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UBC Political Science Students' Association

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FOREWORD

I am delighted to introduce the UBC Journal of Political Studies, 2009 issue. The annual preparation and publication of the journal is one of the Department's major activities. It represents a remarkable student initiative.

The journal manifests the ingenuity, perseverance and intelligence of political science students at UBC. Each year students submit essays for publication. Student work is remarkable in its range, its quality and its sophistication. Equally, student submissions reveal close relationships with faculty on research projects, a hallmark of the Department's undergraduate program, and, in many cases, close relationships between students themselves.

In 2008-9, 86 students submitted papers. Some of the papers were then carefully reviewed by faculty members who provided detailed assessments. On that basis, only a very few essays were published. But the key point is clear – the 86 submissions, writ large, were excellent. The published papers and submissions cover major areas of modern political science. They include careful analyses in political theory, examination of events in Africa and evaluation of BC's carbon tax to give just a flavour.

The UBC Journal of Political Studies requires the dedication of many persons. The student editors, Nabila Pirani and Alesha Porisky, deserve our praise and admiration for their remarkable contributions. And their student colleagues on the Editorial Board happily devoted their time and energy. Faculty assessors also deserve our thanks. In particular, Professor Alan Jacobs provided leadership. Our students deserve our praise including those whose essays appear and those who contributed essays for assessment.

Ultimately all our students, as participants in a collective learning project, are part of this project. Congratulations to you all! Please enjoy the 2009 journal!

Best wishes,

Allan Tupper
Professor and Head
Department of Political Science

EDITORS' INTRODUCTION

All of the student contributors to this eleventh edition of the University of British Columbia's Journal of Political Studies, from the editorial board to the ten published authors, began their foray into the world of politics shortly after the invasion of Iraq in 2003. Even though our lives and experiences, especially our political ones, have been inextricably linked with the issues emerging from Iraq and other regions of the post-9/11 world, nowhere in this year's Journal (apart from this section) will you find reference to the catastrophes that occurred nearly eight years ago and that completely changed the world's political landscape.

While this is by no means a result of our disinterest in the matter (how could we not be fascinated by the multi-layered conflict(s) at hand?), it is perhaps a manifestation of our desire to move away from the entanglements of the previous eight years. Instead, we have chosen to focus on those issues that have, for too long now, taken a back-seat in the field of politics. And so, in this 2009 edition of the Journal we analyze, among others, issues such as the social construction of mental illness, the politics of climate change, the implications of morally evil law, and the successful use of globalization by developing nations.

In compiling and editing this Journal, we have had the unwavering support and dedication of many people. Without each and every one of them, successful publication of this year's edition would have been impossible. Our sincere gratitude goes first and foremost to our editorial board, without whose long hours of reading and editing we would not have been able to give sufficient attention to the eighty-six submissions we received. Through exams, Winter break, and all of this past term, these nine wonderful students have worked hard to ensure that the essays published in this Journal are at their full potential.

Throughout the Journal process, we have relied heavily on our faculty advisors. Dr. Angela O'Mahony helped us understand our roles and provided guidance during the early stages of this year's publication process. Dr. Alan Jacobs only joined the team during the early days of the December break; however, his continued support and guidance since then have been invaluable. Additionally, we would also like to thank the Department of Political Science and Dr. Allan Tupper (Department Head) for their generous financial assistance, without which none of this would have been possible.

The support of the Political Science faculty is critical to the success and academic rigour of this publication. For their expertise and dedication to this undergraduate project, we would like to thank Dr. Barbara Arneil, Dr. Bruce Baum, Dr. Michael Byers, Dr. Maxwell A. Cameron, Dr. R. Kenneth Carty, Dr. Katharina Coleman, Dr. Antje Ellermann, Dr. Alan Jacobs, Dr. Brian Job, Dr. Christopher Kam, Dr. Samuel LaSelva, Dr. Richard Price, Dr. Paul Quirk, Dr. Allen Sens, Dr. Lisa Sundstrom, and Dr. Yves Tiberghien.

Gratitude must also be expressed to the Political Science Students' Association (PSSA) for its continued support of the Journal over the past few years. In particular, we would like to thank the PSSA's President, Karan Riarh, for her continued trust and faith in our vision for this year's edition, as well as her unwavering support in all Journal-related matters.

As well, our sincere thanks to all those who submitted essays for the 2009 edition. The selection of papers we received this year was outstanding, and brings testament to the quality of work produced by undergraduate students at UBC. Finally, thank-you and congratulations to all the authors published in this year's Journal – your efforts to constantly enhance the quality of papers is truly commendable.

Having now worked on this project for six months, both of us are absolutely thrilled with the final version of this year's edition of the Journal. We hope that you will find as much delight and intellectual stimulus as we did in reading the selection of essays presented in the 2009 edition of the UBC Journal of Political Studies.

With best wishes,

Nabila Pirani & Alesha Porisky
Editor-in-Chief | Assistant Editor-in-Chief

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EDITORIAL BOARD

Nabila Pirani, Editor-in-Chief

Nabila is a fifth year Political Science and Asian Language & Culture double major graduating in May 2009. When not dividing her time (highly unequally) among school, work and sleep, she can be found re-reading the works of Salman Rushdie, drinking tea, or contemplating the fate of the world. While her academic interests are diverse and include Urdu literature and peace & conflict studies, her research focuses on the politicization of religion and the formation of politico-cultural identities in South Asia. After graduating, Nabila hopes to travel and photograph the world, and pursue graduate studies.

Alesha Porisky, Assistant Editor-in-Chief

Alesha is a fourth year Political Science and Economics double major, with a strong interest in economic development and international political economy. When not working on the Journal, she can be found working with the Journalists for Human Rights' UBC Chapter, on the field hockey pitch or at Whistler. She has a passion for writing and photography, which she hopes to one day compile into a career as an international correspondent, or in development work. After graduation, Alesha hopes to be found travelling the remote corners of the world, before settling down to pursue a Masters degree in International Development.

Nick Banerd

Nick is a fourth year Political Science major, specializing in Canadian politics and international relations. Nick has been very involved in extracurricular activities: he is the Graduation Representative for the UBC PSSA as well as the Program Director for this year's Arts-wide graduation. Nick has thoroughly enjoyed his four years at UBC, and hopes one day to return to earn a Masters degree in politics or business. In the meantime, Nick hopes to pursue employment in the Canadian federal government, as well as travel to Europe, Asia, and Latin America.

Jasleen Hundal

Jasleen is a fourth year Political Science Honours student. She has a strong interest in ethnic conflict, forced displacement, postcolonial feminism, judicial activism and human rights enforcement. Jasleen enjoys Urdu & Persian poetry, Romanticism, music, yoga, swimming, reading, philosophizing and more. She has found serving as an Editor for the UBC Journal of Political Studies to be an intellectually stimulating learning experience.

Allison Louie

Allison is a fourth year student double-majoring in International Relations and Psychology. Her areas of interest include environmental issues, ethnic conflict studies, the psychology of genocide, and PTSD-related therapy research. She is especially interested in working with trauma victims in countries recovering from war or widespread conflict, through effective rehabilitation and reintegration efforts. Allison has enjoyed being active as a local and international volunteer this past year, working at a women's transition house, fundraising for HIV/AIDS, and being closely involved with a student-run NPO dedicated to promoting international dialogue. Allison would like to express her deep gratitude to the Editor-in-Chief, Assistant Editor-in-Chief, and Editorial Board of the Journal for all their hard work during this past year, as well as the many authors who submitted very competitive, quality essays.

Chris Malmo-Laycock

Chris is a Political Science and International Relations student in his final year at UBC. He is currently writing an undergraduate thesis investigating the links between political culture and climate change policies in Canada and Europe. After graduation, Chris plans to earn an M.A. and then cycle around France and Spain for a summer. He thanks his fellow editors and contributors for making this year's journal a success.

Lauren Mills

Lauren is a third-year undergraduate student in the International Relations program. Her particular academic interests are political theory and the economics of development and transition. She hopes to

go on to graduate or law school and pursue a career in academia or work for an international organization.

Brad H. Morrison

Brad is a fourth year Political Science major at UBC. He likes to explore unfamiliar intellectual territory, but especially enjoys political economy and democratic theory. Currently, Brad is working on a thesis concerning the effects of preferential voting systems in divided societies. After graduation, he plans to take a year off to gain more experience outside of academia.

Dyna Tuytel

Dyna is a fourth year Honours Political Science student who first became politically aware when she took a break from colouring and eating Cheerios to watch coverage of the Gulf War on television. She enjoys hiking, tea, John Steinbeck, and England, and her academic interests fall mainly into the categories of political theory and international relations. She frequently finds herself writing about the politics of climate change. Her plans post-graduation are uncertain, but will most definitely include more school and a change of scenery (or several!).

Eric Wallace-Deering

Eric is a third year Political Science major whose areas of interests lie in international security studies and political economy. Born and raised in Vancouver, British Columbia, Eric developed an early interest in politics and current events from conversations around the kitchen table with his liberal activist mother and realist contrarian father. Eric began his foray into the world of journalism and academic publishing working as an editorial writer with the Coquitlam NOW newspaper, and hopes to pursue journalism as a career.

Elizabeth Kai Shi Wong

Elizabeth is graduating this year with a Political Science degree. She enjoys reading and studying political philosophy works. Some of her favourite political philosophers include Nietzsche, Rousseau, and Dr. Seuss. She is heading to LSE for her graduate studies in political philosophy for the 2009/10 academic year.

CONTRIBUTORS

Nathan Cato

Originally from St. Albert, Alberta, Nathan is a fourth year Political Science student at the University of British Columbia. His research interests within the discipline include Canadian government and politics, constitutionalism and comparative federalism. During his time at UBC, Nathan has become a keen observer of B.C. political culture and politics, taking a particular interest in how they are remarkably distinct from other regions of the country. Nathan is looking forward to graduating and plans to pursue a MA in political science at the University of Toronto in the fall.

Gwendolen Eamer

Gwendolen is inspired by innovative solutions to conflict and poverty. Her research and studies have focused on human security, particularly on pragmatic ways to address global issues in health, violent conflict, and private sector engagement. Within the context of globalised capitalism, she believes that both business and society would benefit from international engagement with a triple bottom line: economics, environment and social justice. Gwen, an avid globe trotter with a passion for languages, intends to put her International Relations and Political Science degree to good use working to promote policies and programmes that support basic human rights globally.

Sverre Frisch

Sverre is a fourth year Honours Political Science major, minoring in international relations. His interests include political psychology, nation building, democratization processes, counter insurgency strategies, ethno-political violence, and conflict forecasting models. Sverre is native Norwegian, and enjoys backcountry skiing, baking banana bread, and travelling in his spare time.

Andrea Green

Andrea Green studies political science at the University of British Columbia in Vancouver. Her current research focuses on American domestic policy, social justice, and government process. Andrea is actively involved in the UBC community, specifically in the Go Global

Exchange Program and in philanthropic work for the Heart and Stroke foundation. Her interests include travelling, dance, and politics. Andrea hopes to pursue a career in government communications.

Simon Kelly

Simon is a fourth year Political Science student in the Faculty of Arts at the University of British Columbia. His specific interests include political economy and institutional development, while also extending to political theory and philosophy. Currently, Simon resides in Paris, France, where he is a visiting student at Sciences Po. In the twilight moments of an extensive undergraduate career, Simon is completing his Honours thesis on the topic of secularism and modern Islamism in France and Turkey.

Chris Malmo-Laycock

Chris is thrilled to be published in this year's edition. He would like to thank his family for all their love and support during his years at UBC. Chris dedicates his paper to his father, David, whose sage advice to "smarten up fast" still rings true today!

Brad H. Morrison

Brad is a fourth year Political Science major at UBC. He likes to explore unfamiliar intellectual territory, but especially enjoys political economy and democratic theory. Currently, Brad is working on a thesis concerning the effects of preferential voting systems in divided societies. After graduation, he plans to take a year off to gain more experience outside of academia. Brad would like to thank everyone who helped him develop the themes in his paper.

Will Plowright

Will is currently a Political Science undergraduate at UBC. His area of interest is the political management of crises in Sub-Saharan Africa, specifically in Central Africa. He was raised by gorillas somewhere in Angola, but can't remember exactly where. He is neither a lion nor a jackal, and isn't really sure what post-colonialism is all about.

Hillson Tse

Hillson is a third year student undertaking a double major in Political Science and Economics. When not falling asleep on the bus to school, he can be found loitering in the UBC Dance Club office. His primary interests in the field of political science are international security and conflict resolution. Hillson hopes to pursue either graduate studies or law after finishing his undergraduate degree.

Vanessa van den Boogaard

Vanessa is a fourth year International Relations major graduating in December 2009. Her primary academic interests include international humanitarian law, conflict analysis and security studies, focusing regionally on the Middle East and South-Central Asia. Upon graduation Vanessa hopes to pursue an internship abroad to supplement her studies before continuing with a graduate degree in the field of International and Public Affairs.

CANADA'S WITHERING FIGHT FOR HUMAN RIGHTS: REASSESSING POLICIES ON INTERNATIONAL CORPORATE SOCIAL RESPONSIBILITY IN THE RESOURCE SECTOR

Gwendolen Eamer

This report is intended to stimulate discussion and reappraisal of Canada's policy on Corporate Social Responsibility (CSR) for Canadian mining corporations operating in less developed countries. Extractive activities in the developing world remain under-regulated, as states often lack the governance capacity or political will to enact or enforce social and environmental protection legislation. The Canadian mining sector—the largest in the world—remains entirely self-regulated. While the Government of Canada promotes the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, and the United Nations Global Compact, adherence to these guidelines remains voluntary. The Government must take concrete action to ensure Canadian corporations comply with CSR guidelines, or risk tacitly supporting human rights abuses and infringements of international law. This report argues that Canada should legislate mechanisms that facilitate disclosure and corporate accountability, while expanding and clarifying civil jurisdiction to allow those adversely affected by Canadian actions to address their complaints through the Canadian legal system

Resource Extraction in Developing Countries:

Canadian investment in developing countries' extractive sectors presents social, economic and environmental challenges for the Government of Canada, and for corporations themselves. While resource extraction has the potential to contribute to economic development and an increased quality of life for locals, it often leads to social disenfranchisement and abuse.

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Mining operations can cause tensions with local populations by contributing to environmental problems—by polluting drinking water, compromising arable land, and despoiling fishing and hunting grounds. Along with subsequent social disturbances, these disruptions can provoke influxes of migrant populations and increase internally displaced persons.¹ Many countries lack resource governance capacities, and communities impacted by resource extraction lack the capacity to effectively engage the central government or the extractive corporation. Frequently, the economic benefits of resource extraction in developing countries are mostly accrued to foreign investors, national governments or business elites. However, the most adverse impacts of extraction affect primarily the local populations, who are often not consulted about the extraction project, and who may face repression for opposing it.²

Governments in developing states often lack the capability and resources to enforce environmental laws, where they exist, or to address emergencies stemming from industrial accidents. Resource extraction may further exacerbate poor governance, as industries often provide basic services to local populations, weakening the government's capacity to deliver these services. All mines are depletable, and eventually close, inevitably ending industry service-provision. As government services have often declined during extractive operations, populations may be left worse off than before the project began.³ Resource extraction may further limit governments' ability to provide services, as extraction can hinder economic development by "shifting local resources into one sector of the economy, distorting exchange rates and making the rest of the economy uncompetitive."⁴

In areas that are prone to conflict or have a weak government, "security and access to natural resources represent one of the most important flashpoints for abuses and violations of human rights."⁵ Canadian companies may be complicit in this abuse, harming both the local population and the reputation of Canadian industry and government. Resource extraction can not only lead to infringements of human rights, but also to armed conflict. Over twenty-five percent of the approximately fifty armed conflicts active in 2001 had "a strong resource dimension—in the sense that resource exploitation helped trigger or exacerbate violent conflict or financed its continuation."⁶ Resources can fund conflicts, but resource depletion and scarcity also lead to conflict. Scarcity "drives elites to capture existing resources and marginalize others, which becomes a source of grievance; conflict itself

exacerbates resource scarcity and environmental degradation, leading to political collapse.”⁷

Canada's Natural Resource Sector:

Canada leads the world in mineral exploration in both number of corporations and earnings, and is the primary supplier of capital for the global mining industry.⁸ Sixty percent of the world's mining companies are based in this country.⁹ The mining sector is an integral component of the Canadian economy, contributing four percent of GDP in 2004.¹⁰ Canada's resource sector is also very international: over sixty percent of large Canadian mining companies' budgets were allocated for programs abroad in 2003.¹¹ Canadian companies operate over 130 mines abroad - making them the largest outward investors among Canada's goods-producing sectors—and invested an estimated \$26.6 billion overseas in 2004.¹² Canadian companies increasingly invest in developing countries as easily extracted resources dwindle in the developed world. Canadian mining expansion overseas has resulted in some of the world's worst environmental disasters. In Spain, Guyana and the Philippines, Canadian operations accidentally released a combined total of 14.3 million cubic metres of acidic tailings into river systems, releasing cyanide, mercury and other long-lasting toxic compounds.¹³ Canadian companies have also been directly linked to the forced relocation of indigenous peoples in Ghana, Romania, Tanzania, Zambia and the Philippines.¹⁴

Corporate Social Responsibility in the Canadian Extractive Sector:

Research by the Canadian Centre for the Study of Resource Conflict indicates that Canadian compliance with voluntary standards remains “remarkably low.”¹⁵ Although the Government actively promotes the OECD Guidelines for Multinationals, only 1.5% of Canadian mining companies use them.¹⁶ Companies that have adopted standards remain internally evaluated, and do not report their findings. The study also found that “companies which do have formal policies have experienced positive outcomes which should make implementing a CSR policy a prudent business decision.”¹⁷ The benefits to reputation from meeting or exceeding standards “offer extractive companies a competitive advantage and increase their overall economic success,” and reflect positively on Canadian industry as a whole.¹⁸ This is especially true given the emerging consensus that companies should “integrate social, environmental and economic concerns into their

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values, culture, decision-making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society.”¹⁹ While this imperative is outlined by the Canadian government, and allegedly supported by it, actions to sustain it lack direction and remain unenforceable.

