong critique by making it the second condition for when the presumptive right to exclude is defeated, he points out two limitations. While all unprotected would-be immigrants have a general right to immigrate, they are also not free to choose any particular host country.[18] In other words, they have no right to insist on permission in a Scandinavian country when being accepted in an Eastern European country. Moreover, would-be immigrants might have a duty to stay at home in order to assist their compatriots.[19] But Blake denies such a special obligation towards the residents of one's home country. He thinks that would-be immigrants only have a duty to stay if all citizens of the world provide comparable assistance. However, as long as this condition is not met, the argument is irrelevant.[20]

A summary of Blake's argument and its six premises looks like the following:

(P1)   A state is responsible for respecting, protecting and fulfilling the human rights of only those people present within its territorial jurisdiction.

(P2)   Each resident of a state is obligated to support its state's capacity for human rights protection and fulfillment within this scope, and not beyond.

(P3)   Immigrants impose obligations of this sort on current residents.

(P4)   People "have a presumptive right to be free from others imposing obligations on them without their consent". Hence, an argument is required for defeating this presumption.

(P5)   The presumption in (P4) is defeated if the would-be immigrants are not enjoying adequate human rights protection where they are.

(P6)   The presumption in (P4) is also defeated if it applies to would-be immigrants that migrate within a transnational community, e.g. the European Union.

(C)   A state has a presumptive right to exclude would-be immigrants, not fall-

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15 Ibid., 123-4.

16 Ibid., 124.

17 Ibid., 125.

18 Ibid., 127.

19 Ibid., 128.

20 Ibid., 129. Kieran Oberman provides another strong counterargument against a special duty to stay. He argues that this duty to stay can only be justified if four conditions are met: See Kieran Oberman, "Can Brain Drain Justify Immigration Restrictions?" *Ethics* 123, no. 3 (2013): 453.

ing under (P5)[21] or (P6), because they impose positive human rights obligations on its residents that cannot be justified.

Residents, Compatriots and Would-be Immigrants

The following section will show why I think that Blake's argument for a presumptive right to exclude would-be immigrants is unsound due to a lack of further elaboration. My criticism will focus on the third premise which says that immigrants impose positive obligations on a state's current residents; or alternatively that residents are obliged to do something in order to support their home state's capacity to protect and fulfill the human rights of immigrants.

This premise is problematic for three reasons. First, Blake says little about the exact content of the positive human rights obligations which are entailed in the third premise of the argument.[22] In a thought experiment, he only mentions three particular ways in which residents are morally and legally obligated to protect and fulfill the human rights of immigrants: they have to pay for the police, serve on juries, and create political institutions.[23]

However, the first example, paying for the police, is contradicted just two pages later. By distinguishing the difference between costs and obligations, Blake highlights that having an obligation is not only about paying money to someone.[24] The obligated person has to perform an 'authentic' act; it is authentic in the sense that it involves some time and effort. Although the second example, serving on juries, corresponds to this meaning, it is also problematic. While not all countries have a legal system that includes citizens in juries,[25] the example is not only a hypothetical but seems also less relevant when applied to the well-protected would-be immigrants that can rightfully be excluded by Blake's overall argument. Besides the more abstract demand for the creation of political institutions, the reader is left floundering what additional 'authentic' acts every individual

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21 Hereafter, referred as "well-protected would-be immigrants".

22 In her criticism to Blake, Julie Arrildt also emphasizes that the obligations are vaguely defined. See Julie Arrildt, "State borders as defining lines of justice: why the right to exclude cannot be justified.," *Critical Review of International Social and Political Philosophy,* (2016): 6. However, I think that her point is slightly different. By referring to Blake's definitions of legal and moral obligations [a legal obligation as the elimination of '(…) my freedom to do a certain thing while not suffering a negative consequence' and a moral obligation as the limitation of '(…) my moral right to do a particular thing' (Michael Blake, "Immigration, Jurisdiction, and Exclusion," *Philosophy & Public Affairs* 41 (2013a): 115)] she argues that Blake does not provide any explanation of the 'things' used in those definitions. Despite this being true, it is not the content of the rights ('things') outweighed by the obligations which need further explanation but rather the content of the imposed obligations, namely the particular action that must be performed to fulfil them. This is because only then, can we judge whether the right to immigrate can trump the residents' right to freedom of choice and not vice versa.

23 Michael Blake, "Immigration, Jurisdiction, and Exclusion," *Philosophy & Public Affairs* 41 (2013): 113.

24 Ibid., 114-5.

25 There are currently about 55 countries of which many are members of the Commonwealth. See Neil Vidmar, *World Jury Systems* (Oxford: Oxford University Press, 2000), 3.

resident must perform to protect and fulfill the human rights of immigrants. However, this information is necessarily needed if one wants to judge whether the residents' right to freedom of choice can outweigh the right to immigrate.

Second, Blake does also not consider that would-be immigrants have the same obligations as the current residents once they have entered the state and become compatriots. Since not only benefits and burdens,[26] but also obligations are reciprocal, residents impose as many obligations on accepted immigrants as vice versa. And they do so immediately; There is not a slight moment in which the accepted immigrants would be free to refuse moral and legal obligations towards their new compatriots. To defend his argument against this criticism, Blake must either take for granted that many would-be immigrants do not have the means to fulfill their positive obligations as new residents or assume that they are more likely to violate the laws which in consequence increases the burden on the side of the state. Although the first correlation could be true, it does not change the essence of the criticism since it only applies to unprotected would-be immigrants that have good reasons to be included in the first place.

Finally, Blake points out that people impose moral obligations on one another all the time but that their extent differs by distance to the right bearer.[27] A person who is closer to the right bearer, e.g. a resident to a compatriot compared to a resident to a would-be immigrant, seems to have a greater set of obligations.[28] However, this is already a claim that must be defended. The extent of what is demanded might be less about the actual distance to the right bearer than about the ability to help in a given situation (See Singer 1972).[29] Blake acknowledges that distance and partiality cannot be the primary criteria for whether people have obligations towards one another or not. Residents have distinct obligations towards each other because they authorize and share liability to the state's coercive mechanisms.[30] This does not, however, exclude the necessity to fulfill even unwanted obligations, if the other's right in question outweighs our freedom to refuse.[31] Despite egalitarianism and the elimination of relative poverty being only required within the domestic context of state coercion, sufficientarianism and the elimination of absolute poverty is still demanded in the international arena.[32]

However, state coercion does not provide a good justification for prioritizing residents

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26 Michael Blake, "Immigration, Jurisdiction, and Exclusion," Philosophy & Public Affairs 41 (2013): 117.

27 Ibid., p. 118.

28 Michael Blake, *Justice and foreign policy* (New York, NY: Oxford University Press, 2013), 20.

29 See Peter Singer, "Famine, Affluence, and Morality," *Philosophy & Public Affairs* 1, no. 3 (1972): 229-43

30 Blake, M. "Distributive justice. State Coercion, and Autonomy," *Philosophy & Public Affairs* 30, (2001): 258.

31 Michael Blake, "Immigration, Jurisdiction, and Exclusion," *Philosophy & Public Affairs* 41 (2013): 119.

32 Michael Blake, "Distributive justice. State Coercion, and Autonomy," *Philosophy & Public Affairs* 30, (2001): 264-5.

over would-be immigrants since the latter are also subject to state's' coercive regime of border control.[33] Although this is a strong counterargument, it cannot entirely challenge Blake's distinction because its focus is not on state coercion itself, but rather on the residents' consent to the coercive mechanisms. One could, nonetheless, argue that would-be immigrants' foundation for having political obligations is much stronger than those of most residents as they have all given explicit consent to state authority by crossing its borders. However, this does also not necessarily apply to all types of would-be immigrants. It is questionable whether unprotected immigrants really have a free choice when they make such a decision.[34]

A distinction between the often so-called special and general obligations is primarily irrelevant here because residents of a state already have the same positive human rights obligations towards their compatriots.[35] At this point, it is hard to see how these obligations towards compatriots are in any sense different from the ones that are imposed by accepted immigrants. A state that already promotes human rights domestically will necessarily have and support the required political institutions. But if this is the case, the state's current residents do not need to perform any additional 'authentic' act to protect and fulfill the human rights of accepted immigrants. Hence, would-be immigrants do not impose any additional human rights obligations on current residents that could justify their exclusion.

Defending a Modified Argument from Imposed Obligations

One could respond to all this in defense of Blake's argument for a presumptive right to exclude would-be immigrants by arguing that although they do not impose any additional obligations there is a quantitative increase in what is already demanded.[36] This argument assumes that there is a positive correlation between the number of people whose human rights can be protected and fulfilled by a political institution and the resources that such protection and fulfillment would require.[37] This brings us back to the question of what

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33 Arash Abizadeh, "The Special Obligation Challenge to More Open Borders," in *Migration in Political Theory: The Ethics of Movement and Membership*, ed. Sarah Fine and Lea Ypi (Oxford: Oxford University Press, 2016), 112-13.

34 David Hume makes a similar point about the link between consent and emigration. He argues that residents do not have the opportunity to show discontent with their government by leaving the country since they might lack the capacity to do settle somewhere else. David Hume, *An Enquiry Concerning the Principles of Morals*, in Enquiries, ed. L. A. Selby-Bigge (Oxford: Oxford University Press, 3rd ed., 1975), 475.

35 Michael Kates and Ryan Pevnick, "Immigration, Jurisdiction, and History," *Philosophy & Public Affairs* 42, (2014): 188.

36 Ibid.

37 Jan Brezger and Andreas Cassee contend that Blake's argument from imposed obligations cannot justify a difference in treatment between would-be immigrants and resident citizens' offspring. (See Jan Brezger and Andreas Cassee A., "Debate: Immigrants and newcomers by birth – Do statist arguments imply a right to exclude both?" *The Journal of Political Philosophy* 24, (2016): 267-8.) However, I do not think that their criticism can challenge the overall argument since it does not consider that Blake distinguishes two types of immigrants: unprotected and well-protected. While the former immigrants are not, the latter are very much different from newborn in that their subsistence is not dependent on others.

exactly residents must do to support the state's political institutions that protect and fulfill human rights. The most likely answer is to pay higher taxes. However, this objection fails for the same reasons as before. Blake has already denied that his argument is only about bearing higher costs since a fair share of the well-protected would-be immigrants might be financial blessing to the new host country.