Canada’s Position:

The Canadian Government recognises that “weak governance capacity is a primary obstacle to the maximization of positive development impacts, and the mitigation of negatives ones,” in developing countries.²⁰ Canada remains committed to increasing governance capacity in the developing world, especially in areas directly impacted by Canadian multinationals. The Canadian International Development Agency actively promotes development, governance and human rights abroad. Canada’s foreign ministry, Foreign Affairs and International Trade Canada (FAITC), has helped to establish global anti-corruption mechanisms, while Natural Resources Canada has engaged in processes to strengthen natural resource governance capacity abroad.²¹ Canada also actively encourages companies to implement best practices. Export Development Canada (EDC) reviews environmental impact assessments submitted by extractive companies, and identifies “appropriate mitigation measures related to transactions for which EDC may extend insurance or financial coverage.”²² The Trade Commissioner Service briefs Canadian clients on Corporate Social Responsibility, and disseminates information on Canadian CSR initiatives to host governments. The Service also develops material illustrating how CSR promotion can be integrated into the six core services provided by the Government to Canadian companies operating overseas.²³

While Canada has contributed to global governance efforts limiting the adverse effects of trans-national resource extraction, it has done little to address companies’ responsibilities and complicity. Canada’s domestic extractive sector is governed by a comprehensive regulatory regime addressing sustainability, community impacts, environmental protection and project closure. However, Canadian corporations are not bound to even limited versions of these standards when operating abroad. There is an emerging consensus among proponents of international law, especially in civil society organizations, indicating a legal and moral obligation for states to ensure their nationals are not complicit in and do not profit from human

rights abuses.²⁴ Despite such advocacy, international regulatory bodies remain “fragile, fragmented, fixed in old frameworks, and thus often ineffective.”²⁵ Similarly, Canadian corporate self-regulation has failed to significantly or broadly increase governance or accountability on projects abroad.

Canada has a long tradition of supporting human rights, and has an interest in protecting its reputation as a promoter of human security. Given this tradition, Canada could improve accountability in the mining sector by facilitating greater disclosure and corporate accountability, providing companies with incentives to meet clearly-defined standards, or coercing companies into compliance through legal structures.

Option 1 - Facilitative Policies:

The House of Commons Standing Committee on Foreign Affairs and International Trade (SCFAIT) has recommended that Canada improve services for mining companies operating in developing countries, so as to clarify corporations' obligations and capacity to operate responsibly, and raise awareness of the impacts of resource extraction.²⁶ The author of this report believes Canada should go beyond this recommendation, facilitating corporate responsibility by legislating a framework allowing stakeholders to hold corporations accountable for their actions.

Canada legislates no standards for the extractive industry operating abroad. Current guidelines vary and are imprecise; they therefore remain ineffective, as the industry requires clear standards and delineation of what constitutes a breach of conduct. Mining Watch Canada has called for a *Canadian Corporate Code of Global Conduct* that clearly articulates standards and prescriptions for social and environmental engagement and assessment.²⁷ This should draw on existing voluntary codes and international norms, rather than domestic law. Existing codes and norms are more relevant and universally applicable in an international context. Canada should encourage companies to abide by this code of conduct by requiring publicly traded companies to disclose their social and environmental impacts, potential emerging issues, and steps taken to meet the standards established in the Code. Similar policies have been implemented successfully in France, Britain, and South Africa, without placing inordinate demands on corporations.²⁸

Canada should also facilitate disclosure by amending the Canadian Business Corporations Act, to allow consumers and

stakeholders to hold Canadian-incorporated companies accountable for their actions, even when operating outside the country. Shareholders currently bear the burden of proof in their attempts to force disclosure or alter companies' activities. Companies may summarily reject shareholder proposals that are "primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes."²⁹ Canada should implement a similar policy to the United States, where the corporation must prove to the Security and Exchanges Commission that it is justified in refusing a shareholder proposal.³⁰ Canada should further facilitate corporate accountability by enacting private sector whistle-blower protection and by reforming the Access to Information Act to include corporations. The US export credit agency has successfully balanced corporate confidentiality and impact disclosure, placing the onus on corporations to prove that requested information is commercially sensitive.³¹

Facilitative mechanisms are not without their obstacles. Smaller companies may find the transition difficult, justifying a staged approach with input from the mining sector. Corporations may also view these regulations as unnecessarily bureaucratic, and therefore lobby against them. Moreover, compliance with Canadian standards may conflict with legal obligations in host countries. Creating a Code of Conduct and bodies to regulate disclosure would require government expansion, requiring the expenditure of public funds.

However, facilitative mechanisms may also benefit the Canadian resource sector by creating a level playing field for the corporations operating in the single largest segment of a highly competitive industry. This would facilitate Canadian corporate leadership in a global economy increasingly focused on accountability. The West is moving towards greater regulation of corporations' international activities. Implementing progressive facilitative policies today would allow Canadian corporations to transition more smoothly and with less financial impact than would future reactive policies. In the future, stakeholders may not allow time for companies to play catch-up with regulations already in place in other jurisdictions. Comprehensive and universally high standards could also benefit larger corporations, which are often scrutinized by concerned investors.

The accountability and transparency measures outlined above would allow Canada to facilitate civic oversight of corporate activity. They allow concerned investors and stakeholders to more effectively use market mechanisms such as divestment to encourage corporations to abide by human rights guidelines. Traditionally, companies have abided by social responsibility guidelines only as long as they do not

limit profitability. By linking profits to responsible management and engagement, Canada could facilitate similar levels of compliance through relatively simple legislative changes, rather than through extensive costly regulation.

Option 2 - Coercive Policies:

Canada should also extend civil law to include jurisdiction over abuses committed abroad, and eliminate barriers to presenting tort cases in Canadian courts. This would create a legal forum for settling disputes and determining liability, one capable of awarding compensation and damages. Common Law dictates that courts may dismiss claims that are better suited to another legal forum, based on, for example, the locations of parties and evidence.³² However, parliamentary statutes supersede Common Law. Canada should enact legislation allowing foreign tort claims on the basis that they may be tried in Canada when the defendant is a Canadian national or a Canadian corporation, and when a fair trial is unlikely in the country where the offence was committed. This would be similar to the Alien Tort Claims Act in the United States, though with a narrower scope. This would be especially effective in conjunction with the Code of Conduct and disclosure rules previously outlined.

Clearly outlining the minimum standards expected of Canadian extractive companies, and allowing those harmed by corporations that fail to meet those standards to face their opponents in Canadian courts, would place the impetus for responsible project management on corporations, rather than on the government. By allowing civil claims of liability and damages to proceed in Canadian courts, this legislation would provide a financial incentive for corporations to work responsibly with local populations. This policy could, however, lead corporations to hide or underreport infractions, as they would have a double financial incentive to appear compliant. The role of the government in this situation should be to enforce the initial transparency and accountability legislation, and allow market forces and civil claims to take their course.

Corporations can be held criminally liable for offences committed in Canada, and likewise for those committed outside Canada when there is a "real and substantial link between Canada and the offence."³³ Canada could extend the criminal negligence provisions of the Criminal Code to include acts committed by Canadians abroad.³⁴ This would involve globalizing the 'Westray Law', which allows criminal prosecution of persons negligently directing domestic projects.

Making corporate directors personally responsible for abuses could force them to take effective steps to limit corporations' impacts on local populations.

Mining Watch Canada proposes changing Canada's trade sanctions law by removing the requirement for United Nations authorisation before invoking trade sanctions under the Special Economic Measures Act.³⁵ Canada could clarify the trigger clause in this Act to reinstate its initial intention: to "provide a means for Canada to impose sanctions without any action of the UN."³⁶

Coercive policies have several limitations. Provinces have jurisdiction over some areas of legislation, while expanding civil or criminal law is subject to contestation and legal review. Domestic law does, however, have precedents for expanding Common Law jurisdiction to prevent Canadians from committing offenses abroad.³⁷ Expanding criminal liability abroad, however, could infringe upon state sovereignty by pre-empting other states' attempts to hold Canadian companies accountable within their territories, and may be incompatible with international law. Expanding international law requires near-universal acceptance of moral standards; although a consensus is emerging in this direction, it has been neither quantified nor clarified.

Option 3 - Incentive Policies:

The SCFAIT report urged Canada to strengthen incentives to "encourage Canadian mining companies to conduct their activities outside Canada in a socially and environmentally responsible manner and in conformity with international human rights standards."³⁸ Export Development Canada has the weakest disclosure rules among regulatory agencies in the US, the UK, and Australia, as well as the World Bank and the Inter-American Development Bank.³⁹ Canada's Auditor General has reported that EDC lacks "the necessary counterbalance to an active discretionary policy."⁴⁰ Canada could require impact disclosure as a condition for EDC funding and support. The Government could also limit credit, insurance and consular services to corporations that fail to meet minimum standards.

The Canadian Lawyers' Association for International Human Rights has recommended reforms to tax law to withhold incentives from extractive companies involved in environmental or human rights abuses. Canadian companies are currently refunded taxes paid to repressive regimes, even though the companies may be complicit in this repression. The Association recommends the "Government should also

bar business expense deductions in the calculation of corporate income taxes where those deductions are made for projects raising serious human security issues.”⁴¹ These benefits should accrue only to corporations meeting the Code of Conduct guidelines.

Incentives' effectiveness is limited because Canada does not financially assist most Canadian overseas mining investment.⁴² The alternative—non-financial incentives in the form of changes to policies for consular support and trade missions—may be less effective than policies that immediately impact a company's profitability. Taxation methods would also be contentious and difficult to effectively enforce, as the definition of 'repressive regime' would be both politically sensitive and difficult to quantify. Placing the onus on the Government to establish a link between corporations and 'repression' would also be onerous and would require extensive government regulation and involvement.

Conclusion:

Liberal democracy is underpinned by the idea that regulation is justified when its benefits outweigh its limitations on freedom. Canada's admitted inability to sanction Talisman Energy—which the government-commissioned Harker Report determined contributed to human rights violations in Sudan—demonstrates the need to regulate the activities of the national extractive sector. Canada has lost its status as a beacon in human rights policy. The government possesses the authority and capacity to influence its corporate citizens' extraterritorial activities, and has a duty to the international community to protect the fundamental rights of all individuals, within and outside Canada's borders. Clear and enforced regulation would create a level playing field for all Canadian companies, and set the standard for the Canadian-dominated mining industry. Canada should uphold its longstanding tradition as a champion of human rights by continuing its efforts to promote and enhance governance in the developing world. The Government should also facilitate corporate accountability by linking companies' social and environmental impacts to profits. This can be done by legislating disclosure and allowing stakeholders to hold companies accountable for their actions. Canada should furthermore extend civil jurisdiction to include abuses committed by Canadians abroad, and eliminate barriers to foreigners presenting tort cases in Canadian courts. In so doing, the Canadian extractive sector can become a leader in corporate social responsibility, and the Government can promote Canada as a responsible and equitable business partner.

While the author recognises that this argument could be blamed for being overly normative or utopian, it is the contestation of this report that the long term gains for Canadian multi-national corporations, as well as Canada's standing as a responsible, liberal nation, supersede these criticisms.

¹ Michael Renner, *The Anatomy of Resource Wars*, *Worldwatch Institute Paper 162* (Washington DC: Worldwatch Institute, 2002), 39-40.

² *Ibid.*, 8.

³ Foreign Affairs and International Trade Canada (FAITC), "National Roundtables on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries: Discussion Paper, June 2006"; available from <http://geo.international.gc.ca/cip-pic/library/CSRDiscussion%20Paper.pdf>; Internet; accessed 18 February 2008.

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THE POLITICS OF BRITISH COLUMBIA'S CARBON TAX: IMPLICATIONS FOR THE FUTURE OF B.C. POLITICS

Nathan Cato

This essay analyzes why the B.C. Liberal Government chose to introduce a consumer-based carbon tax, instead of an alternative policy option, as the central pillar of its action plan to reduce the province's greenhouse gas emissions. Additionally, the essay discusses the future implications of this policy for B.C. politics. The essay suggests that the key factors influencing the government's decision were: an initial vote-maximizing reaction to electoral incentives; a genuine belief in the moral imperative to act; a history of a powerful environmental movement in B.C., including well-organized NGOs; and a strong endorsement from the province's academic community.

On February 19th, 2008 British Columbia became the first jurisdiction in North America to introduce a consumer-based carbon tax. This policy is the central pillar of the B.C. Liberal Government's action plan to reduce the province's greenhouse gas (GHG) emissions. The carbon tax is a controversial subject among B.C. voters. While most British Columbians support government efforts to mitigate climate change, and many economists and environmentalists are steadfast proponents of carbon taxes, polls currently indicate substantial public opposition to the carbon tax.¹ This raises a number of important political questions. This essay analyzes why the B.C. Liberal Government chose to introduce a carbon tax instead of implementing alternative policies to reduce GHG emissions. It reviews the positions of the major proponents and opponents of B.C.'s carbon tax; and finally, it closes with a discussion of the future implications of this policy for B.C. politics.

What is a Carbon Tax?:

A carbon tax is broadly defined as a tax on GHG emissions generated from burning fossil fuels.² Fundamentally, a carbon tax is a market-based policy, which means that it is designed to affect the costs

of alternative actions available to economic agents.³ By assigning an economic cost to each tonne of GHGs emitted into the atmosphere, the tax creates incentives throughout the economy to reduce such emissions.⁴ Whether by reducing fuel consumption, increasing fuel efficiency or adopting new technologies, cleaner and environmentally friendly energy consumption becomes more attractive to economic agents with the implementation of a carbon tax, because the opportunity cost of burning fossil fuels becomes relatively higher. As a result, the aggregate level of GHG emissions in an economy will fall as fossil fuel consumption decreases.

The B.C. carbon tax applies to the purchase of all fossil fuels in the province and its implementation will be phased in gradually.⁵ The first phase began on July 1st, 2008 at a rate of \$10 per tonne of CO₂ emissions.⁶ This rate will increase by \$5 per tonne each year for the next four years to an eventual tax of \$30 per tonne in 2012.⁷ The gradual implementation is designed to give businesses and consumers time to re-evaluate their habits and purchasing patterns as they adjust to the effects of the carbon tax.

The design of B.C.'s carbon tax is revenue-neutral because all revenue collected from the carbon tax is legally required to be returned to taxpayers in the form of reductions to other taxes, such as personal income and business taxes.⁸ The law explicitly states that no revenue from the carbon tax can be used to fund government programs.⁹ In addition, low-income families who do not pay any income tax receive 'Climate Action Tax Credits' to ensure they are also compensated for the costs of the carbon tax.¹⁰ Furthermore, a one-time 'Climate Action Dividend' cheque of \$100 was distributed to all British Columbians before the July 1, 2008 implementation of the carbon tax.¹¹ These measures are designed to ensure the carbon tax is used only as an instrument to reduce GHG emissions, rather than as a new source of revenue generation for the government.

An alternative market-based approach to GHG emission reductions considered by some jurisdictions is the cap-and-trade system. A cap-and-trade system places a legal 'cap' or limit on the total quantity of GHG emissions permissible in the economy each year.¹² Companies may then 'trade' permission credits among themselves to emit GHGs.¹³ Each year the 'cap' on emissions will be reduced until the government's aggregate targets have been reached.¹⁴ Thus, a cap-and-trade system creates a market for GHG emission permits, which, like carbon taxes, allows for an efficient allocation of emissions reductions.

The clear advantage of the cap-and-trade system, in contrast to

carbon taxes, is that GHG reductions are guaranteed because the government mandates the total permissible GHG emissions each year. Companies must comply or face significant penalties. The disadvantage is that the cost of reducing emissions for companies is uncertain. Moreover, while the primary targets of cap-and-trade systems are large industrial emitters, consumers will inevitably face increased costs for products that are less environmentally friendly because companies will pass the costs of reducing their emissions and the purchase of permission credits along to the consumer. The difference is that those costs will likely be hidden in the prices of goods and services, whereas a carbon tax makes them clear and transparent, constantly reminding consumers of the environmental consequences of their behaviour. Thus, both systems will result in increased costs borne by the consumer. Cap-and-trade systems, however, typically do not provide for offsetting of consumer costs like the carbon tax model.