A successful response must rather present some concrete examples. There are at least two human rights that impose positive obligations that require more from a state and its current residents than just additional financial resources: the right to adequate health and well-being, that includes the provision of medical care (article 25), and the right to education (article 26). Both human rights can only be protected and fulfilled if there are enough people who can provide these services. One could respond to this problem by pointing out that a deficiency in human resources could be resolved through market intervention. Given that both doctors and teachers are part of the public-sector workforce, the state could create new jobs to achieve optimal allocation. However, there are also limits to economic theory. First, such state intervention to resolve the market shortage would take some time. Consequently, there would be a period in which not every resident's human rights to medical care and education could be fulfilled. Second, since both jobs require high qualifications, a state might not have the human capital to fill an increased number of vacancies in the education and medical sector. Third, and most importantly, a state's residents cannot be obliged to become doctors and teachers because there is an increasing number of would-be immigrants who want to enter their home country.[38]

Although this does not justify a general right to exclude a particular type of would-be immigrant, it grants a state a presumptive right to exclude if the human rights obligations that are imposed on its residents go beyond a viable threshold.[39] Despite the difference in argument, I agree with Blake that states have good reasons to rank would-be immigrants by their level of protection at home if there is a sudden influx beyond a viable threshold. If a state has the capacity to protect and fulfill the human rights of an additional number of 100,000 would-be immigrants but 200,000 want to enter, it is justified in enacting a need-based prioritization and excluding those who are already well protected outside the transnational community to which it belongs.[40] This means that regardless whether the viable threshold is reached or not, the presumption is defeated if the would-be immigrants migrate within a transnational community or are not enjoying adequate human right

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38 Michael Blake, *Justice and foreign policy* (New York: Oxford University Press, 2013), 23-4.

39 Kieran Oberman who has argued for a human right to immigrate does agree that restrictions might be justified in extreme circumstances in which the acceptance of immigrants leads to high social cost. See Kieran Oberman, "Immigration as a Human Right," in *Migration in Political Theory: The Ethics of Movement and Membership*, Ed. Sarah Fine and Lea Ypi (Oxford: Oxford University Press, 2016), 33-4. The here presented argument to viable threshold is different in that it grants a presumptive right that is not grounded on cost but on obligations.

40 This example should not create the impression that the viable threshold is always fixed; it correlates with the state's capacity to fulfil and protect the human rights of those people present within its territorial jurisdiction.

protection where they are since there are more immediate basic needs than education and medical care.

The modified version of Blake's argument has six premises and looks like the following:

(P1)   A state is responsible for respecting, protecting and fulfilling the human rights of only those people present within its territorial jurisdiction.

(P2)   Each resident of a state is obligated to support its state's capacity for human rights protection and fulfillment within this scope, and not beyond.

(P3)   Each immigrant imposes cumulative obligations of this sort on current residents.

(P4)   People have a presumptive right to be free from others imposing obligations on them beyond a viable threshold.

(P5)   Regardless whether the viable threshold is reached or not, the presumption in (P4) is defeated if the would-be immigrants are not enjoying adequate human right protection where they are.

(P6)   The presumption in (P4) is also defeated if it applies to would-be immigrants that migrate within a transnational community, e.g. the European Union.

(C)   A state has a presumptive right to exclude would-be immigrants, not falling under (P5) or (P6), if the human rights obligations that are imposed on its residents go beyond a viable threshold.

Conclusion

In this essay, I have dismissed Blake's argument for a presumptive right to exclude would-be immigrants for being unsound. The reason for my rejection is that there are three problems with the third premise as it stands now. First, Blake says little about the exact content of the imposed obligations. However, without such information, it is impossible to judge whether the residents' right to not have their freedom be infringed upon can outweigh the right to immigrate. The second problem is that, compared to what is owed to compatriots, would-be immigrants do not seem to impose any additional human rights obligations which could justify their exclusion. Third, Blake also does not consider that would-be immigrants have the same obligations as the current residents once they have entered the state and become their compatriots. This criticism does not, however, mean that states have no presumptive right to exclude well-protected would-be immigrants. By providing a modified version of Blake's argument from imposed obligations, I have contended that a state has such a presumptive right if the human rights obligations that are imposed on its residents go beyond a viable threshold.

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BOOK

REVIEWS

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Centrifugal Empire: Central-Local Relations in China. By Jae Ho Chung. New York: Columbia University Press, 2016. X, 232 pages. USD 60.00. ISBN: 978-023-1176-20-0.

Book Review by Giuseppe Gabusi.

Why is China a unitary state? Why has federalism never taken hold in China? Why is China divided in only 33 province-level units, considering its huge – almost continental – size? To these old and fascinating questions Jae Ho Chung's *Centrifugal Empire* tries to give an answer by looking at how the People's Republic of China has managed to organize the political division of the territory in continuity with all the – not always successful – imperial attempts to hold the country together. Chung looks particularly at "perceptual undercurrents (i.e., national identities of local governance), as well as their behavioral manifestations" (p. 3), especially in the post-Mao era, which have shaped the Chinese Communist Party's (CCP) mindset when dealing with issues of local governance. In particular, the author outlines how historical memories of territorial fragmentation, warlordism, and local fiefdoms have generated in the Communist elite a true obsession for the complete control of a unified country. How in contemporary China the center and the localities have been coping with this historical legacy is the central theme of the book.

"Local units" in China include provinces (and province-level units like centrally administrative municipalities, ethnic minority regions, and the special administrative regions of Hong Kong and Macao), prefecture-level cities and prefectures, county-level cities and counties, and towns, townships, ethnic minority townships, and street-level administrative offices. Since these units are all part of a centralized state, the central government shapes the different levels of the administration, their hierarchies and their respective jurisdictions according to the perceived needs of the state. For this very reason, post-Mao decentralization – which has allowed local economies to thrive – has never meant loss of control by Beijing. Chung speaks of post-1978 "de-centering" coupled with

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selective recentralization, with the notorious case of the 1993 fiscal reform as a typical example of the latter. China's success story in the last 40 years owes much to competition among localities, each of them fighting to attract funds, foreign investment, and economic opportunities, often also by circumventing central rules still nominally in force. Localities have thus become more aggressive vis-à-vis the center, but at the same time Beijing could not resort back to the top-down, ideological, principal-agent kind of approach that Mao adopted in his heyday, precisely because the central government needed economic growth at the local level for its political legitimacy. Therefore – within overall continuity in the need to keep local administrations at bay – the pursuit of economic development and growth has changed in a way the center/local relationship.

In fact, it is precisely at this political economy junction that center/local dynamics meet state-society interactions. According to Chung, Beijing's perceptions of local bureaucracy are of three type: as agents, representatives or principals. The reform era has somehow weakened the role of localities as loyal and diligent executors of the center's wishes and policies. However, the author reminds us that this image has often represented a mythology, as even in the 1960s and 1970s Mao's ideological grip on power did not prevent local officials from cheating (for instance, on statistics) if those actions were necessary to keep their power positions while at the same time allowing *some* degree of autonomy. Conversely, decentralization and 'segmented de-regulation' - a concept well articulated by David Zweig in his *Internationalizing China* (2002) – encouraged local governments to proactively present Beijing their own autonomous instances and demands – a relatively quite new behavior in China's recent history. Moreover, since China's governance – even though authoritarian in nature – relies on some degrees of support from the population at large, having local administrations perform the role of representatives is of crucial importance for the center: in this way, the periphery conveys all sorts of signals (from expectations to complaints, and from necessities to suggestions) that Beijing should respond to in order to maintain political and social order in the country. This role is certainly crucial for 'hearing the pulse' of society, but especially in times of factional infighting at the center, local officials could exceed their role and try and carve out a leadership role for themselves, in the name of local collective interests, thus triggering a firm crackdown from Beijing. The rise and fall of Bo Xilai in Chongqing some years ago might well be a case in point.

Indeed, even after the dilution of ideological discipline, Beijing has several instruments to rein in the excessive protagonism of local officials. For a start, as preventive mechanisms, like in traditional China the center keeps the power to demarcate territories and jurisdictions through artificial boundaries, "to prevent the rise of localism embedded in common dialects, cultures, and customs cultivated over long periods of time" (p. 77). The Communist Party has added to that the personnel system as an extraordinary mechanism of control, since personnel collectively represents – as explored in Susan

Shirk's *Playing to the Provinces* (1993) – that very *selectorate* which ultimately shows his loyalty to the center, and indeed to the top echelon of the party elite, chosen every five years in the Congress. Moving officials from one position to another entails an incentive system of rewards and punishments which can be as effective as a Maoist framework requiring to keep the ideological Party line (one can find here echoes of Zhang Yongnian's *Organizational Emperor* – 2010). Instruments of control can also be of investigative nature, be them leaders' 'inspection tours' (kaocha, 考察) that have seen Mao, Deng, Jiang, Hu and Xi all touring the country "just as the Qianlong Emperor of the Qing dynasty journeyed out of the Forbidden city six times" (p. 80), or be it the CCP's Discipline Inspection Commission or the "central inspection group", the latter established in 2003. The central government enjoys also the power to change the rules of the game any time it needs to do so – and it really did it in 1993 when with the tax reform it reneged on a previous promise to keep the status quo until 1995 – and it keeps supervision over at least twenty-eight key policy domains, from taxation to banking, and from industrial and commercial management to national and public security. And yes, suppression as a last resort is always available: that is the reason why it is so important for Beijing to prevent the People's Liberation Army from developing local ties and loyalties.

Chung explores also the gray areas, the interstices where localities find their way to advance and implement their agendas, exploiting the limits that the system sets for their discretion. But under what circumstances is this attempt successful? The author elaborates a hypothesis based on three elements: policy scope, policy nature, and degree of urgency. Only if policy scope is selective, the nature of the policy involves resources, and the matter is not urgent, localities will enjoy high discretion (and total time taken by the central government to intervene would be long). On the contrary, if policy scope is encompassing, the nature of the policy regards governance issues, and policy implementation is urgent, local discretion will be low (and the central government would waste no time in making its voice heard). Then, the hypothesis is tested in a few cases such as regional development policies, the administrative separation of the island of Hainan (now a province) from Guangzhou, the 1993 tax-sharing reform, the household responsibility system, and the case of social stability maintenance. This last issue is obviously of the uttermost importance, since social protests occur mainly at local level against local decisions, and if on the one hand they are useful 'relief valves' (when contained), they can threaten the regime stability (when they become widespread), signaling a potential governance malfunction.

Beijing has often responded to this challenge – apparently not with the expected success – by increasing fiscal transfers. The problem is that this kind of "vertical support" not always works in tandem with the logic of the political economy of horizontal networks, which have always been met with suspicion by Beijing. Chung devotes an entire chapter to this potential clash, finding that "the center's vertical intervention may often prove

unsuccessful, as Beijing is generally likely to value a political logic (i.e., sustaining a political status quo and seeking administrative convenience) more than an economic rationale, often overlooking the centrality of reciprocal incentives for cooperation" (p. 140). The author offers a possible solution to the conundrum: "reviving natural economic territories" and letting horizontal links and networks to flourish in the economy. It remains to be seen if the central leadership is confident enough to trust localities to such an extent, considering the historical fear – if anything, strengthened by the collapse of the Soviet Union in the early 1990s – of the breaking up of the country.

In the conclusion, Chung points out that of the three traditional menaces to China's unity – "foreign aggression, the rise of alternative military forces, and peasant rebellions" – only the last one is significant in the XXI century, as the number of collective protests has skyrocketed in the recent past, and most of them have been directed against local officials, which enjoy the lowest level of trust among the Chinese public. The localities tend to be allocated greater responsibilities with less financial and material resources, thereby opening up the space to "institutional decay" and the "emptying" of the state which actually seems to be a trend across the globe: "The fast-expanding influence of local clans over the basic-level party and state units, particularly in the rural areas, as well as the infiltration of bad elements in the grass-roots apparatus, poses a crucial question of governance. Is the center's capacity to rule stretching down effectively to the sub-county and grassroots levels so that key societal demands are met satisfactorily?" (p. 144). The resilience of the Chinese authoritarian framework, therefore, should not be taken for granted.