In contrast to carbon taxes and cap-and-trade systems (both market-based policies) some jurisdictions have chosen to pursue regulatory approaches, wherein the government simply imposes fixed caps on the GHG emissions of specific industries or firms.¹⁵ This approach is similar to the way many jurisdictions currently regulate the use of air pollutants, toxic chemicals and vehicle fuel efficiency standards. Like cap-and-trade systems, industries or firms must comply with imposed caps on emissions or face penalties. Thus, regulatory approaches have the benefit, like cap-and-trade systems, of ensuring mandatory targets of emissions reduction are met; however, the cost of meeting these targets is unclear and is borne almost exclusively by industry, which generally leads to increased costs to the consumer. Unlike cap-and-trade systems, however, fixed regulations on GHG emissions without the creation of a market for emissions credits does not enable the economy to reduce emissions in the most efficient way possible.

In sum, there are three primary policy options for governments to reduce GHG emissions: carbon taxes, cap-and-trade systems and regulatory measures. While both carbon taxes and cap-and-trade systems harness market mechanisms to create incentives for an efficient allocation of GHG emissions reductions, regulatory approaches seek to achieve reductions by imposing fixed emissions targets.

Why Did B.C. Adopt a Plan to Combat Global Warming?:

Before analyzing why the B.C. Liberal Government of Premier Gordon Campbell chose to implement a carbon tax, it is logical

to ask the more fundamental question of why the Campbell Government initially became interested in developing a plan to combat global warming. This question will be examined first, at which point the focus will shift to the issue of why the carbon tax was chosen as the primary instrument to reduce GHG emissions in B.C.

Political Incentives:

A logical point of departure in the study of any policy decision taken by a democratic government is to examine the political incentives associated with that particular issue. Kathryn Harrison argues that democratic governments are generally reluctant to pursue policies of environmental protection, except during periods when environmental concerns become highly salient for the public.¹⁶ The most compelling historical explanation for the imposition of environmental protection policies in Canada is that public opinion occasionally overcomes the obstacles to collective action.¹⁷ However, given the diffuse nature of the benefits of environmental protection, high levels of salience among the public are often difficult to sustain.¹⁸ Canada has seen two distinct periods of heightened environmental concern in its history; however, in both cases public attention soon returned to “bread and butter issues,” such as the economy.¹⁹ The environment is often cited as an example of an issue that “has the propensity to come and go from the political agenda as public attention waxes and wanes.”²⁰ This theory suggests that democratic governments can be expected to pursue environmental protection policies during rare periods when the public’s attention is focused on the environment, rather than conventional issues, such as the economy, health care or education.

Polling data reveals that the environment became a highly salient issue for British Columbians (and indeed all Canadians) from late 2006 to late 2007. In early January 2007, a poll conducted by Harris Decima Research indicated that the environment had become the top political issue among British Columbians.²¹ In another poll taken during the same period by the Strategic Counsel, global warming was cited by more than seventy-eight percent of respondents across Canada as the number one environmental threat facing the country.²² For the first time in decades the environment eclipsed health care, the economy and taxes as the most frequently mentioned preoccupation among voters.²³ At the time, Harris Decima Research CEO Bruce Anderson stated:

For months our data has shown a combination of events was propelling the environment to the centre of the political agenda. These include extraordinary or shocking weather events, sustained high prices for fossil fuels, a generally healthy economy and a baby boom generation increasingly preoccupied with leaving the planet in better, not worse shape, for future generations.²⁴

The results of these polls confirm that global warming and climate change became the focus of the public's attention during this period. As Harrison argues, it is during these rare occasions of heightened public attention that democratic governments find themselves in the spotlight on environmental matters, and their positions usually shift closer to those of the public.²⁵ It appears the Campbell Government reacted to this shift in public opinion, just as Harrison believes it would be expected to, as it placed climate change at the top of its agenda. The political incentives during this period generally favoured policies directed towards mitigating the effects of climate change. Thus, it can be argued that the Campbell Government made a rational choice to pursue an agenda of environmental protection, thereby migrating towards the median voter in the B.C. electorate.

A Moral Imperative:

Evidence suggests that the decision to tackle global warming by the B.C. Liberal Government was not exclusively a vote-maximizing reaction to electoral incentives; it appears the B.C. Liberals, and particularly Premier Campbell, were genuinely persuaded of the necessity to curb GHG emissions. In an article for the *Globe and Mail* in February 2008, Justine Hunter reported that Premier Campbell experienced an epiphany on the issue of global warming during a trip to Beijing in November 2006.²⁶ She stated that while the Premier toured the Olympic Stadium in Beijing, a "thick haze of pollution left his eyes stinging and his throat raw."²⁷ In a later interview, the Premier recalled this moment and said the intensity of the pollution in the air was a "visible manifestation of man's impact on the environment."²⁸ This moment, according to Hunter, proved to be Premier Campbell's "personal tipping point on the environment."²⁹ She writes, "the smog that enveloped Beijing during Mr. Campbell's trip left a searing impression on him, helping to transform him into an unlikely environmental champion."³⁰ This intimate experience with the harmful

long-term consequences of environmental degradation seems to have triggered the Premier's interest in global warming.

Following his trip to Beijing, Premier Campbell began intensely studying the issue.³¹ He read dozens of books on the subject, including Al Gore's 1992 book *Earth in the Balance* and the United Nations' Intergovernmental Panel on Climate Change report.³² He also began quietly consulting with economists and scientists on the subject, while giving very few public indications his government would soon launch a dramatic climate change action plan.³³ In the February 2007 Speech from the Throne, the B.C. government committed to cut one third of B.C.'s present GHG emissions by 2020.³⁴ Calling global warming "a threat to life on earth as we know it," the Speech vowed concerted provincial action to halt and reverse the growth of GHG emissions.³⁵ It also stated that a "market-based approach would be critical to meeting these targets."³⁶ This was a signal that the government was considering the implementation of a carbon tax.

The *Globe and Mail* has also reported that many business and industry leaders have tried unsuccessfully to persuade the Premier to slow the government's pace in its plan to combat global warming.³⁷ Instead, they have come away from these meetings with the impression that Premier Campbell has embraced the issue with "religious fervour."³⁸ Accordingly, many indicators point to the conclusion that Premier Campbell is genuinely committed to action against climate change. In one interview, he said: "I don't see it as a left-right issue. It's a question of right and wrong."³⁹ Thus, it can be argued that the Campbell Government's plans to combat global warming were at least partially inspired from a genuine belief in the necessity of reducing GHG emissions, and the Premier's personal conviction that the issue represents a moral imperative.

Influence of the Environmental Movement in B.C.:

It is not surprising that the B.C. government and public have become concerned about the effects of global warming. During the last forty years, B.C. has witnessed a significant growth in the number and size of nongovernmental organizations (NGOs) and grassroots movements committed to the preservation of nature.⁴⁰ These actors have made an impact on politics in B.C. by focusing attention and pressure on governments of all political stripes.⁴¹ Their roles include agenda-setting and political mobilization, lobbying at the provincial, national and international level; scientific research, analysis and data collection, and monitoring compliance with environmental legislation.⁴²

A few of the largest and most influential environmental NGOs active in B.C. are Greenpeace International, Friends of the Earth International, the World Wide Fund for Nature and the Sierra Club.⁴³

Greenpeace International, one of the world's largest NGOs, was formed in B.C. by a group of activists who opposed U.S. nuclear weapons tests in 1969 on Amchitka Island in Alaska.⁴⁴ Their campaign successfully recruited thousands of people to join Greenpeace in opposition to the nuclear testing, and eventually the U.S. government announced that Amchitka would no longer serve as a nuclear test site.⁴⁵ The U.S. government's policy reversal represents one of Greenpeace International's earliest victories.⁴⁶ Since 1972, Greenpeace has grown from having a single office in Vancouver to staffing offices in over thirty countries, and today it undertakes its campaigns and projects worldwide.⁴⁷ The birth of Greenpeace in B.C. was the beginning of a tradition of activist environmental organization in the province. It is also proof of the existence of a strong environmental constituency in B.C., and its actions demonstrate how environmental NGOs have been influential by pressuring governments on issues relating to the environment.

Why Did B.C. Implement a Carbon Tax?:

The primary reason the B.C. Liberal Government chose to implement a carbon tax, instead of a cap-and-trade system or an alternative regulatory mechanism, is that it was persuaded the tax would be the most effective policy to reduce GHG emissions. There is a growing consensus in the academic community that a carbon tax, as a market-based instrument, is the most effective and efficient method of reducing GHG emissions. Most economists and environmentalists believe carbon taxes have a number of benefits over regulatory approaches to GHG emissions reduction.⁴⁸ The most important benefit of a carbon tax is that it internalizes externalities.⁴⁹ An externality is defined as a cost or benefit generated by an economic activity that affects others, without being fully reflected in the cost of the economic activity.⁵⁰ Thus, a carbon tax forces the polluter to pay by internalizing the cost of pollution in the price of an economic activity.⁵¹ Many advocates consider carbon taxes to be more efficient, transparent and effective than regulatory mechanisms.

In September 2007, a group of professors from four B.C. universities wrote an open letter to B.C. Finance Minister Carole Taylor advocating the adoption of a revenue-neutral consumer-based carbon tax. The group of professors wrote: "Your government has

identified action on global warming as a critical policy goal. We believe that a carbon tax is the most efficient and effective way to reach that goal.”⁵² Citing the need to capture the full costs to the environment in the prices of goods and services in B.C., the professors argued the carbon tax is superior to regulatory mechanisms, which “force a one-size fits all approach, are likely more costly to administer, and will always be one step behind in terms of the environmental technologies being applied.”⁵³ The administration costs of regulatory mechanisms and cap-and-trade systems are generally considered to be higher than a carbon tax regime because of the necessity to ensure enforcement with regulations. Inspectors and enforcement officers will ultimately be required to ensure companies are compliant with the legal limit of GHG emissions each year under any regulatory framework. In contrast, the collection of a carbon tax can be handled by the government’s existing tax collection agencies.

In her Budget Speech in the B.C. Legislature on February 19th, 2008, the Finance Minister confirmed that the government had chosen to adopt the view of the academic community and introduce a comprehensive revenue-neutral carbon tax. She said:

Leading economists and scientists all agree. Seeing that cost, making it real, will give us new incentives to change the habits that created global warming in the first place. Higher costs for high carbon choices will make cleaner options more attractive to consumers, business and industries alike.⁵⁴

It is clear that the B.C. Liberal Government, and in particular the Premier and the Finance Minister, chose the carbon tax because they believed it would be more effective than alternative regulatory mechanisms. After having been persuaded of the need for real action against climate change, a survey of different measures by the government concluded that a carbon tax would be the most effective and efficient tool to achieve B.C.’s goal of reducing GHG emissions by one third by 2020.

Who are the Main Proponents and Opponents of the Carbon Tax?:

It is not surprising that the main proponents of the carbon tax, aside from the B.C. Liberal Party, are primarily environmental groups who have long advocated for reducing GHG emissions. For example,

Ian Bruce, a climate change specialist with the David Suzuki Foundation, has endorsed the carbon tax, saying that it will prompt the energy sector to search for new ways to economize, likely resulting in more wind and solar power use for home heating.⁵⁵ The Sierra Club has indicated support in principle, but it does not believe the current rates of taxation on carbon are high enough to have the desired impact of shifting behaviour away from high-carbon activities.⁵⁶

Leading economists and political scientists in B.C. are also strong supporters of the carbon tax. SFU economist Mark Jaccard has argued that the provincial government has simply decided to be honest, because the transparent nature of a carbon tax, in contrast to regulatory measures or cap-and-trade regimes, allows the consumer to see the cost of polluting at the gasoline pump.⁵⁷ UBC political scientist Katheryn Harrison also supports the carbon tax, adding that it is "unusual to see an environmental policy that is innovative, well designed and starting to do the right thing."⁵⁸ In addition, SFU professor of public policy John Richards has lauded the B.C. Liberals for their "pioneering approach to emission controls."⁵⁹ Most academics in B.C. seem to be strongly in favour of the carbon tax regime.

The carbon tax is not without its critics, however, even among traditionally environmentally friendly constituencies. The primary political opponent of the government's policy is the BC NDP, the official opposition in the legislature. NDP Leader Carole James has led a focused attack against the carbon tax, arguing that "the Campbell Government's claim of revenue neutrality is a joke."⁶⁰ Bruce Ralston, the NDP Finance Critic, said: "This new carbon tax is not a climate change plan. The tax will hit consumers and average families the hardest as large industrial polluters get a pass and a handout."⁶¹ In contrast, the NDP favours repealing the carbon tax and implementing a cap-and-trade system in its place.⁶² The NDP's political strategy seems to be aimed at exploiting anxieties within the electorate about the imposition of a new tax, while downplaying the corresponding reductions to other taxes designed to offset the revenue collected by the carbon tax. The NDP has been unclear about how their cap-and-trade model would cost consumers less than the current carbon tax, as large industrial polluters would inevitably have to recoup their costs of compliance with the regulations imposed under the NDP policy.

It may be surprising to some observers to see the NDP leading the opposition against the carbon tax, as the environmental constituency has traditionally been a key component of their electoral coalition. However, it is more unusual for the official opposition to support the government on a key policy in a parliamentary system. The

NDP's position has given them the ability to frame the issue as a new tax on consumption, which may prove to be effective with the electorate.

A more surprising critic of the carbon tax is the B.C. Green Party. They have argued that the \$10 per tonne tax on carbon is not nearly high enough to be effective.⁶³ Instead, the Green Party has called for a \$50 per tonne carbon tax that invests the proceeds into new green energy systems, rather than offsetting the costs with reductions to other taxes.⁶⁴ As a party that has never won a seat in the legislature, the Green Party is more of an environmental advocacy organization than a political party. Its criticism of the government's plan seems to ignore or downplay the gradual implementation of the carbon tax over several years, which would peak at \$30 per tonne, and give the economy time to adjust.

The Canadian Taxpayers Federation has also been highly critical of the carbon tax. Arguing that it will be "anything but neutral" and that the government has "no mandate to implement a carbon tax," the Canadian Taxpayers Federation has been a vocal opponent of the government's plan to reduce GHG emissions.⁶⁵ The Canadian Taxpayers Federation also believes that the one-time \$100 'Climate Change Dividend' cheques sent out to every British Columbian were designed to "keep the squealing about the new carbon tax to a minimum."⁶⁶ It is likely the government did want to attempt to mitigate the fears of voters that the carbon tax was simply a new consumption tax that would generate more income for the government. The vocal criticism of organizations like the Canadian Taxpayers Federation probably does raise suspicions among voters about the veracity of the government's claim of revenue-neutrality.

What are the Future Implications for Politics in B.C.?:

While it is clear the B.C. Liberal Government was at least partially motivated to implement a carbon tax by polls showing strong support for climate change mitigation in 2006 and 2007, more recent polls indicate a majority of British Columbians are opposed to the carbon tax. Ipsos Reid has found that more than fifty-nine percent of British Columbians are opposed to paying a provincial carbon tax on gasoline and other fossil fuels.⁶⁷ Opposition to the carbon tax is highest in the Interior, followed by the Lower Mainland and then the rest of the province.⁶⁸ The Ipsos Reid poll also indicates that the attacks on the government's claim of revenue-neutrality by the NDP and the Canadian Taxpayers Federation seem to have resonated. More than seventy-one

percent of British Columbians expect to pay more than they will get back through reductions to other taxes.⁶⁹

Since the implementation of the carbon tax, the B.C. economy has had to deal with the effects of the global economic crisis that is currently plunging the Canadian and American economies into recession. As a result of the recession, gasoline prices in Vancouver have decreased by 20.2 percent since 2007.⁷⁰ Recent polling data also indicates that the economy is now overwhelmingly the most concerning issue for voters in British Columbia.⁷¹ These developments suggest that the public's mood has changed dramatically since 2006–2007, the period when the Campbell Government initiated plans for the implementation of the carbon tax. It seems that concerns about climate change are easily displaced when the public is uneasy about the state of the economy. The dramatic decrease in the price of gasoline also raises questions about the effectiveness of the carbon tax policy at the current rate of taxation.

Given the current opposition to the carbon tax and the general anxiety about the economy, the scheduled statutory provincial election date set for May 2009 has the potential to become a referendum on the carbon tax. If it does, the ability of the Campbell Government to communicate the merits of the policy, particularly to those living in remote areas that have fewer options for transportation, will become paramount to its re-election. The NDP will likely continue its attacks against the policy and hope the carbon tax issue remains salient with the electorate.