Centrifugal Empire is a highly readable book, and does its best when combining the bigger picture in historical perspective with the wealth of policy details and institutional frameworks – less so when listing the (absolutely necessary) technicalities of the administrative reforms of the latest years. Page after page, *Centrifugal Empire* becomes a constant source of inspiration and thoughts on China's governance, and it reveals how the very evolution of the perpetual tension between the center and the provinces – "Heaven is high and the Emperor is far away", as the old saying goes – is at the core of any possible speculation on China's future. Finally, it confirms Chung's authority on this topic, and it should be compulsory reading for anyone interested in the evolution of the PRC. It is a pity then that the publisher's choice to relegate all the notes to the end of the book wastes part of the wealth of resources lying behind it.

The Perfect Dictatorship: China in the 21st Century. By Stein Ringen. Hong Kong University Press, Hong Kong, Distributed by Columbia University Press, 2016. 208 pages. USD 70.00. ISBN 978-988-8208-93-7.

Book review by Maximilian Ernst

In his latest book "The Perfect Dictatorship; China in the 21st Century," Stein Ringen uses the discipline of state analysis to establish and substantiate the hypothesis that China is a dictatorship. The entire book is as much to the point as the title. The book is presented in a "just the facts, Ma'am" manner, analyzing in-depth modern China's political sphere and its strategies to govern the (still) most populous country in the world. One important reference for the book is a previous work by Stein Ringen, "The Korean State and Social Policy,"[1] which Ringen repeatedly draws on to compare the Asian tiger state of South Korea and its economic miracle with the alleged economic miracle of China. According to Ringen, China's economic growth is, given its size, not all that miraculous. Furthermore, Ringen uses Korea as the example of an authoritarian state to show that China, being considerably more autocratic and using violence against its citizens more often, cannot also be authoritarian, but instead must be a dictatorship.

Another repeatedly quoted work is the recent book by Daniel A. Bell, "The China model: Political Meritocracy and the Limits of Democracy,"[2] to which Stein proposes in this book a sort of counter-argument. Based on the thorough analysis provided in this book, complete with a number of scenarios how the future of the Chinese state will play out, Ringen argues it is rather unlikely "that the Chinese state is on its way to becoming a

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1 Stein Ringen, Huck-ju Kwon, and Ilcheong Yi, *The Korean state and social policy: How South Korea lifted itself from poverty and dictatorship to affluence and democracy* (Oxford: Oxford University Press, 2011).

2 Daniel A. Bell, *The China model: Political meritocracy and the limits of democracy* (New York: Princeton University Press, 2016).

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good regime of its own kind,"[3] as among others Bell proposed, and that China's leaders, able or not, have not governed China well. Instead, Ringen concludes that the Chinese state has been run highly inefficiently in economical terms and that the nation could be many times more productive if the ruling elite would be less preoccupied with ensuring its own survival and more with serving its people.

The book's structure is rather straight-forward. In the beginning, the hypothesis that China is a dictatorship is introduced and the rest of the book investigates whether China is in fact a dictatorship and if so, what kind of dictatorship it is. The book is organized into five chapters, in which Ringen analyses China's *Leaders* (1), *What They Say* (2), *What They Do* (3), *What They Produce* (4), and *Who They Are* (5). If there is one possible criticism for this book, it is the seemingly ambiguous name-giving of the chapters and the fact that all chapters will inform the reader to some degree about who China's leaders are, what they say, and what they do.

Chapter One (Leaders) sets out with an inventory on the state of the Chinese Nation and examines national identity, leaders' self-image towards the outside and to the inside, as well as their priorities. China, as a party-state, "is a system with two overpowering bureaucracies, side by side and intertwined. The state controls society, and the party controls the state."[4] Control indeed is one of the best-describing features of the Chinese state, which is why Ringen, before coming to the conclusion that China is a dictatorship, asserts that China is a "controlocracy." Chapter One also explains important variables in Chinese leaders' foreign policy behavior. A first such variable is insecurity, which makes it "near paranoid about being treated with the respect the leaders believe it is due," which went as far as China having "lead down the threat of war to neighbours such as India (invaded in 1962) and Vietnam (invaded in 1979)."[5]

Chinese leaders, Ringen asserts, are most likely telling the truth when they insist "that China does not represent a threat to anyone in the world who does not oppose its self-defined 'core interests' and who is otherwise cooperative, in particular in economic matters and treats it with that all-important respect."[6] The central 'core interest', of the Chinese leadership is self perpetuation, which it derives through 'legitimacy of rule'. Since up until now economic growth has guaranteed this legitimacy, other nations were right in their assessment that China would not threaten international peace and stability so as to guarantee continued economic growth. However, since economic growth and prosperity of the Chinese people are not an end, but a mean to gain this all-important legitimacy, "[i]t is conceivable that [the Chinese leadership] might accept great economic sacrifice in a mission of protecting its own definition of territorial integrity, and even for

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3   Stein Ringen, *The Perfect Dictatorship: China in the 21st Century* (Hong Kong: Hong Kong University Press, 2016), xi.
4   Ibid., 1.
5   Ibid., 9.
6   Ibid., 10.

the promotion of national glory."[7]

Chapter Two (What They Say) represents a central building block in the establishment of the hypothesis that China is a dictatorship. In this first step, Ringen inquires what the 'purpose' of this one-party state of China is by proposing three possibilities, namely 'the triviality hypothesis', 'the welfare hypothesis', and 'the power hypothesis'. The triviality hypothesis maintains that the Chinese state may be strong "but does not possess any purpose beyond itself for the use of its strength."[8] What a trivial state lacks, however, is ideology.