Conclusion:

The B.C. Liberal Government was motivated by several factors in its decision to implement the first consumer-based carbon tax in North America. First, polling data in 2006 and 2007 revealed a significant consensus among the electorate for the need to reduce GHG emissions and mitigate the effects of climate change. Second, the Premier experienced a personal epiphany on the need for climate change action during a trip to Beijing. Finally, the strong presence of the environmental movement and NGOs in B.C. over the past forty years has not been inconsequential; they have exerted a greater influence in B.C. than in other Canadian jurisdictions. The carbon tax was chosen over alternative policy options because of a genuine belief that it would be the most effective policy tool to achieve the desired GHG emission reduction targets. This belief was strongly supported by the province's academic community.

The carbon tax continues to be a highly controversial subject. The main proponents of the policy include the B.C. Liberals, most environmental organizations, such as the David Suzuki Foundation and the Sierra Club, and many economists and public policy experts. In a somewhat ironic coalition, the NDP and the Canadian Taxpayers Federation are united in their opposition to the tax. The B.C. Green Party has argued that the tax does not go deep enough. Current polling data also suggests the B.C. electorate is not convinced of the merits of the carbon tax, which could lead to a spring election mainly focusing on the carbon tax issue. It is also unclear how the current global economic crisis will affect the mood of voters when they go to the polls.

The evidence suggests that while this policy decision was a political risk for the B.C. Liberals, it was one they were willing to take in an effort to bring forward a policy that would result in reduced GHG emissions in B.C. They will have to hope that the B.C. electorate is willing to reward them for this courageous move in the upcoming provincial election. Undoubtedly, other governments in Canada and the United States will be watching closely to observe the electoral impact of this policy.

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⁶⁷ Ipsos Reid, “Majority of British Columbians Oppose New Carbon Tax,” 18 June 2008; available from <http://www.ipsos-na.com/news>; Internet; accessed 5 November 2008, 1.

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THE CLINTON HEALTH CARE INITIATIVE: DEAD ON ARRIVAL?

Andrea Green

With the recent election of President Barack Obama, health care, and the need for its reform, has once again come to the forefront of American politics. The idea of health care reform is one that has plagued the United States since Franklin D. Roosevelt's administration, and will likely continue to be prominent in political debate in the coming years. But what happened last time a major presidential overhaul of the health care system was attempted? This paper examines the Clinton Health Care Plan and attempts to explain why it failed, focusing specifically on the way in which it was affected by the framing of the plan by both the Clinton administration and its opponents. The failure of the administration to shape and control the agenda, the strong influence of the opposition, and the inability to place the issue on the public agenda caused the administration to lose control of its health care reform plan, destroying any chance of success before they had even really begun.

As is the case in any developed nation, the issue of health care is of utmost importance to the American public. The idea of health care reform is one that has plagued the United States since Franklin Delano Roosevelt's administration, and will likely continue to be prominent in political debate in the coming years. In the recent presidential election of 2008 health care once again proved to be a primary issue in the campaign, with both potential Democratic candidates promising to create a universal health care program should they have been elected. With the election of President Barack Obama, it will be interesting to see how this policy comes to form, especially as he will attempt to overcome the failures of the last Democratic attempt (led by former First Lady Hillary Clinton) at the creation of a national health care plan.

There are several explanations as to why the 1993 Clinton health care initiative failed: growing anti-government sentiment within the American public, the inability of the Democratic Congress to block

a filibuster even if entirely united, and the complexity of the plan, which made it difficult for even some experts to understand. However, it was perhaps not the plan itself but the presentation of the initiative that surrendered any chance it may have had of succeeding. I will argue that the 1993 Clinton health care initiative failed before it even had a chance to succeed, due to the inadequate framing of the issue by the Clinton administration and its opponents. This paper will focus specifically on the failure of the administration to shape and control the agenda, the strong influence of those opposed to the health care initiative, and the fact that the issue was discussed solely in the political realm and never properly surfaced on the public agenda.

The Clinton Health Care Reform Plan - "Health Care That's Always There":

The Clinton Health Care Reform Plan was born during the election campaign of 1992. From early days, it is clear that President Clinton (then the Governor of Arkansas) saw the benefit, both electorally and for the overall good of the country, of reforming the health care system. The aim was to create "Health Care That's Always There,"¹ providing everyone in the United States with a system of health care that they could count on, regardless of income. Aware that Americans would not support reform that involved mass tax increases, President Clinton set to work developing a plan to redesign the health care system without any cost to the American public, starting with the creation of a health care task force to be led by First Lady Hillary Clinton. The task force created a plan based on six guiding principles; universality, savings, choice, quality, simplicity, and responsibility.² The overall goal of the health care reform plan, as developed by the health care task force was "to draw on the best of competing ideas to create a new higher-level synthesis, and in doing so, to overcome the ideological and political deadlock that has marked the reform debate over the past decade."³ In order to finance the reforms, it was proposed that health insurance would be paid into by every employer and individual, with small businesses and low income individuals qualifying for discounts, ensuring every citizen basic health coverage without crippling debt.

The Clinton Administration and the Health Care Agenda - Slipping Through Their Fingers?:

Within its role in policy making, the ability of the government to hold a firm grasp on the agenda is of primary importance in control over the policy cycle. Samuel Popkin writes that “controlling the agenda is a critical part of maintaining a political coalition.”⁴ This piece of advice seems to have been ignored by the Clinton administration when attempting to pass its initiative. The problem here lay not only in the way in which the plan was developed, but also in its monitoring as it moved through the congressional process. When President Clinton announced his plan to the public in September of 1993, it was met with almost unprecedented support. Seventy-one percent of Americans felt that health care reform was needed, and twenty-one percent felt that they “knew a lot about it and supported the plan.”⁵ By October this number had fallen to seventeen percent, and by August of 1994 it had decreased to thirteen percent.⁶ It was clear that the more the public heard about the initiative, the less they understood.

The first major problem with the communication of the health care initiative was the way in which the plan was created. Instead of attempting to use an incrementalist approach, the initiative attempted a large-scale, comprehensive reform of the health care system. This went against the grain of the normal incrementalism of Washington, thus making it more difficult for even some Democrats to support.⁷ Instead of seeking a number of small victories, the Clinton administration aimed to overhaul the system in one swoop, creating an incredibly complex plan. This complexity resulted from the technical focus, rather than political formulation, of the plan. Because the aim was to create the best and most effective system for health care reform, the health care task force was comprised of too many medical and insurance experts and too few political analysts. James Morone argues that “the health reformers gathered sprawling expert task forces; they worked so hard on the details that they lost track of political time and, in the end, they produced a proposal that was complex, unfamiliar, and impossible to explain.”⁸ Thus, the administration became too caught up in the formulation of the reforms and “underestimated the politics,”⁹ allowing their opponents to hijack their agenda, which directly caused the failure of the health care initiative.

The failure of the Clinton administration to predict the volume and intensity of the opposition to the health care initiative allowed its opponents to create a message of their own to reach the American public. Morone contends that “the contemporary recipe for defeating

unfamiliar opponents is no secret: define them before they define themselves.”¹⁰ Because the debate on health care reform was of such high interest to the public, there was a great deal of media attention paid to the issue, making the framing and control of the agenda essential to success. From the beginning the administration struggled to properly define the problem of health care reform. Through polling, President Clinton had been convinced that “eighty-four percent of the American public believed there was a ‘crisis today in health care,’”¹¹ and, in order to call attention to the issue, went on to sell the health care initiative through labelling the American health care situation as a “crisis.” Unfortunately for Clinton, 1994 saw “improvement in the annual rate of medical inflation,” allowing Republicans to argue that “the Clinton team was guilty of over dramatizing the health care situation.”¹² Popkin writes that “a party’s ability to maintain credibility with voters depends on whether party leaders can suppress issues that threaten intra-party elite pacts.”¹³ In the case of health care reform the Clinton administration was unable to do this, creating a hole in the credibility of the initiative.

In his 1994 State of the Union address, President Clinton attempted to regain control of the agenda by dedicating almost a quarter of the domestic section to health care reform, and once again promised to “make history by reforming the health care system,” and to “guarantee health security for all;”¹⁴ however, his attempts proved futile. The administration’s “inability to articulate its vision to a confused and often frightened public”¹⁵ left the public’s perception of the health care agenda to be formed by anyone who could speak loud enough to be heard. In this case, this voice was the Republican Party and the insurance companies who stood to lose from a health care system that decreased their business and profits.

The Opposition - The Elephant in the Room:

The ability of the opposition to gain control of the agenda created a major battle between supporters and opponents of the Clinton health care initiative, which was fought on both the political and the citizen level. Those opposed to the success of the plan needed to create a politically solid opposition and convince the public that their views were more valid than those presented by the government. This inspired what Morone describes as a “harsh political campaign that destroyed [the government’s] efforts.”¹⁶ It was not a struggle for Republican elites to convince their fellow politicians and targeted interest groups that fighting against the reforms was in their best interest. In the 1994

midterm elections, Republican strategists continuously reiterated that “one of the most important predicates for Republican success is not having health care pass.”¹⁷ Furthermore, McGovern and Willerton explain that “numerous interests had much to lose if meaningful comprehensive health-care reform were to pass...specifically the medical/ industrial/ insurance complex that had more than \$800 billion a year at stake.”¹⁸ With combined motives, the Republican Party and the special interests groups launched “the most heavily financed and sophisticated lobbying effort in America ever,”¹⁹ and began successfully convincing the public of the evils of the proposed health care reforms.

In addition to ensuring that there was a strong enough political opposition to ensure the failure of the health care initiative in Congress, the opponents of the reforms also had to convince the public that it was detrimental to their interests for such reforms to take place. For public support for any government action to exist, the public must first understand what the proposed action would mean for its daily life and, therefore, the plan must be transparent enough for the public to understand.

The value of autonomy for the American citizen is primary, and actions that will limit the liberty of the individual are rarely supported. Opponents of the Clinton health care reforms were able to combine these two truths to create a strong opposition campaign. Popkin contends that “the Clinton Health Care Plan failed in no small measure because opponents of the plan were able to convince people that there would be a ceiling on how much medical care they could get for themselves, and [they] might be limited to getting what everyone else got.”²⁰ Opponents of the reforms were able to take advantage of the top down nature of the policy and frame it to their advantage. Much as Clinton had put his own label on the health care “crisis,” Republicans labelled the plan “tax and spend” and “big government,” words that semantically carry negative connotations with the American public.²¹ In order to invoke concerns about choice limitation they framed the reforms as a “one size fits all” plan that would not provide for the individual and their unique needs. Although citizens would actually have had more choice under the Clinton health care initiatives, there was a lack of comprehension; people believed that government regulation would serve only to limit them.²²

In the media, Republicans continued to spin the intentions and details of the reforms, relying on their complex nature to overwhelm the public and attempting to tie them to various negative perceptions. One Republican Congressman stated, “You can’t expect the hard-

working people in suburban Cook County to go into the same health care alliance as the crack heads in Chicago.”²³ In an attempt to discredit the initiative, opponents sought to convince the public that they would be in a position of reliance on the government and would be brought down to a lower level of society should the reforms be passed. The Republican cause was aided by the immediate following of the welfare portion of the 1994 State of the Union Address with Clinton’s plans for healthcare reform.²⁴ Although President Clinton’s intentions in linking the two were to establish a symbolic and hortatory tone, stating that “no one in the United States should have to lose everything they’ve worked their whole lives for because they were unfortunate enough to become ill,”²⁵ this proved to be the wrong tool choice for these particular reforms. When pitted against Republican congressmen, outspoken doctors and insurance agents using authority tools to convince patients that they would receive “‘cattle car’ care, regulated by the federal government, with higher out-of-pocket costs for care, higher taxes, less choice, lower wages, and increased unemployment,”²⁶ the authority tools proved stronger and public perception continued to shift towards the negative.

Yankelovich states that “the plan lost public support because its opponents found it easy to raise the public’s fears about reforms people did not understand.”²⁷ The Clinton administration, responding to polling which told them that the public would respond to a metaphorical learning based approach, attempted to use metaphorical examples to assist the public in their understanding. The only metaphors available, such as examples of the Canadian health care system, were foreign and could be all too easily framed as anti-American by opponents. The Clinton administration’s mischoice of policy tools, and the ability of the opposition to spin the intentions and consequences of the proposed health care reforms, effectively proved to be yet another nail in the coffin of the Clinton health care initiative, one from which it was impossible to recover.

Lack of Public Knowledge - A Nation in the Dark:

The infighting in Washington and the use of the media to manipulate the framing of the Clinton health care initiatives resulted in a severe divide between the political and the public agendas. The 1993 health care fight could have been two separate discussions: one on the political and one on the public level. Yankelovich asserts that there was “a serious disconnect between the American public and its leaders.”²⁸ McGovern and Willerton go further, stating that the opposition was so

strong that it made it impossible for the issue to enter the public agenda because of the many misconceived notions that existed surrounding the reforms.²⁹ Just as the expert teams underestimated the politics of passing such expansive reforms, they also forgot the key role the public must play in their success. As a result, the plan became “a product of experts and experts alone,”³⁰ excluding the public from many of the intricacies. From the expert formulation it went immediately to other political elites in Washington and as such, with the exception a few polls, a consultation process of the policy ensued that left out the public.

This problem is affirmed by Yankelovich, who states that “although elites have no problem conversing with one another, they carry out ‘a bizarre dialogue of the deaf’ with the people.”³¹ The policy remained largely within what Howlett and Ramesh term an “iron triangle,” an alliance of well-versed political interests that the public was unable to break into.³² This lack of dialogue may have been a strategy of opponents to ensure that the public would not have all the information to properly understand the reforms, a strategy which the Clinton administration failed to combat, or it may have been simply a product of top down Washington politics. No matter how it came about, the failure to converse with the public meant that they could not properly grasp the health care initiatives, and thus they were completely at the mercy of the Washington spin machine.

Without the issues ever being properly discussed at the public level, especially with the initiative being such a vast one, there was no way to garner enough public support to adequately allow for the success and implementation of the policies. The participation and involvement of the public, an important element of the democratic process, was mismanaged by the Clinton administration. Morone asserts that “the institutional labyrinth can only be negotiated by waves of popular support.”³³ With mixed messages coming from Washington and corporate America it would have been incredibly difficult to achieve a united public. Yankelovich writes that “technical experts designed it, special interests argued it, political leaders sold it, journalists more interested in its political ramifications than its contents kibitzed it, advertising attacked it. There was no way for average Americans to understand what it meant for them.”³⁴ The failure to place the issue on the public agenda meant that the public was robbed of its opportunity to participate in the debate, and thus even polls asking public opinion could not have been accurate, as the public responded only to what it thought it knew or what it partially understood.

This lack of information played a critical role in the failure of the reforms as it created a fear of the unknown in the public. This is a conclusion that is affirmed by Yankelovich, who writes that “when people lack the opportunity to work through what the proposed change means for their lives, fear of change itself takes over, and people settle for the status quo, however unsatisfactory, preferring it to change they do not understand.”³⁵ Without the understanding, and consequently, firm support of the public, vast reforms cannot succeed as the instinct of the unknown creates a barrier for support, a lesson illustrated pertinently in the Clinton administration’s attempt of health care reform.

Conclusions:

The failure of the 1993 Clinton health care initiative came as a result of a failed communication strategy that doomed the reforms before they had a chance to succeed. The Clinton administration’s inability to control the agenda, as well as the heavy opposition it faced, created a block to placing the issue on the public agenda, thereby robbing the public of the ability to participate in the discussion – a discussion which was desperately needed to create public support in order to reach the implementation stage of the policy cycle. When seeking such expansive reform, the framing of the issue is critical, and in the instance of reform with such polarized opinions, ultimately, it is the side that frames the issue more convincingly that wins the battle. The top down nature of the policy meant that the selection of policy tools was critical, and the Clinton administration chose tools that proved inferior to those used by the opposition to communicate their framing of the initiatives. As America enters yet another administration promising to enact vast health care reform, President Obama and his health care advisors must remember the lessons learned from the last time policy such as this failed in its infant stages. The framing of a policy is crucial to or a primary determinant of its success and, as witnessed with the 1993 Clinton health care initiative, it has the ability to bring reform to a halt before it ever really begins.

¹ Hugh Helco, “The Clinton Health Care Plan: Historical Perspective,” *Health Affairs* 14 (1995): 93.

² Walter A. Zelman, “The Rationale behind the Clinton Health Care Reform Plan,” *Health Affairs* 13 (1994): 10.

³ *Ibid.*, 10.

⁴ Samuel Popkin, "Public Opinion and Collective Obligations," *Society* 44 (2007): 38.

⁵ Daniel Yankelovich, "The Debate that Wasn't: The Public and the Clinton Plan," *Health Affairs* 14 (1995): 14.

⁶ *Ibid.*, 15.

⁷ Patrick J. McGovern and John P. Willerton, "American Democratic Practice, France, and Russia: Institutions, Values, and Alternative Democratic Experience," *New Political Science* 29 (2007): 246.

⁸ James A. Morone, "American Democratic Practice, France, and Russia: Institutions, Values, and Alternative Democratic Experience," *New Political Science* 29 (1995): 392.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ D.A. Rochefort and R.W. Cobb, Problem Definition: an Emerging Perspective, Chapter 1 of *The Politics of Problem Definition*, Lawrence: University Press of Kansas (1994).