The triviality hypothesis has important implications both domestically and internationally. Domestically, "[a] trivial dictatorship is likely to strike a deal with the people that they can get on with life much as they want, as long as they do not make serious trouble." Internationally, however "[strength] without a purpose can be a threatening constellation. […] Perhaps it has no capacity because it has no other vision of itself than being bigger than others"[9] Either way, a trivial state is much harder to predict by foreign policy analysts. This instant is contrasted with the example of the United States, which stands for the protection and promotion of values such as freedom and democracy. This something that the United States stand for may be liked or disliked by others, but everyone knows that these American values are there and that they are promoted through American foreign policy. In the end, such triviality seems highly unlikely in the case of a party-state such as China, which needs legitimacy and needs justification so as to "make it credible that there are reasons why it should be in control and why its rule should continue."[10]

The welfare- and the power hypothesis can be understood as opposites, the disambiguation of which goes back to the book *Citizen and Churchman* by William Temple.[11] The welfare hypothesis maintains that "the purpose of rule is to advance and protect the well-being of citizens. In power states, the purpose is to perpetuate the might and glory of the nation and its destiny, while citizens are subordinate in a duty to serve the state."[12] In other words, the two hypotheses are two opposite ways of state-society relations, i.e. whether the state serves society, or society serves the state. The welfare state represents a strong narrative, as therein the Chinese state has a purpose and a destiny, namely to increase the welfare of its people. Power states have an ideology too, and have a purpose. Most importantly, power states are in most cases also dictatorial states. In international relations, power states tend to be more aggressive than trivial- and welfare states. In order to decide which of the three hypotheses is the most accurate, the social security structure and ideology of the Chinese Regime needs further analysis, which

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7   Ibid., 11.
8   Ibid., 47.
9   Ibid., 49.
10   Ibid., 50.
11   William Temple, *Citizen and Churchman* (Eyre & Spottiswoode, 1941).
12   Stein Ringen, *The Perfect Dictatorship: China in the 21st Century* (Hong Kong: Hong Kong University Press, 2016), 51.

Ringen does in the following chapters.

Chapter Three (What They Do) represents a very thorough, almost encyclopedic, elucidation of the Chinese state, which institutions it is made up of, and how they work. Special attention was paid to the involvement and the degree of influence and control capacity the party vis-à-vis the government has on the different institutions. This chapter does not contribute to the theoretic part of the book, but goes into detail to describe the culture of centralism the CCP conducts in virtually every aspect of Chinese political, social, and individual life. The conclusion of this 'rich in raw data' chapter is that the Chinese government is an effective government in the sense that it controls everything and is capable to conducting every policy it wishes, but that it is not an efficient government, meaning the resources (time and working hours of Chinese citizens) to be put into any such policies are far from being used "cost-efficiently."

Chapter Four (What They Produce) is similar to Chapter Three in the sense that it provides detailed information on the Chinese public sector and the social security system. While there are considerable local differences, mostly between rural areas and the cities, overall it can be said that China has a social welfare system comparable to developing countries, while the tax burden to sustain it resembles that of developed countries. Ringen hence asserts that China is after all not a welfare state. This conclusion is based on the finding that the system is unequal and that the poor pay more into it than the rich. Furthermore, social assistance is limited, the threat of falling into poverty is real for Chinese citizens and the quality of the services is below 'best practices', meaning those who can afford it get better treatment. Overall, "we see a state that takes a great deal in taxes and that takes proportionately more from the poor than from the rich, and that gives back a [marginal package] that would normally be associated with a low-tax regime—and a package that is without redistributive force in poverty protection or otherwise."[13]

Chapter Five (Who They Are) concludes the analysis of the book. The question at the core of this chapter is, what kind of regime China is; authoritarian, totalitarian, or something else? Ringen asserts that China cannot be authoritarian as this term is too accommodating. Yet while the Chinese regime's demand of obedience from its people and readiness to use violence against them meet the dictatorship threshold, it is still too unsophisticated a label for a Chinese "dictatorship in which dictate is restrained and in which, except in the last resort, indirect control is substituted for direct command. This mode of control, hard in effect but soft in execution, is being developed to perfection and makes the Chinese state a kind of dictatorship never seen before."[14] For the remainder of the chapter, Ringen calculates, drawing on the previous chapter, what the state gives (economic growth, public services, a degree of life quality) and what it takes (between 55 and 67 percent of Chinese people's income) and concludes that the Chinese government

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13 Ibid., 132.
14 Ibid., 138.

takes considerably more from its people than it gives back. In the end, this appears to be the strongest argument for China being a dictatorship and not some sort of benevolent autocracy that struck a deal with its people; "It needs to be dictatorial because it is the kind of state it is, because of its greediness in what it takes and how it takes it, and because of its stinginess in what it gives and how it gives it. A regime of this kind would not be possible if it were to depend on the consent of the people."[15]

The postscript (A Better Regime) presents five scenarios and their likelihood of how the Chinese state will develop. In the scenario *Steady On*, which is a highly probable one, the economy continues to grow and the state continues to remain in control to some degree, while it also continues to reform step-by-step, under continued collective leadership. However, accounting for Xi Jinping's recent concentration of power in his own hands in a degree unprecedented since Mao, the scenario got a little less likely.

The second scenario, *Demise*, asserts that a number of things could go wrong in areas such as finance, socio-economic developments, national security etc. leading to social unrest and even war with neighboring countries. However this scenarios is, due to the Chinese Government's formidable capacity to stay in control, to reform and to adapt, an unlikely one.