¹² *Ibid.*

¹³ Samuel Popkin, "Public Opinion and Collective Obligations," *Society* 44 (2007): 37.

¹⁴ Bill Clinton, *1994 State of the Union Address*; available from http://www.cspan.org/executive/transcript.asp?cat=current_event&code=bush_admin&year=1994.

¹⁵ Yankelovich, 7.

¹⁶ Morone, 392.

¹⁷ *Ibid.*

¹⁸ McGovern and Willerton, 247.

¹⁹ *Ibid.*, 245.

²⁰ Popkin, 41.

²¹ Morone, 392.

²² Popkin, 41.

²³ Morone, 393.

²⁴ Clinton.

²⁵ Clinton.

²⁶ Yankelovich, 10.

²⁷ *Ibid.*

²⁸ *Ibid.*, 7.

²⁹ McGovern and Willerton, 247.

³⁰ Yankelovich, 8.

³¹ *Ibid.*

³² M. Howlett and M. Ramesh, *Studying Public Policy*, 2nd Ed. Ontario: Oxford University Press (2003).

³³ Morone, 396.

³⁴ Yankelovich, 9.

³⁵ *Ibid.*

FREEDOM AND THE SOCIAL CONSTRUCTION OF MENTAL ILLNESS

Brad H. Morrison

People live a variety of distinct, but valuable and legitimate, modes of life. The social construction of idiosyncrasies and modes of life as mental illnesses can be oppressive. It can internally limit freedom, by causing people to internalize negative stereotypes, and can externally limit freedom, by legitimizing the forceful regulation of the behaviour of the mentally ill. I argue that in order to preserve freedom, we must exclude from the concept of mental illness those idiosyncrasies and modes of life that are not harmful to others, and that do not render the individual internally unfree.

No two people are exactly alike. Although a degree of conformity is possible, all people have unique traits, ways of thinking, and ways of acting - in other words, their own idiosyncrasies and modes of life. However, because we live in a society, an individual's ability to achieve his vision of the good life is contingent on other individuals behaving in certain ways. An obvious example is that if we value peace, we require that others act as though they do as well. In order for people to happily coexist, it is necessary to exert social control, for instance through the socialization process, and through laws. To return to the example of peace, we teach children in schools to resolve conflicts without violence, we express disapproval of violence, and we have laws to punish offenders. These are examples of social construction, which, following Nancy Hirschman, I define as the process whereby "our desires, preferences, beliefs, values... are all shaped by the particular constellation of personal and institutional social relationships that constitute our individual and collective identities."¹

The social construction of mental illness, in terms of which behaviours and identities are considered illnesses, as well as the normative judgments associated with them, can be extremely oppressive if not properly limited. Requiring the presence of harm, or of internal barriers (disability), is one way of limiting the definition of mental illness. For instance, the American Psychiatric Association

(APA), in its Diagnostic and Statistical Manual (DSM-IV) defines a mental disorder as:

A clinically significant behaviour or psychological syndrome or pattern that occurs in an individual and that is associated with present distress... or disability... or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.²

The presence of harm to the individual, or of disability, is crucial. Otherwise, the concept of mental illness could be used as a form of social control over individuals' personal life choices. However, the objective effects of an idiosyncrasy are contingent on the social situation, and the normative values attached to the idiosyncrasy and its effects, and therefore the harm associated with it is also socially contingent. The definition of mental illness, and the treatment of the mentally ill, should therefore take into account the possibility that the harm caused by some idiosyncrasies and modes of life is the result of social construction.

In this essay, I will argue that many idiosyncrasies and modes of life that are considered mental illnesses are not inherently harmful, and are primarily harmful as the result of them being construed as mental illnesses. The social construction of these idiosyncrasies as mental illness is inimical to the individual's freedom for several reasons. In the first section, I argue that the social construction of people and of behaviours as mentally ill acts on individuals on several levels, forcing them to hide their identities for fear of disapproval, and often causing them to internalize this disapproval, and to exhibit the negative stereotypes that they believe apply to them. This prevents them from acting in harmless and fulfilling ways that they otherwise would, and is therefore a barrier to their freedom. In the second section, I argue that real mental illness constitutes an internal barrier to freedom, and that therefore the concept can justify second guessing the expressed will of the mentally ill. As a result, medical professionals, the government, or even friends and family, can justify making decisions for those labelled as mentally ill, in the name of their best interests. If the individual is in fact merely idiosyncratic, then this imposition is an external barrier to their freedom, since it externally prevents them from acting out their will. In the third section, I use examples of homosexuality and other supposed forms of sexual deviance as real world examples to demonstrate how the pathologization of different modes of life can be coercive and can

prevent freedom of choice. Finally, I conclude that in order to respect the freedom of minorities and of idiosyncratic individuals, our society must accept legitimate differences, and avoid pathologizing idiosyncrasies and modes of life which are not inherently harmful and internally disabling.

The Social Construction of Mental Illness:

Regardless of the social value assigned to biological processes or traits, they often have certain objective consequences. An obvious example of this is a disease like cancer. We can imagine a society that reveres malignant tumours as a sign of divine favour. This might make cancer sufferers happier, but the tumours will be just as lethal. Of course, not all diseases, symptoms, or effects, will exhibit the same degree of biological determinism. Diseases can be placed on a continuum in terms of the biological determinacy of their causes and outcomes, and mental illnesses tend to be less predictable, based on biological causal mechanisms.

The values assigned to modes of thought and of life are influenced by the social construction of what is normal, and of what is a mental illness. Not all aspects of mental disease are socially constructed, nor is it always desirable to treat all idiosyncrasies as differences in personality and self-control, or to learn to accept and value all consequences of any idiosyncrasy. Mental illnesses can cause incredible suffering, and exhortations to accept or to unduly value them as modes of life is not always the answer. Medical treatment can at least ameliorate the negative effects of some mental illnesses, and is often a necessary part of any attempt to free those who suffer them. Having said this, there are many situations where idiosyncrasies and modes of life are socially constructed in ways that cause them to become harmful, and are therefore only illnesses under those social conditions.

The role of social construction in determining what constitutes an individual's real self is crucial to whether socially constructed agents, such as the mentally ill, can be free in any meaningful sense. The social construction of mental illness can mean a number of things, for instance the socialization of those labelled as mentally ill, the representation of mental illness, and normative evaluations of unusual behaviour. To make sense of these different types of social construction of mental illness, we can make use of Nancy Hirschmann's identification of different levels of social construction.

In building a feminist theory of freedom, Hirschmann offers insights into the social construction of women, which can be applied to the construction of the mentally ill. She identifies three levels of social construction, through which “individual and collective beliefs and self-conceptions” are produced within the social order.³ The first level is “the ideological misrepresentation of reality.”⁴ On this level, a false conception of reality is created, which dominates individuals’ lives. With respect to mental illness, ideological misrepresentation can present certain behaviours as deviant and harmful when they are not inherently so. The second level of social construction is that of “materialization” in which “how we think about, talk about, interpret, and understand social phenomena produces material effects on the phenomena themselves.”⁵ Materialization can act on the mentally ill by preventing them from learning the skills necessary for their independence, or by causing their idiosyncrasies to be socially maladaptive. The third level is “the discursive construction of social meaning,” in which language determines “what it is possible to think or know.”⁶ At this level, we are all socially constructed, and there is not necessarily an essential self, which is uninfluenced by social relations.⁷ An individual’s thoughts, desires, and truths (in a Foucauldian sense) are therefore socially constructed. This process will therefore determine whether a mental state is abnormal, unhealthy, harmful, or maladaptive, and whether it is considered as such.

The attitudes towards and stereotyping of the mentally ill is related to Hirschmann’s ideological level of social construction. For instance, they could be viewed as sick, as possessed by demons, or as in need of moral guidance. The position that the mentally ill are sick is commonly held today, whereas mediaeval Europeans considered them as unhuman or possessed,⁸ and some anti-psychiatrists, such as Szasz, consider them to be in need of moral guidance.⁹ In its extreme form, the belief that the mentally ill were animals led to the attitude that this “unchained animality could be mastered only by discipline and brutalizing.”¹⁰ In order to avoid the dehumanizing consequences of treating the mentally ill as incapable of rational choice, Szasz argues that all mental phenomena should be treated as a matter of free agency, which can be corrected by moral guidance. How we perceive the nature of mental illness influences how we treat the mentally ill, and, consequently, the external and internal conditions of freedom. The human ‘animals’ in cages were not free of external obstacles, nor are patients in hospital wards who cannot leave or refuse medications. Thus, the social construction of perceptions of the nature of mental illness can lead society to impede freedom through overt physical

control. It can also impede freedom through the construction of individuals' conceptions of themselves.

This leads us to the other levels of social construction. For instance the discursive construction of social meaning determines what we value, and what we consider harmful and irrational, and therefore what we consider a mental illness. This is closely related to the process of materialization, which imprints upon individuals certain values and patterns of behaviour. These personal values, and the socially imposed categories of illness are inextricably linked. This is because, to use Charles Taylor's terminology, internal obstacles to freedom occur when one's higher values go unrealized as a result of internal obstacles, such as the unwanted dominance of desires which we "experience as not ours."¹¹ At least some of these values are socially constructed, as are the attitudes of other social actors concerning what constitutes legitimate desires. Hirschmann recognizes this. She argues that,

Without such specificity of context, the individual too is unspecified, an abstraction. In this regard, Taylor's argument displays, even as he himself ignores, the inherently social dimension of internal barriers and the relationship between internality and externality.¹²

Social contexts, social values, and the values of the individual in question determine the harm caused by many idiosyncrasies. In these cases, there is therefore nothing inherent in the biological or psychological causes of idiosyncrasies, or in their effects, that makes them illnesses.

Internal Barriers, Second Guessing, and External Barriers:

Some theorists of freedom, for instance Taylor or Hirschman, identify internal barriers to freedom, such as ignorance, lack of self control, or addiction. If we believe that a person cannot exercise freedom because they are internally unfree, then we can free them by forcing them to do what is in their real interests. This is second guessing, and although the concept of forcing people to be free has obvious potential for abuse, it is necessary if we admit to the existence of mental illness. Since the very nature of these illnesses is that they work on the mind, in some cases they impede the mentally ill from seeking, or consenting to, medical treatment that is in their interests. For instance, an alcoholic may resent an intervention by friends and family, or a drunk driver may resent a court order to get counselling,

but if they overcome their addiction they will be grateful for the interference.

Second guessing is necessary given mental illness, since it becomes logically possible for an individual to express desires that are not truly theirs. The solution that some anti-psychiatrists, such as Szasz, offer is to reject the concept of mental illness. As he puts it, if a person can be identified as ill because of their mental state, then:

Any psychological phenomenon may thus be regarded as a mental disease or psychopathology, and any psychological intervention a form of mental treatment or psychotherapy. The only viable alternative to this familiar but false perspective is to abandon the entire medical approach to mental illness and to substitute new approaches for it appropriate to the ethical, political, psychological, and social problems from which psychiatric patients suffer and which psychiatrists ostensibly seek to remedy.¹³

Szasz is correct in asserting that second guessing, and the resulting psychological intervention, is an unavoidable consequence of using the conceptual framework of mental illness. However, the potential for abuse does not mean that second guessing is never justifiable.

Charles Taylor's philosophy of free agency is particularly well suited to addressing freedom for the mentally ill, since he acknowledges internal barriers that can impede expression of one's real self. In his view, "you are not free if you are motivated, through fear, inauthentically internalized standards, or false consciousness, to thwart your self-realization."¹⁴ Because he recognizes internal barriers to freedom, Taylor seeks ways to free people from these barriers, without enabling other actors to use second guessing to justify coercion. He does this by emphasizing the individual's ability to autonomously discover his real interests. He defines freedom as "being able to recognize adequately my more important purposes, and my being able to overcome or at least neutralize my motivational fetters, as well as my way being free of external obstacles."¹⁵ Under this conception of freedom, it is possible to liberate someone by providing them with the conditions necessary for them to develop own self understanding and to achieve internal liberation. From this perspective, it is legitimate for a doctor to confine a patient to a hospital, or administer drugs without the patient's consent, provided that internal barriers to the expression of their real selves, such as paranoia, phobias, compulsions, or even

ignorance, prevent them from consenting to treatment, and can be removed by treatment.

This liberation from internal barriers approach to freedom appears to be the most promising with respect to the treatment of mental illness. However, no process is likely to always produce results that we would consider reflective of peoples' true selves. For instance, removal of the causes of irrationality is often considered a necessary condition for the expression of one's true will. A smoker who wishes to quit may not express this when feeling strong cravings. In this case, we would require that they decide whether they truly desire to smoke when they are not experiencing cravings.

An analogous situation, which reveals the pitfalls of this type of thinking, is that of anorexics, since their decision to diet, or to starve themselves, is harmful, yet it is the decision made upon reflection. They may succumb to the temptation to eat, when overcome by cravings for food, but upon later reflection, experience guilt and shame for doing so. The APA defines Anorexia Nervosa as a mental disease,¹⁶ but in this case it is manifested as a seemingly reflective decision to abstain from eating, which is overcome by eventually uncontrollable urges. I agree that the anorexic's urge to eat is probably his true desire, and that the desire to lose weight is pathological, but if this is the case then internal freedom does not consist merely in reflection in the absence of base urges. The anorexic's reasoning is almost certainly not the untroubled and undistorted reasoning of the smoker who decides to quit, and we can make this assessment in one of two ways. We can judge an individual's reasoning based on the substance of their conclusion, in which case they are never free unless they do what we think they should. This is clearly unacceptable. The other possibility is that we use criteria which are completely distinct from the conclusion they come to. In order to do this, we must be able to define observable biological and psychological states in which people are less capable of making choices that reflect their real interests. When this is the case, we are justified in second guessing, and in making treatment mandatory. In order to respect the autonomy of individuals, mental health can be achieved by the administration of treatment (for a period of time even forced), but cannot be defined by the substance of the decisions made. As such, although a degree of coercion is in some situations necessary in order to provide patients with treatment necessary for mental health, they must ultimately be given freedom of choice where this does not present harm to others, including choice over the continuation of treatment.

We must also recognize that individuals' desires, and their personal evaluations of which are higher and lower, are socially constructed. Charles Taylor recognizes that the value (or disvalue) of desires is always culturally situated when he says that:

The desire for revenge for an ancient Icelander was a sense of a real obligation incumbent on him, something it would be dishonourable to repudiate; while for us, spite is the child of a distorted perspective on things.¹⁷

If an ancient Icelander were transported to the present day, we would consider his sense of vengeful honour an internal impediment, and perhaps mental illness, unless he convinced us vengeance were his real desire. This is not merely the result of his socialization, but of our own. The freedom or unfreedom of the mentally ill is therefore determined not only by the lack of external obstacles, and the overcoming of internal obstacles, but the social construction of the valuation of modes of life, within themselves and the society they live in.

The identification of an individual as mentally ill, and therefore internally unfree, can justify coercion in their best interests, and in order to cure the mental illness and remove the internal barriers. If the individual is internally unfree, and the treatment can rectify this, then interference is justified, however, this interference necessarily involves the imposition of external barriers. Furthermore, the institutionalization of a mental patient severely limits their freedom to act. In some historical cases, the mentally ill were literally caged and chained.¹⁸ Even in present day Canada (and elsewhere), patients can be involuntarily committed to psychiatric facilities, and even when they voluntarily commit themselves, they can be prevented from leaving until they are released.¹⁹ For instance, in many jurisdictions in North America, it is not necessary to obtain the consent of patients in order to administer psychotropic drugs.²⁰ There are also obstacles to the mentally ill outside of hospitals, for instance when they face workplace discrimination. These external obstacles to freedom are serious, and can only be justified if they prevent harm, or if they free the mentally ill from internal psychological barriers.

The Social Construction of Homosexuality and Sexual Deviance:

The social construction of mental illness impacts all facets of everyday life, and especially the lives of the mentally ill. Although it is by no means the only aspect of life which is influenced by attitudes

towards mental illness, sexuality is a particularly useful example. The pioneering works of Foucault and the feminist movement provide ample examples of the social construction of sexual roles and sexuality.

The DSM listed homosexuality as a mental disorder until the APA voted to remove it in 1973.²¹ This was replaced by a new diagnosis, Ego-Dystonic Homosexuality, for those who are troubled by their homosexual impulses, and which was included in the DSM until it was removed in 1987.²² One cause of this change was the contestation over the ideological representation of homosexuality. The justification for including homosexuality as a mental illness was that it was considered irregular, and a form of sexual deviance. The gay liberation movement, by destigmatizing and politicizing homosexuality, made the position that homosexuality is inherently maladaptive politically untenable for the APA.²³ Contesting the ideological representation of homosexuality enabled homosexuals to liberate themselves from the external and internal repression resulting from social stigma.