The third scenario, *Utopia*, entails that the socialist paradise as written in the party's constitution becomes a reality. While this scenario is a possibility, and first steps towards a relaxation of the hukou system and the embryonic system of social protection could be seen as steps in the right direction, it is however also the case that all previous movements towards balanced social relations and democracy "have been seen as a threat, and have been crushed," and the new regime in China appears to be determined to maintain and fortify the current "controlocracy".

The fourth scenario, *Democracy*, explores the possibility that China continues to develop the "grassroots" democracy it has on the village level. The model Ringen presents here is that of indirect elections, where officials would answer downwards (not as now upwards), all the way down to the lowest level of directly elected officials. However, this scenario again is deemed unlikely due to the apparent common understanding at the top of the Chinese leadership "that anything that resembles real democracy is a danger to that all-important stability and not permissible given the regime's determination to self-preserve."[16]

The last scenario, *The perfect fascist state*, addresses much of the analysis provided in the book, especially chapter two and the establishment of the power state hypothesis. However while China is a perfect dictatorship and a near-totalitarian state, it remains unclear whether the regime has an ideology or is trivial. China can check the other boxes of fascism; aggressiveness, nationalism, and militarism, but China's nationalism is not

15 Ibid., 164.
16 Ibid., 173.

grounded in a fascist ideology. The following years will show whether China develops the "China Dream" into the "ultra dangerous" nationalist ideology it has the capacity to be.[17] This scenario is asserted to have a high probability.

With this warning in disguise the book concludes. The main points to take away from Stein Ringen's analysis are that China is a perfect dictatorship; perfect, because it is inconspicuous as most of the times commanding is not necessary and citizens self-sensor. This dictatorship is furthermore based on an effective yet inefficient system of control which serves the main purpose to maintain stability and to preserve the current regime. This finding is based on the thorough investigation this book undertakes of the relationship between the Chinese government and the Chinese people. This relationship, however, is unequal, as the state takes more than it gives back.

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17 What we are seeing in the China Dream is the embryo of an ideology that is ultra-dangerous. is is that because it sits on a rhetoric of power and national greatness and because, ultimately, it is an ideology in which the person ceases to exist as an autonomous being and is subsumed in the nation […]. If repression, aggression, and ultimately war are in the national interest, then these policies are by ideological fiat also of the good of 'each person's future and destiny'. Ibid., 176.

EDITORIALS

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The Displaced: An Editorial

Nate Kerkhoff

The issue of migration and reactionary politics has exploded over the past three years. Migrants flee their homelands to escape horrors that most of us in the first world cannot imagine. They risk their lives to move to a foreign land, often abandoning their culture, language, friends, and sometimes family. Seeing people survive a harrowing journey only to be mistreated in their countries of destination is a heartbreaking sight, almost shameful in some ways. While there is no justification for such treatment of fellow human beings, simply labeling unwelcoming locals as close-minded does not contribute to the solution. The biggest problem is the disconnect between those who are most strongly advocating refugee-friendly policies, and those who are most affected by them. Those most passionate about refugee resettlement would be wise to look at this issue from a local viewpoint. While the solutions may be straightforward, the implementation is complicated and must be done with utmost precaution. Many pragmatic and thoughtful ideas about addressing this issue have been put forward, but often times they are directed toward an audience that has similar values. Many in the academic and policy world may not have faced the same economic pressure that the European and American working classes are currently facing. If those in power want to create a welcoming environment for refugees while at the same time assuring their countrymen of physical safety and job security, then action must be aimed in the right direction. Migration affects all of us, and in order solve this complex matter, we must widen our perspectives to include not only to refugees, but the natives in the refugees' new homes as well.

This action must start at the federal level and flow downward. These policies are important because only federal governments deal with international relations and big picture migrant policies. Open channels of communication and organized programs will help the flow of refugees. Unfortunately, due to the sudden influx, refugee infrastructure is lacking and social programs have superseded capacity. This is a point of contention for many lawmakers. Should part of the budget be spent to help refugees when other problems should seemingly have priority? In this case, contention stems more from the fear of outsiders than economic troubles. Economists point out that migrant workers have helped expand the economy. Migrants in Britain between the years 2011-2015 contributed a

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substantially higher number to the state than they took away.[1] Wages are not low because of immigration either. In fact, wages in the United States and the EU, after plummeting from the 2008 financial crisis, have been slowly rising. In terms of taking jobs, a report published by the National Academies of Sciences, Engineering, and Medicine shows that not only have immigrants not taken jobs from Americans, but they have also helped create new ones.[2] Security is another issue for refugee policy. The reality is refugees from war-torn countries in the Middle East go through a screening process that takes nearly two years. Alex Nowrasteh of the Cato Institute, an American think-tank, in a report published in September 2016, calculated that the chances of suffering a terrorist attack by a refugee in the U.S. are about 1 in 3.64 billion per year.[3] However, this is preaching to the choir. It is not the political elite or scholarly class that needs convincing about the benefits of refugee-friendly policies.

The plight of the first world working class received more attention than usual in 2016, mostly due to extreme government shifts in the U.S. with the election of Donald Trump, and the vote by Britain to leave the EU, a decision based largely on independent border control. In 2017, elections in Germany, the Netherlands, France, and possibly Italy will all prominently feature the issue of refugee acceptance. While the working middle class is evolving, it still comprises the core of the U.S. and western European societies. Due to rapidly advancing technology and globalization, many of these workers feel left behind by their governments, like being displaced in their own countries. This is the bridge that needs to be rebuilt. Governments must multitask better. They have a duty to not only accommodate migrants escaping war, but to accommodate their own citizens as well. Unfortunately, the working class has politically devolved into little more than a mascot for emotions during campaigns and photo ops for candidates to go to factories and pose in hard hats.