The pathologization of homosexuality also worked to materialize homosexuals into certain roles. Discrimination against homosexuals made it very difficult for them to have open and meaningful romantic relationships. Many homosexuals internalized negative views of homosexuality, believing that their sexual preference was morally deviant or a form of illness. Thus, it was not uncommon for homosexuals to have feelings of shame, and to seek medical treatment.²⁴ They were socialized such that they often internalized attitudes that reflected discrimination against themselves. These internalized values can be considered internal constraints, provided that they were not part of the real self.

At the discursive level of social construction there may not *be* a real self, since we are all socially constructed. This is crucial to understanding the importance of the debate over whether homosexuality is biological, or a choice. Both suffer the same weakness, which is that discursive social construction, and not biology or personal choice (alone), determines whether homosexuality is harmful, and whether a person identifies homosexual urges as their own. In the 1950s through to the 1970s, numerous attempts were made to 'cure' homosexuality, including the use of medications and surgery.²⁵ Whether these interventions were, or could be, successful is largely irrelevant to how homosexuality should be accepted, as are its biological foundations. Many incurable biological conditions are extremely harmful (or beneficial), and many unusual choices are beneficial (or harmful). If homosexuality cannot be accepted as a

choice, then it is discursively constructed as suboptimal, regardless of whether it is tolerated as a biological fact.

The DSM still identifies certain sexual orientations (or preferences) as mental diseases. These include Paedophilia, Voyeurism, Transvestic Fetishism, and Gender Identity Disorder.²⁶ These only fulfil the diagnostic criteria if they are harmful, but as I have argued, harm is often due to social construction. In the cases of Paedophilia and Voyeurism, the harm is imposed on others, making them very easy to identify as harmful and objectionable behaviour. However, to some degree, though certainly not entirely, the harm caused by the latter three behaviours is socially constructed. For instance, in the case of Transvestic Fetishism and Gender Identity Disorder, the harm is much more an instance of harm to oneself, and is probably much more the result of social construction, since they are not inherently painful but are painful as the result of stigma. Even the harm in the case of Voyeurism, although outwardly oriented, involves aspects of social construction, since the harm involved is premised on the conventions of privacy in our society. With the exception of Paedophilia, treating these conditions as diseases, even if only when they cause discomfort to those who hold them, is inconsistent with not doing so for homosexual urges in cases which cause discomfort (Ego-Dystonic Homosexuality). Treating idiosyncrasies which are not inherently harmful as diseases, even when they are unwanted by those who hold them, delegitimizes them as modes of life. Therefore, conditions in which the harm is not overwhelmingly and directly biological, and where harm is not caused to others, should not be considered mental illnesses. People with transvestic fetishes, gender identity issues, and unwanted homosexual urges who wish to change should have the option to get help to do so, but this should not be mandatory, and it should not be considered treatment of a medical disorder.

Conclusion:

The categorization of an idiosyncrasy as a mental illness can limit freedom in several ways. This is most visible when those labeled as mentally ill are physically prevented from doing certain things, for instance in medical institutions. However, freedom can be restricted through the socialization of individuals as well. The identification of behaviours or desires with mental illness can be extremely repressive, if it prevents people acting as they would like to (within certain limitations), or from even accepting themselves. On the other hand,

mental illnesses can create real barriers to freedom, by setting up internal psychological barriers. In extreme cases, these may even prevent people from consenting to the medical treatment of these illnesses. In these cases, the mentally ill may require mandatory medical treatment in order to live meaningfully free and self-directed lives. However, this must be balanced with the repressive potential of the pathologizing of difference and the denigration of the 'other.'

The values assigned to any idiosyncrasy or mode of life are to a large degree the result of social conditioning and one's social circumstances. Therefore, the presence of harm is necessary for an idiosyncrasy to be an illness, but it is not sufficient. The harm which is caused by this idiosyncrasy cannot merely be due to social devaluing, either directly or indirectly. Instead, there must be some harm, to the individual in question, which would occur even if their condition were not discriminated against. This is not to say that the purposeful social engineering of values is justified, or that people are not entitled to value certain modes of life above others. It does mean is that we, as friends, family, neighbours, and even doctors, have a responsibility to accept the legitimacy of difference, and to not pathologize idiosyncrasies and modes of life which are harmful primarily because they are held in low esteem.

¹ Nancy J. Hirschmann, *The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton: Princeton UP, 2003), 10.

² Herb Kutchins and Stuart A. Kirk, *Making Us Crazy: DSM: The Psychiatric Bible and the Creation of Mental Disorders* (New York: The Free Press, 1997), 30-31.

³ Hirschmann, *The Subject of Liberty*, 77.

⁴ *Ibid.*

⁵ *Ibid.*, 79.

⁶ *Ibid.*, 81.

⁷ *Ibid.*, 84.

⁸ Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Vintage Books, 1988), 74-80.

⁹ Thomas S. Szasz, *The Myth of Mental Illness: Foundations of a Theory of Personal Conduct* (New York: Harper and Row, 1974), 259.

¹⁰ Foucault, 5.

¹¹ Charles Taylor, "What's Wrong with Negative Liberty," *Philosophy and the Human Sciences: Philosophical Papers 2* (Cambridge UP, 1985), 225.

¹² Hirschmann, 10.

¹³ Szasz, 78-79.

¹⁴ Taylor, 217-218.

¹⁵ *Ibid.*, 228.

¹⁶ American Psychiatric Association, *Quick Reference to the Diagnostic Criteria from DSM-IV* (Washington, The American Psychiatric Association, 1994), 251.

¹⁷ Taylor, 226.

¹⁸ Foucault, 59.

¹⁹ Heather Sones, "Choosing and Refusing Therapy: The Right to Refuse Psychotropic Drugs." *Ethics of Psychiatry: Insanity, Rational Autonomy, and Mental Health Care*, ed. Rem B. Edwards (New York: Prometheus Books, 1997), 218.

²⁰ *Ibid.*

²¹ Kutchins and Kirk, 71.

²² *Ibid.*, 78.

²³ *Ibid.*, 57-61.

²⁴ *Ibid.*, 61-63.

²⁵ *Ibid.*, 59.

²⁶ American Psychiatric Association, *Quick Reference to the Diagnostic Criteria from DSM-IV*, 243-248.

NAZI LAW AND RADBRUCH'S FORMULA: FACING THE PROBLEMS POSED BY THE EXISTENCE OF MORALLY EVIL LAW

Vanessa van den Boogaard

The Nazi regime created legislation and parallel moral dilemmas which sparked a process of self-analysis within the field of legal philosophy. This process was dominated by the jurists Radbruch, Kelsen, Hart and Fuller, all of whom responded to the moral dilemmas with a jurisprudential analysis of the concept of law. By comparing their jurisprudential thought, this author illustrates that it is Radbruch's Formula and his analysis of the law that is the most capable theory in dealing with the legal conundrums that were established, on account of his fundamental capacity to bridge the gap between legal certainty and justice in extreme cases.

Introduction:

The Nazi regime will always be remembered for twelve years of unimaginable atrocities perpetrated within the Third Reich. The Nazis should also be remembered for creating legislation which sparked a process of self-analysis within the field of legal philosophy and analytical jurisprudence. The reality that Hitler came to power legally in 1933 and that many of the most unjust Nazi decrees were passed lawfully necessitates that a closer look be taken at the logic and justice behind the legal system that allowed the subsequent atrocities to occur. Sorting out these philosophical dilemmas was a fundamental part of the greater European and global post-war recovery process and played a lasting role in future jurisprudential debates regarding the relationship between law and morals.¹

These debates were dominated by the prominent jurists Gustav Radbruch and Hans Kelsen, later followed by H.L.A. Hart and Lon Fuller. Each jurist responded to the dilemmas created by Nazi legislation not only with moral outrage, but with a jurisprudential analysis of the concept of law. All were profoundly affected by the post-war moral quandaries; however, this essay will argue that it is

Radbruch's Formula and his jurisprudential analysis of the law that is the most capable theory in dealing with the legal conundrums that were established. The sufficiency of his theory is based on the fact that he is able to address the substantive fundamental issue of legal validity by bridging the gap between legal certainty and justice in extreme cases. Radbruch's post-war thesis finds a balance between justice and fairness, and between legal certainty and the rights of victims, and thus prevails in practical application over the positivistic theories of Kelsen and Hart, and over Fuller's appeal to inner morality.

In making this argument, this paper will analyze how Radbruch's philosophies were transformed after WWII, by illustrating the differences between his pre- and post-war thinking. In considering the Nazi dilemma, it will then contrast his post-war thesis with those presented by the positivists Kelsen and Hart, followed by a comparison to the ideas of the anti-positivist Fuller. After analyzing each perspective to a significant degree, this paper will then outline the ways in which Radbruch's Formula prevails over the reconciliatory attempts of his fellow jurists. Before initializing these discussions, however, it is necessary to take a closer look at the background of Nazi law in order to have a clear picture of the moral and legal dilemmas faced within the field of legal philosophy after 1945.

Background - Nazi Law and the Dilemmas it Created for Post-war Germany:

As previously noted, Adolf Hitler became Chancellor of the German Bundesrat through constitutional means, with support from the right wing of the Reichstag and from many professional groups, including professors, lawyers and judges.² German legal traditions were not relinquished immediately with the onset of the new Nazi regime; significantly, the National Socialist party did not need to instigate a major reformation of German civil law in order to pass its legislation. Almost all Nazi measures were implemented by systematic and formal laws interpreted by official bureaucrats and judges, many of whom who had held their positions under the Weimar Republic.³ These measures were not only enacted under the form of law, but, amid the institutionalization of Nazism, were subject to the analysis of juristic and intellectual commentators. As Michael Stolleis notes in *The Law under the Swastika*,

Until the final gruesome phase, in which disguise seemed superfluous, all discriminatory and

disenfranchising measures were enacted within the forms of law; they were published and commented on by jurists.⁴

Following the Allied victory in 1945, the prosecution of the National Socialist leadership within the International Military Tribunal at the Palace of Justice in Nuremberg confronted courts and judges with a need to render justice to unprecedented atrocities that seemed to defy rational and judicial explanation.⁵ This crisis, perhaps more than any other in the course of history, deeply affected the jurisprudential perspectives regarding the basic concept of law, the criteria necessary for legal validity, and the relationship between law and morality.

By affecting these perspectives, Nazi law created multifaceted dilemmas within the fields of jurisprudence and legal philosophy. Rendering justice in the post-Nazi era critically brought to question, from a jurisprudential point of view, the relation between law and morality. In this way, the Nazi dilemma hits at the core controversy of one of the major Anglo-American jurisprudential debates – the conflict between legal positivism and natural law theory.⁶ As will be explored further in this essay, after WWII jurisprudential thinkers had to address the urgent question of whether the injustice of Nazi legislation invalidated its legal status. This fundamental dilemma reflects the conflict between adherence to the form of law, advocated by Kelsen and Hart, and adherence to a criterion of minimal justice, a position advocated after the war by Radbruch. The significance of this moral question was illustrated by Radbruch, when he recognized the “frightful dangers for legal certainty there can be in the notion of ‘statutory lawlessness,’ in duly enacted statutes that are denied the very nature of law.”⁷

The fundamental nature of this conflict was outlined by Karl Jaspers in *The Question of German Guilt*, from the positivist perspective that, “There can be crimes only insofar as there are laws. [...] In particular - *nulla poena sine lege* - sentence can only be passed under a law in force before the act was committed.”⁸ And yet on the other side of the debate, appealing to natural law theorists, Jaspers recognizes that, “In the sense of humanity, of human rights and natural law, and in the sense of the Western ideas of liberty and democracy, laws already exist by which crimes may be determined.”⁹

These two conflicting statements, the former in support of a positivist separation theory, the latter appealing to a justice-related vision of law, play at the heart of the debates between Kelsen and Radbruch, and later Hart and Fuller. We will begin our consideration of

the different perspectives within this critical moral dilemma by looking at the theories of Radbruch, which, as will be illustrated, were greatly affected by the Nazi quandary.

Radbruch's Pre- and Post-War Theories of Law:

In considering the jurisprudential theories of law that attempted to deal with the dilemmas created by Nazism, we first turn our attention to Gustav Radbruch, one of the most influential German legal philosophers of the twentieth century.¹⁰ His theories are particularly significant as Radbruch underwent a fundamental shift in thinking prior to and after the Nazi regime, which illustrates the profound impact that Nazi legislation had on the field of legal philosophy.

In his early career, before being affronted with the moral quandaries that would later haunt him, Radbruch largely appealed to theories of legal positivism and relativism. As he stated,

Since it is impossible to ascertain what is just, it must be decided what is lawful. In lieu of an act of truth (which is impossible) an act of authority is required. *Relativism leads to positivism.*¹¹

This had necessary implications for his pre-war views on judicial interpretation; he argued that judges had a duty to defer to the law as it stood without regard to its moral implications. He thus argued for a strict loyalty to the law, embodying a criterion of legal certainty which amounts to enforcing positive law, whatever the content or moral implications. Illustrating this point, Radbruch borrowed the words from a fellow German, Goethe, who pronounced, "It is better that you suffer wrong than that world be without law."¹²

Facing the moral dilemmas that arose after WWII, Radbruch responded to the "collapse of human values"¹³ in the face of "renewed barbarisation"¹⁴ with moral outrage, accompanied by a re-examination of his previous positivist concepts of law by incorporating a new order of values and justice. Radbruch reformed his concept of law into what became known as the Radbruch Formula. This thesis amounted to a substantive concept of law incorporating a greater emphasis on justice and morality over legal certainty in extraordinary times, differing noticeably from the strict positivism and relativism of his earlier work. In his 1946 essay "Statutory Lawlessness and Supra-Statutory Law," he

redefined his position by reconciling the conflict between legal certainty and justice by pronouncing that:

The positive law, secured by legislation and power, takes precedence even when its content is unjust and fails to benefit the people, unless the conflict between statute and justice reaches such an intolerable degree that the statute, as 'flawed law,' must yield to justice. [...] Where there is not even an attempt at justice, where equality, the core of justice, is deliberately betrayed in the issuance of positive law, then the statute is not merely 'flawed law,' it lacks completely the very nature of law. For law, including positive law, cannot be otherwise defined than as a system and as an institution whose very meaning is to serve justice.¹⁵

Radbruch thus introduced an adaption to his previous theory by revising the hierarchy of justice in extreme cases, without denouncing legal certainty – "itself a component of justice."¹⁶ By presenting a vision of the concept of law that incorporates both morality and legal certainty, Radbruch offers a more flexible interpretation than the traditional strict separation between natural law theory and legal positivism. As Frank Haldemann, postdoctoral fellow of the University of Berne observes, Radbruch reconciles extreme cases by providing a method "adequate to the task of rendering legal justice to traumatic history, without neglecting the central role of the rule of law."¹⁷ Radbruch deals with the issue of justice and legal validity by reconciling the difference between "apparent and real justice,"¹⁸ and maintaining that in extraordinary cases, lawless statutes must be subordinated to the justice principle recognized in "supra-statutory law." This idea of a justice principle existing over and above positive statutory law recognizes the critical component of morality within natural law, which Radbruch's Formula recognizes in extreme cases. By making this recognition, Radbruch offers a solution within both substantial and procedural legislation, as he acknowledges the importance of maintaining the legal certainty statutory law in the context of ordinary times. Radbruch thus offers an alternative view, blending arguments of legal positivism and natural law theory by demonstrating a fundamental difference between ordinary times and those that are extraordinary, represented by the era of the Third Reich.¹⁹

Radbruch's Formula Contrasted by Theories of Legal Positivism:

With his post-war thesis, Radbruch provided an implicit critique of pure positivism, and, accordingly, of the Austrian positivist philosopher Hans Kelsen. Kelsen's "Pure Theory of Law" attempts to construct "a legal theory purified of all political ideology and every element of natural sciences,"²⁰ essentially holding legal and ethical or political questions in autonomous spheres. Kelsen's morally relativistic thesis holds that moral illegitimacy does not entail legal invalidity as there can be no rational argument against an unjust system of norms. Even after a personal traumatic experience – fleeing from the Nazis on account of his Jewish origins – he did not opt for a more subjective view of morality and justice within his concept of law.²¹ Kelsen maintained a theory of positive law that aimed at "cognition focused on the law alone,"²² leaving no room for judgments of moral value or justice and ruling out correctness of content altogether when determining legal validity.²³

Without reaching to the heart of the substantive issue of legal validity, Kelsen attempts to reconcile the dilemmas faced by Nazi law by offering a procedural argument in favour of retroactive legislation. While considering the question of re-establishing the rule of law in post-Nazi Germany, Kelsen argues that, even though those being prosecuted were not punishable under positive law:

A retroactive law providing individual punishment for acts which were illegal though not criminal at the time they were committed, seems also to be an exception to the rule against *ex post facto* laws.²⁴

In this sense, then, Kelsen steps away from the idea of a pure theory of law in order to submit Nazi atrocities to legal judgment, but fails to provide a coherent method of opposing radical relativism by embracing a content-neutral concept of validity. Indeed, Kelsen clings to moral relativism, even though many scholars, like Radbruch, would argue that the extreme injustice of Nazism could be rationally justified as immoral. Kelsen's formalistic procedural argument, which fails to incorporate ideas of morality or legal validity, seems to be self-defeating as it therefore can be compatible with arbitrary and oppressive systems.²⁵

Another positivist approach, formulated by H.L.A. Hart, also fails to provide a sufficient response to the Nazi dilemma. Hart considered the issue, and Radbruch's response to it, in great detail.

Indeed, the 1958 debate between Hart and Fuller focused on Radbruch's Formula and the attempt to address the relationship between legal invalidity and immorality in the context of Nazi law and judicial procedure. The central problem which Hart had to face, then, was the implicit post-war recognition that positivism had strongly contributed to the horrors of Nazism.²⁶ Like Kelsen, Hart believed that there should be a separation of law and morals, with legal validity being identified through a purely legal criterion wholly separate from morality.²⁷ In considering the Nazi dilemma, Hart did not face the substantive dilemmas of moral relativism, outlining instead that Radbruch's Formula suffered from "an extraordinary naïveté" in repealing law's validity if it failed to conform to the minimum requirements of morality.²⁸ For Hart, legal validity was not in question – a morally iniquitous law is still the law. As John Austin asserted before him, saying that laws lose their validity if they conflict with fundamental principles of morality is akin to talking "stark nonsense."²⁹

In Hart's view, re-establishing the rule of law by imposing retrospective legislation, as "odious" as it may be, posed fewer problems and dilemmas than the idea of pretending that Nazi law was simply not law.³⁰ In making a choice between "two evils," Hart appeals to the principles of legality and the utilitarian notion that "laws may be law but too evil to be obeyed."³¹ Thus, as Harris explains, Hart believed that the statement of law and its criticism should not be confused.³² Hart, along the lines of Kelsen, presented retrospective legislation as a solution to the problem – a solution to which Radbruch also appealed as the only way to render justice in a "situation of drastic emergency."³³ The difference, however, lies in the ineffectiveness of the positivist approach in practical terms, as it fails to address the issues that arise from moral relativity and the non-recognition of the existence of universal moral truths. Thereby, positivism does not reconcile the dilemma of legal validity. In actual terms, positivism, with its lack of regard for issues of legal validity, failed to prevent a violation of victims' basic rights within Nazi Germany.

Radbruch's Formula Contrasted by Fuller's Perspective:

Contrary to the positivist side of the debate, Fuller appealed to an anti-positivist morality thesis claiming that law and morality are necessarily connected, with morality as the source of law's binding power. Fuller criticized positivism in favour of natural law theory, whose normative content, representing the inner morality of law, would tend to produce "goodness."³⁴ Fuller's requirement that there exist an

“inner morality of law” led him to assert, in regards to the Nazi question, that,

There is nothing shocking in saying that a dictatorship which clothes itself with a tinsel of legal form can so far depart from the morality of order, from the inner morality of law itself that it ceases to be a legal system.³⁵

This leads Fuller to criticize Hart, declaring that positivism failed to give “any coherent meaning to the moral obligation of fidelity to law.”³⁶ In this sense, then, Fuller is in accord with Radbruch insofar as laws that are irreconcilable with principles of fundamental justice can no longer be considered law. Unlike Radbruch, though, he does not provide a hierarchy distinguishing when morality should prevail over legal certainty.

According to Fuller’s “inner morality of law” and his belief in the principle *nullum crimen, nulla poena sine praevia lege poenali*, the idea of retroactive legislation is repugnant for its distinct lack of form and content; indeed non-retroactivity is one of the eight principles consistent with his inner morality of law. Facing the urgent post-war dilemmas, however, Fuller recognized that such principles of moral aspiration could not be absolute. Instead he argued for retroactive statute as a means of “isolating a kind of clean-up operation,” in order to allow a return to normalcy on the part of the judiciary that could incorporate the demands of legal morality and regain the ideal of fidelity to law.³⁷ Fuller thus provides a more complete view than the positivists Kelsen and Hart, but failed to appeal to the legal certainty which is necessary under ordinary times. Much of what Fuller desired was to maintain the integrity of procedural natural law. Ultimately, however, he failed to extend his analysis as far as Radbruch, who broadened his critique of Nazi law by considering such legislation a violation of substantive as well as procedural natural law.

The Superiority of Radbruch’s Formula over Positivist and Fullerian Theories:

In the end Radbruch contested unclear formalistic views of legal validity by integrating a criterion of basic justice into the concept of law. Kelsen and Hart’s positivist theories concluded that anything that can be manifested in legal form is valid law, regardless of its moral content, leading Radbruch to assert in 1946 that,

Positivism, with its credo 'a law is a law,' has in fact rendered the German legal profession defenceless against laws of arbitrary and criminal content. Positivism is, moreover, in and of itself wholly incapable of establishing the validity of statutes.³⁸

This statement reflects the inability of positivism to address the moral dilemmas and practical issues presented by Nazism, and its inability to articulate a theoretically sound response to the legal challenge that arose. He thus offers a sharp criticism of Kelsen and Hart, pronouncing that the only way to overcome an outlaw state is by "fundamentally overcoming positivism."³⁹ By emphasizing the essential requirement of justice and the equal treatment of individuals, Radbruch, unlike the positivists, is able to deal with the problems presented by Nazi law by discrediting Nazi decrees because they lacked "the very nature of law."⁴⁰ A content-neutral concept of the law provides no guidance and no clear solution, strongly contrasting Radbruch's Formula with an indifference to substantive justice. While Radbruch also made the case for retroactive legislation, the theories of Kelsen and Hart lacked effectiveness as they offered a merely procedural argument that failed to adequately address the substantive issue of legal validity.

Accordingly, Radbruch's view that *lex iniusta non est lex* fits to a significant degree with Fuller's view of unjust laws lacking, *prima facie*, the power to bind in conscience which just laws possess.⁴¹ As Fuller takes into account "the inner morality of law," Radbruch offers a coherent solution to extreme injustice by adopting a concept of law that integrates basic morality as a limiting criterion. Radbruch prevails over Fuller, however, in that Fuller's formal account of morality of law through his eight principles cannot replace Radbruch's substantive standards for validity. As Haldemann articulates, an unjust law can, in certain instances, fulfil the Fullerian requirements of the rule of law (including requirements for constancy, generality, and prospectivity, among others), and thus would not trigger the principle *lex iniusta non est lex*.⁴² In extreme cases, then, Radbruch includes Fullerian thought, but goes beyond him by establishing a more practical and appropriate theory by embracing principles of substantive as well as procedural natural law. Radbruch's formula provides for a threshold trigger, without completely abandoning the principles of legal certainty and positivism that Fuller implies with his procedural natural law approach to conceptualizing law. In this way, Radbruch's Formula is more attractive than the theories presented by Kelsen, Hart or Fuller as it

provides a balance between legal certainty and a basic desire for moral humanity and justice. Radbruch offers a middle ground and a practical method to implement a values-based form of justice.

Conclusion:

As this essay has illustrated, the Nazi regime created fundamental moral dilemmas within legal philosophy as it posed the problem of the existence of morally evil law. After WWII this had profound effects on jurists and had major impacts on the fundamental jurisprudential debates regarding the relationship between law and morals, and on the concepts of law and legal validity. Though Radbruch, Kelsen, Hart and Fuller each attempted to sort out the moral dilemmas through a jurisprudential analysis of the concept of law, it is Radbruch's Formula that is the most capable of dealing with the quandaries of Nazi legislation. Radbruch addresses the substantive issue of legal validity and is able to bridge the gap between legal certainty and justice in extraordinary cases. In this way, he is able to find a balance between justice and fairness, which is the most adept solution in facing the recurring problem of morally evil law.

¹ David Fraser, "This Is Not Like Any Other Legal Question: A Brief History of Nazi Law Before British and American Courts," *Bepress Legal Series* (2003):1.

² Laurence Lustgarten, "Taking Nazi Law Seriously," *The Modern Law Review* 63, no. 1 (2003): 128-9.

³ Fraser, "This Is Not Like Any Other Legal Question: A Brief History of Nazi Law Before British and American Courts," 129.

⁴ Michael Stolleis, *The Law under the Swastika: Studies on Legal History in Nazi Germany*, trans. Thomas Dunlap (Chicago: University of Chicago Press, 1998), 14.

⁵ Frank Haldemann, "Gustav Radbruch vs. Hans Kelsen: A Debate on Nazi Law," *Ratio Juris* 18, no. 2 (2005): 162.

⁶ Stolleis, 10 and 15.

⁷ Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 8.

⁸ Karl Jaspers, *The Question of German Guilt*, trans. E. B. Ashton (New York: Fordham University Press, 2001 (1st ed. 1946)), 55-6.

⁹ *Ibid.*

¹⁰ Haldemann, 162.

¹¹ Radbruch qtd. in Haldemann, "Gustav Radbruch vs. Hans Kelsen: A Debate on Nazi Law," 164. Emphasis in original.

¹² Goethe qtd. In Gustav Radbruch et al. *The Legal philosophies of Lask, Radbruch, and Dabin*. Trans. Kurt Wilk (Cambridge: Harvard University Press, 1950), 117-8.

¹³ Haldemann, 164.

¹⁴ Radbruch qtd. in Haldemann, 167.

¹⁵ Radbruch, 7.

¹⁶ Ibid, 11.

¹⁷ Haldemann, 163.

¹⁸ Radbruch, 7.

¹⁹ Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher," *Journal of Law and Policy* 2 (2000): 490-1.

²⁰ Hans Kelsen, *Introduction to the Problems of Legal Theory*, Trans. Bonnie Litschewski Paulson and Stanley L. Paulson (New York: Oxford University Press, 1992), 1.

²¹ Haldemann, 167.

²² Kelsen, 7-8.

²³ Kelsen, 56-7 and 60-1; J.W. Harris, *Legal Philosophies*, 2nd ed. (New York: Oxford University Press, 2004), 3.

²⁴ Hans Kelsen, "Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?" *The International Law Quarterly* 1, no.2 (1947): 165.

²⁵ Haldemann, 174.

²⁶ H.L.A. Hart, "Positivism and the Separation of Law and Morals (1958)" in *Law and Morality: Readings in Legal Philosophy*, ed. David Dyzenhaus, Sophia Reibetanz Moreau and Arthur Ripstein (Toronto: University of Toronto Press, 2007), 43. Lon. L. Fuller, "Positivism and Fidelity to Law – A Reply to Professor Hart (1958)," in *Law and Morality: Readings in Legal Philosophy*, ed. David Dyzenhaus, Sophia Reibetanz Moreau and Arthur Ripstein (Toronto: University of Toronto Press, 2007), 93.

²⁷ Haldemann, 172.

²⁸ H.L.A. Hart, 44.

²⁹ Ibid, 42.

³⁰ Ibid, 45.

³¹ Ibid, 45-6.

³² Harris, *Legal Philosophies*, 19.

³³ Fuller, "Positivism and Fidelity to Law – A Reply to Professor Hart (1958)," 90.

³⁴ Ibid., 73.

³⁵ Ibid, 94.

³⁶ Ibid, 91.

³⁷ Ibid, 95.

³⁸ Radbruch qtd. in Haldemann, 163.

³⁹ Radbruch, 8.

⁴⁰ Ibid.

⁴¹ Harris, 18.

⁴² Haldemann, 176.

OPPOSING GRADIENTS: SHADES OF GENOCIDAIRES, MILITANTS AND REFUGEES

Hillson Tse

Refugee camps are intended to be sites of safety and sanctuary. The presence of militarized elements within refugee camps threatens the security of those who are already vulnerable and marginalized. This essay examines some of the underlying causes of refugee camp militarization and how the militarization of camps can result in regional destabilization, camp violence and the disruption of humanitarian aid to legitimate refugees. In addressing the problem of refugee camp militarization, I will suggest that the United Nations High Commissioner for Refugees and international community utilize a flexible response strategy in order to adapt to the diverse nature in which militarization thrives and develops.

Introduction:

The picture of a smiling child amidst a poor, run down tent city is a common image used to represent the plight of refugees and internally displaced persons (IDP). What remains unseen however, is the shadow of the less innocent: the combatants, *genocidaires* and rebels that hide behind that smiling child. The militarization of refugee camps has become an increasingly common phenomenon given protracted refugee situations and the nature of intra-state conflicts. Militarization is of critical concern to the function of humanitarian aid because it undermines the very principles of neutrality and impartiality while also threatening the security of camp inhabitants, the local population and surrounding region. In this essay, I will begin by detailing the background of militarization in refugee camps, motivations behind refugee militarization and the security threats that militarization poses. I suggest that the United Nation High Commissioner for Refugees (UNHCR) with the assistance of the United Nations (UN) should adopt flexible response strategies to the demilitarization of refugee camps through encouraging and supporting border patrols in host countries with militarized refugee camps, establishing effective policing strategies in camps and, in some cases,

relocating refugees in order to break up militarized camps. Furthermore, the UN and its member states must be willing to increase their support of camp demilitarization efforts through monetary and military means but, most importantly, through increased resettlement efforts so that refugee camps will only be temporary solutions to refugee crises.

Sources of Militarization:

The increase in militarization of refugee camps can be attributed to four primary factors: a re-evaluation of refugee political importance by the West, an increase in internal violent conflict from sending states, a lack of host country ability to control militarization and ineffective or even negative international action with regards to camp militarization. During the Cold War era, refugees and the security concerns they posed were seen as components of a “broader and wider set of geo-political considerations,” given the political climate of the time.¹ As such, refugees were considered to be political actors and the West was eager to support and accommodate refugee movements from Communist countries through generous burden-sharing and resettlement schemes. However, as Cold War politics subsided there was a decline in the willingness of developed countries to assist and accept refugees in the absence of tangible benefits to the state. Rather, states moved to policies favouring refugee encampment and also containment of refugee flows to the country of origin.² This decline in resettlement and also general willingness to assist refugees has paved the way for protracted refugee situations and also refugee camp militarization.

Another contributing factor to camp militarization is the increase in the spread of internal conflict which has resulted in “large-scale migration and refugee flows” in which rebel and military elements have been able to hide effectively.³ The extent to which refugee camps can be militarized depends primarily on the political context of each refugee situation and also, to some extent, socioeconomic factors.⁴ One method of evaluating the risk of refugee militarization is to examine the type of refugee flow from the country of origin. Depending on the political conditions and reasons for refugee movements, the willingness to militarize or the conditions for return to the sending state can vary.⁵ Lischer identifies three groups of refugees: situational, persecuted and state-in-exile. Situational refugees pose a relatively low risk, with persecuted refugees at medium and state-in-exile groups at high risk. In the case of state in exile refugees, there is a

“highly organized political and military leadership” structure that facilitates the manipulation of refugee movements and the presence of “aggressive goals, which likely include a radical change in the government of the sending state.”⁶ As such, state-in-exile groups are likely to conduct cross-border strikes in an attempt to gain political power and are unwilling to return unless their aims are fulfilled.

Another factor in refugee camp militarization is the host state’s willingness and capacity to halt violence and control the militarization of camps. As UNHCR has no mandate for security, the primary responsibility for the maintenance and demilitarization of refugee camps falls on the host states. A host state that has both willingness and capacity to halt militarization can reduce cross border raids and can more effectively demilitarize and demobilize militant refugees, while states that lack either willingness, capacity or both will see increases in cross border violence.⁷ Finally, international influences and state based interests can affect demilitarization efforts. In some cases, state actors have even abetted the militarization by refugee groups and camps in order to achieve self-serving interests. Such cases include the US support of militarized refugee camps controlled by anti-communist rebels in Cambodia and also the US support of Contra rebels in Nicaraguan refugee camps.⁸ The UN is also reluctant about providing military support for camp security as a result of high costs and due to the lack of member state conviction for military deployment.