The working and middle class deserve better than shallow patronage. Improve the lives of the people surrounding refugees, and the lives of refugees will improve as well. Responsible politicians need to get serious about tackling domestic labor issues, and liberal elites need to better understand how migrant policy is taken at a local level. How do we begin this process? Slow assimilation and direct interaction is a good place to start. There are a few ways this can be done. Work programs that group similarly-skilled migrants led by carefully selected local workers will help migrants adjust to the new work culture, and

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1   Alan Travis, "Are EU Immigrants Really Taking British Jobs and Pushing Down Wages?" *The Guardian*, May 20, 2016, accessed January 13, 2017, https://www.theguardian.com/politics/2016/may/20/reality-check-are-eu-migrants-really-taking-british-jobs.

2   Julia Preston, "Immigrants Aren't Taking Americans' Jobs, New Study Finds," *New York Times*, September 21, 2016, accessed January 13, 2017, https://www.nytimes.com/2016/09/22/us/immigrants-arent-taking-americans-jobs-new-study-finds.html?_r=1.

3   Alex Nowrasteh, "Terrorism and Immigration: A Risk Analysis," (Policy Analysis no. 798, *Cato Institute*, September 13, 2016), accessed January 13, 2017, https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis.

local workers adjust to migrants. Reaching out to union leaders and community activists would play a vital role. Many national and international policymakers underestimate the clout local community leaders have. It is more likely that a metal worker will listen to a comrade in arms he or she can identify with than a distant politician or scholar holding up a chart showing GDP trends.

Part of President Trump's campaign promises included massive infrastructure projects. Not only would this be a great opportunity to provide jobs to struggling American craftsmen, it can also serve as a place where skilled local and migrant workers can work together. What could be more patriotic for skilled migrants to work hand-in-hand with locals to help build their new country?

Investments at the civic and state level would be a significant contribution to this cause. Places like churches, schools, and community centers are excellent for assimilation, especially for young people. The federal government would be wise to create an office for adjustment, targeted at resettled refugees and their new local neighbors, which would be run by state and civic governments. Eventually, non government-run organizations would be most effective. After creating a blueprint and providing basic funding, the federal government's best role is as a facilitator.

As for attitudes towards newcomers, most people are humane and tolerant at their core; it is the unknown they fear. Putting a human face on migrants and refugees can go a long way. According to a Trump supporter in an article about Syrian refugees that ran in the Kansas City Star on November 30, 2016, "You could spend years learning what we've learned in the last few weeks…it's changed my thoughts on the original feelings I had." [4] This is not an isolated case. Many people who have loudly expressed their contempt for letting in refugees before have had a change of heart after meeting them. I have seen this for myself as well. As a university student I helped at a community center for migrants from Spanish speaking countries. The attendees had all made the sacrifice to move to a new place where they believed they could find opportunities for a better life. Many refugees, no matter where they come from, have done some sort of skilled labor job, work hard to support their families, and only want a stable environment in which to raise their kids. Sound like people we may know?

Security must also be addressed. It is a sensitive issue, and when people move into the neighborhood from the same places where acts of terrorism are occurring, suspicion and fear follow shortly, especially in relatively safe places like the U.S. and western Europe. Therefore, it is imperative to understand that migrants and refugees have the same fears of terrorism; some have even witnessed it firsthand or know someone who has fallen victim. Again, community leaders like principals, priests, and labor activists can play a role in

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4   Joe Robertson, "Neighbors Vow to Protect Syrian Family as Nation Watches for Trump's Refugee Policies," *Kansas City Star*, November 30, 2016, accessed January 13, 2017, http://www.kansascity. com/news/local/article117865318.html.

connecting the new neighbors with the old.

Tackling these issues is very complicated, and publications such as these and others represent only a small platform. Reality must take all factors into account. Southern European countries are facing an economic crisis as well as an influx of refugees, and it is easy to come to the conclusion that borders should be closed. Rather, this should be seen as an opportunity for long-term investment. Southern European governments can employ craftsmen and teachers for state-sponsored programs to help refugees adapt quickly and contribute to society. This can even be implemented simultaneously with the vetting period, expediting the process. Unfortunately, at the federal level, migrants have at times become political bargaining chips, such as the deal made between Turkey and the EU that sent thousands of refugees who made it to the EU back to Turkey. This is not a viable long-term solution. Refugees have chosen the United States and Europe for a reason, and even arriving in Turkey or the Mediterranean Sea in the first place shows that they are willing to risk everything to make it there. A sober reminder of this to our politicians and those opposed to pro-migrant policies is needed.

It would be fantastic if we all could extend a helping hand to those in desperate need, play the role of our brother's keeper, and help migrants assimilate smoothly into new societies, but that is not reality. While it is not a popular notion among the idealist and energetic millennials (including myself), a generation of middle-class killed workers has felt left-behind by the neo-liberal order. They deserve attention as well. It is by starting here that we begin to make the transition from migrant to functioning member of society smoother. Perception is reality, and until we can expunge the image of refugees/migrants as job-stealing, terrorists-in-waiting, they will always be met with resistance. Good paying jobs for the middle and blue-collar class will help shed the scapegoat role many migrants play. When building a house, work begins with the foundation. Thinking of the unstable middle-classes of the U.S. and Europe as the foundation to our houses is appropriate, and solidifying that portion of society is necessary to accommodate the thousands of refugees and migrants trying to resettle in our countries.

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