The Quagmire that was Zaire:

A brief case study of a militarized refugee camp can illustrate the processes and power structure that enabled militarization. From the many instances of militarized refugee camps that have occurred, probably the most alarming situation was when 1.5 million Rwandan refugees fled to neighbouring Zaire following the Rwandan genocide and overthrow of the Hutu government by the Tutsi Rwandan Patriotic Front.⁹ The types of refugees and their reasons for fleeing Rwanda can be characterized into two groups. The first group were those who had directly participated in or organized the genocide and the second group consisted of innocent Hutu civilians.¹⁰ The first group fled Rwanda fearing reprisals for their roles in the genocide once the Tutsi’s gained power. The second group fled also due to fear of reprisals promoted by propaganda, escape of generalized violence and, in some cases, were forced into serving as “shields” for those that had planned and executed the genocide.¹¹ As such, the refugee population from Rwanda consisted of both armed military and government elements and also legitimate

refugees. An estimated 50,000 refugees in Zaire-based camps consisted of former Rwandan soldiers who hid among the refugee population and obtained food, medical services and shelter at the camps.¹² Propaganda and coercion were used to discourage refugee repatriation to Rwanda and maintain control over the camp population.¹³ From the camps, the former government officials and military pursued “the continuation of the war by other means,” conducting cross border attacks on the Tutsi led Rwandan government.¹⁴ These actions eventually led to border destabilization and the Zairian closure of the refugee camp, culminating in the forced repatriation of 500,000 Hutus back to Rwanda in 2000.¹⁵

Instability and the Security Aid Dilemma:

Militarization of refugee camps brings about many concerns regarding the nature of security and humanitarian aid. The presence of militarized refugee camps can have adverse security effects on refugees, the host country, the country of origin and also the surrounding region. Militarized refugee camps act essentially as safe havens from which militants can launch attacks on other states, recruit fighters, receive supplies and maintain a support base. Such refugee camps also pose a significant danger for legitimate refugees through campaigns of violence and terror waged by militarized groups, forced military service and misappropriation of supplies. As one aid official commented on the conditions in Zaire, “The way the camp was organized, it was militiamen who determined food distribution, [and] access to hospitals. [Militia] police ran the camp. The refugees were more like hostages than refugees getting direct aid.”¹⁶ For the receiving state and sending state, cross border attacks by refugees and the sending state can increase state tensions, threaten state sovereignty and possibly embroil the region in conflict. Militarized camps can also contribute to ethnic or factional violence among refugees and internal violence within the receiving state.¹⁷

The dilemma faced by humanitarian aid providers is that through funding and operating known militarized refugee camps, aid agencies are either directly or indirectly supporting militant movements. This violates the humanitarian principle of maintaining neutrality in conflicts. Means through which humanitarian aid may support violence are instead feeding militants, sheltering militants’ families, supporting war economies and providing legitimacy to combatants.¹⁸ As the humanitarian principle of neutrality is usually defined as not taking sides in hostilities, such funnelling of humanitarian aid from legitimate refugees to violent elements results in

a significant security-aid dilemma. While humanitarian aid operates on the basis that aid is to be impartial and provided on the basis of need alone, militarized refugee camps present a contradiction in humanitarian principles for the UN and other non-government organizations (NGO), threatening the provision of aid to legitimate refugee groups. In the case of the Great Lakes' refugee crisis, widespread misappropriation, violence and corruption in militarized refugee camps led to the complete withdrawal of Doctors Without Borders and the International Rescue Committee from humanitarian aid operations in the region.¹⁹ As such, militarized refugee camps do not only pose direct threats to external and internal security but can also contribute indirectly to deteriorating refugee conditions through forcing aid organizations to re-evaluate their rationale for providing humanitarian aid.

Developing a Flexible Response:

The first and probably most important method of demilitarizing refugee camps is the patrolling of borders between the sending and receiving state. Border patrols can stem cross-border raids from both sides and minimize intra-state tensions in the area. Preventing the militant refugees from conducting their raids also robs them of their purpose and may lead to the breakup of the group's organization. Border patrols have been effective in Tanzania with Rwandan refugees when the government prevented cross border raids and in Guinea where the Economic Community of West African States (ECOWAS) deployed a multinational force in order to patrol the border between Guinea and Liberia.^{20 21} The barrier facing border patrols is that the primary duty for providing security lies with the host state. In some circumstances, the host state may be unable to enforce their border controls and may even be encouraging cross border raids. Where border patrols cannot effectively police the border and prevent violence, the international community can fill the void by committing a security force to assist in border patrols with the consent of the host state or as part of a peacekeeping operation between the receiving and sending state.

Whereas border patrols seek to minimize aggression across borders, there must also be solutions that address militarization inside the camps. A critical initiative to demilitarization is the establishment of an effective policing force within refugee camps. In Guinean refugee camps, the Brigade Mixte (BMS) was formed with the responsibility of "policing within the camps, providing security for humanitarian

personnel and activities, and cooperating with elected refugee committees and the Refugee Security Volunteers to promote law and order in the camps.”²² In response to a training deficit, two Royal Canadian Mounted Police officers were responsible for training the BMS in policing procedures and human rights.²³ Reviews of the initiative have revealed a significant improvement in camp security since the training initiative and increased refugee confidence in the BMS.²⁴ However, the BMS is still suffering from a lack of proper funding and of equipment necessary to fulfil its responsibilities in full.²⁵ Increased support through the provision of equipment and funding to policing groups by the UNHCR or the UN could greatly improve this program’s effectiveness.

Finally, another important solution for the demilitarization of refugee camps is the relocation of camps to areas further away from the border. In Guinea, the realization that armed groups were hiding amongst refugees led to a mass relocation of refugees to six new camps.²⁶ Throughout the relocation process, the Guinean military checked the refugees for weapons and operated guarded escorts to the new sites.²⁷ In the camp, new policing strategies were implemented which culminated in the “maintenance of law and order in the camps” and helped focus security efforts.²⁸ Other instances of the relocation or separation of militants from refugees have also occurred in places such as Zongo, Democratic Republic of Congo where separate camps were established for ex-combatants and refugees.²⁹ The difficulty of camp relocation is that one must be able to identify legitimate refugees from combatants, negotiate successfully with the government and local authorities for access, preserve family unity and also obtain the military support necessary for such an operation.³⁰ While relocating camps is a relatively more drastic initiative, it is a component of a flexible response strategy that provides the UNHCR and host countries a method of countering severe camp militarization.

Conclusion:

The above-mentioned solutions are just some of the means available for addressing the militarization of refugee camps. A flexible response encompassing a variety of different solutions is required in order for the UNHCR to successfully adapt to the various conditions in which militarization arise. Any attempt to address the security concerns posed by militant refugees must take into account their interactions with other actors outside of the camp, their actions inside the camp and must analyze how to address militant refugees once they have been

demilitarized and demobilized. The role of the international community is critical to the demilitarization of refugee camps, as it is only through a sufficient level of funding and support that demilitarization initiatives become effective. Developing countries with low capability to stem refugee violence and control the conditions in which camp militarization occur must be assisted by international efforts through monetary, logistical or military support. As in the case of Guinea, only two RCMP officers were capable of creating significant improvements in camp conditions. In countries where there is low willingness to halt refugee violence, the international community must place increasing pressure on host governments to respond and to allow a greater and more influential presence of the international community in militarized refugee camps. In instances of severe militarization, host government ineptitude or receiving state aggression, the threat of force or even the use of force by the international community must be taken into consideration as part of a flexible response strategy to ensure security. Finally, in order to further supplement the containment of violence in militarized refugee camps, there should be a stronger commitment by developed states to resettle refugees from camps, rather than a policy of favouring prolonged encampment.

¹ Gil Loescher and James Milner, "Security Implications of Protracted Refugee Situations", *Adelphi Papers* 45:375 (2005): 24

² *Ibid.*, 28.

³ Sarah Kenyon Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*, (New York: Cornell University Press, 2005): 4

⁴ *Ibid.*, 18.

⁵ *Ibid.*, 20.

⁶ *Ibid.*, 24.

⁷ *Ibid.*, 29.

⁸ *Ibid.*, 3.

⁹ Ben Barber, "Feeding Refugees, or War?", *Foreign Affairs* Vol. 76 Issue 4 (1997): 10

¹⁰ Kurt Mills, *Refugee Return from Zaire to Rwanda: The Role of UNHCR*, Howard Adelman, ed. *Analyzing and Evaluating Intervention in Zaire, 1996-97*, (Africa World Press/the Red Sea Press, 2002): 2

¹¹ *Ibid.*, 3.

¹² *Ibid.*

¹³ Barber, 11.

¹⁴ Mills, 3.

¹⁵ Barber, 10.

¹⁶ *Ibid.*

¹⁷ Lischer, 13.

¹⁸ *Ibid.*, 6.

¹⁹ Barber, 13.

²⁰ *Ibid.*, 10.

²¹ James Milner, "The Militarization and Demilitarization of Refugee Camps in Guinea", *SAS ECOWAS PART 1 DEF* (2005): 161.

²² *Ibid.*, 157.

²³ *Ibid.*, 158.

²⁴ *Ibid.*, 159.

²⁵ *Ibid.*

²⁶ *Ibid.*, 155.

²⁷ *Ibid.*, 156.

²⁸ *Ibid.*

²⁹ Lisa Yu, "Working Paper No. 60: Separating Ex-combatants and Refugees in Zongo, DRC: peacekeepers and UNHCR's "ladder of options" ", *New Issues in Refugee Research*, (Queens' University, 2002): 6.

³⁰ *Ibid.*, 7-9.

THE TALE OF JACKAL AND TRUSTING LION: DEVELOPMENT AND POLITICAL INTERVENTION IN ANGOLA

Will Plowright

This paper analyzes development in Angola, and how it has been used as a form of intervention by foreign powers. Specifically, this has occurred amidst a hubristic dialogue of development, while in reality, it occurs as a process of theft and corruption. This has occurred in three different eras: Portuguese colonialism, Cold War interference by the superpowers, and the corrupt international trade practices of the contemporary era. In all three cases we can see that development in Angola parallels the African parable of the lion and the jackal, in which the lying jackal stole the lion's food and left him to starve.

In the postcolonial era, international development has been darkly muddled by the interference of foreign politico-economic interests. The disciplinary international relations view of development is one that is inherently biased and Eurocentric, and is heavily laced with notions of a pathologised Third World that is 'undeveloped' or 'uncivilized'. As a Western tradition, international relations is one based in European concepts of modernity and progress, which do not embrace the varied traditional forms of knowledge of the non-European world. The terms for referring to the Third World 'other' may have changed over time from colonialism's terminology of the 'savage and uncivilized', to the modern 'developing'; however, the connotations are the same. National and transnational actors - from foreign nations, international intergovernmental bodies, and even corporate interests - have sought to hijack the process of development, and use it as a means to attain selfish goals. This is accomplished through offers and promises to developing countries, which those countries are coerced into accepting even when it is not in their interest to do so. By analyzing the case of Angola, we can highlight three separate stages of international interference under the justification of development: the period of Portuguese colonialism, 1575-1974; superpower involvement during the Cold War, 1974-1991; and the current methods of corrupt

trade and liberalisation. In the case of Angola, we can clearly see that the siren song of development has been used as a false flag, to lure Angola into foreign political interference. As with the myth of the time Jackal tricked Lion into sharing his food – as Lion’s cubs starved – so in Angola, the people themselves have suffered as they have been lured into the false promise of development.

In modern international relations, ‘development’ is the framework for interaction between the developed West and the developing Third World, just as colonialism was previously the framework for the one-way dialogue between the empire and the ‘Dark Continent.’ Though much of Africa was being liberated from the shackles of imperialism in the 1960s, Angola was still held tightly within the grip of Portuguese control. The imperial interests of Portugal were not conducive to Angolan development; in fact, they were the opposite. Portuguese desire for a settler state in Africa, as well as the search for oil profits, actively retarded and reversed the course of Angolan development. The anti-colonial struggle was one in which Portugal’s use of hard power was justified by a mantra of ‘might is right,’ as the developing nation’s indigenous knowledge was subverted or destroyed, and its people oppressed and dehumanized. Local religion, culture and ways of life were obliterated in the path of the enforced change to European ‘civilization.’

The fascist imperial regime in Lisbon sought to prop up its outdated authoritarian regime and struggling economy through financial gains from Africa.¹ These repressive colonial actions were justified through a rhetoric which claimed to be assisting the poor Africans in desperate need of civilization, while trumpeting the highly advanced and superior nature of the European. The bloody struggle that should have been within Portugal itself against the fascist state was exported to the colonies where tens of thousands would die at the muzzles of colonial rifles and from the missiles of imperial aircraft, as indigenous populations fought the advance of European empire.² Colonialism acted as a force of bloody repression which served the interests of white settlers and the fascist regime’s thirst for oil, while the dictator Antonio Salazar made promises that Angolans would receive “development” and that “populations will be brought more and more into local political and administrative life.”³ It is here that the promises of development can be seen as an example of the classical thought of international relations related to political economy; development was to occur at home, not in the colonies. The Portuguese had expressed humanitarian concerns for Angolan development, yet

only acted to perpetuate the domination and inequality at the heart of the Angolan problem.

The Portuguese dictator Antonio Salazar made promises of development during the colonial era, asserting that he would “assimilate” the “uncivilized” Africans into a system of European values.⁴ His plan, issued in 1948, emphasized the development of railways, ports, harbours, and improved education for whites. This came with an underfunded education system for Africans, which, even prior to these changes, was overtly racist and underdeveloped. The colonial regime promised that the weakened Angolan education system was in order to encourage “self-help,” so that Angolan communities could develop themselves.⁵ In spite of this rhetoric, the reality was quite different; it was actually done in order to build infrastructure for the in-coming white settlers, while keeping the black African population uneducated, poor, and a continued source of indentured labour to support the colonial authority. It was claimed that Angolans would achieve development education through employment in the oil fields.⁶ In this first era of Angolan development, the contradictions are glaringly apparent, as the actions taken by the Portuguese imperial government were not done in favour of Angola, but in the interests of empire itself.

The self-interested actions of the Portuguese led to the Angolan War of Independence, a protracted thirteen-year conflict beginning in 1961, which cost tens of thousands of lives.⁷ This would finally lead to Angolan independence in 1964, which would see the commencement of the second stage of Angola’s turbulent modern history. The politicization of development in the interest of foreign powers can be further seen through this second stage of humanitarian intervention: the Cold War. At the end of Portuguese rule in 1975, the international community perceived a political vacuum in Angola.⁸ In a typical example of the rationalization of international relations, the international community did not see the possibility or legitimacy of a home-grown regime but, instead, saw the situation as a microcosm of the Cold War. The United States and the Soviet Union both sought to grasp Angola within their steely ideological embrace, and gain an important foothold in Africa. Very soon, divisions emerged along the lines of the Marxist MPLA and the pro-Western UNITA. A bloody conflict raged between these groups for a horrific twenty-seven years, killing more than 500,000 people.⁹ Both superpowers had quickly become involved in the perpetuation of the Angolan Civil War, pursuing their own political and economic interests while making promises of assistance and development to their new clients.

The status of development as a means of negative political intervention can be seen through Soviet and American ‘assistance’ to Angola. In one of the most contradictory and shameless actions of international interference, the United States offered a covert arms package worth \$15 million to UNITA leader Jonas Savimbi, while his opponent MPLA government was one of the US’s largest trading allies on the African continent.¹⁰ This came amidst pro-development rhetoric from the American State Department, which noted that such trade between the USA and the MPLA was “in the long-term interests of both our nations.”¹¹ The hypocrisy of the situation is clear; the USA was willing to provide one side of the conflict with weapons and ideological support, while giving the other side incredible amounts of trade and economic growth. Cyrus Vance, American Secretary of State at the time, commented that his country was pursuing a policy with the MPLA of “peaceful development” in Angola.¹² At the same time, the Soviets were supplying the MPLA with largely military aid in order to promote “non-capitalist development.”¹³ The battle between America’s “peaceful development” and the Soviet “non-capitalist development” was one that was largely supported with military hardware, and had little to do with assisting those suffering on the ground. In fact, the situation was quite the opposite, for it was the American and Soviet support and ‘development’ which provided the weapons with which the war raged for twenty-seven years.

The political intentions of both superpowers are clear; they sought economically strong regional allies and, equally importantly, they sought to assure that their superpower opponent *did not* gain these regional allies. The future of Angola, its people, and any development of the nation, were all peripheral to the interests of the ideological game of superpower chess. In this game, the position of Angola as a pawn mattered little, provided that it played its part in the greater anti-Soviet or anti-capitalist battle. At independence, Angola was granted sovereignty, on the condition that this sovereignty was not used to pursue an independent and indigenous narrative, but instead was used to act as a subjugated state that fell in line with one of the ideological superblocks. Any promises made to Angola with regards to development were merely a mask hiding true political intentions, in order to ensure that the Angolan players maintained their seats at the table on the ‘right side’ of the non-African ideological struggle.

The further use of development as a means of political intervention can be seen in the final period of Angola’s troubled history - the contemporary era. As the Cold War faded and died, the MPLA emerged as victorious in the civil war, though it abandoned its previous

Marxist rhetoric and pursued a policy of neoliberalism.¹⁴ Recently, massive new oil reserves have been discovered in the central African country and it has received new attention from developed nations thirsty for oil.¹⁵ Promises have been made to the people that the development of oil industries will lead to a development of the Angolan nation. It is telling of the cyclical nature of history and African development that modern neoliberals would use rhetoric identical to that used by Portuguese colonial authorities. Though the trade was formerly done to obtain weapons for war, the MPLA party elite now seeks to line their own pockets. Far from benefiting the people of Angola, the oil industry has created a wealthy and corrupt elite that controls a government that has largely abandoned social services and welfare.¹⁶ Foreign corporations – among them British Petroleum – have publicly admitted to paying bribes to ensure contracts in the area.¹⁷ In this example, corporations interfere in government to ensure it promotes trade, while abandoning the promises of development for the people.

It is equally important to analyze the role of the major trading partners, and their interference with Angolan politics. At present, oil represents a massive ninety-two percent of Angola's economy, most of which is traded with the US.¹⁸ The current American government's strategy was summarized in a key document written by the Council on Foreign Relations, entitled *Toward an Angolan Strategy*. The first paragraph of this document is incredibly honest, noting that because of Angola's oil reserves, few countries "are more important to American interests."¹⁹ The document continues to note that the United States' prime goal in Angola is to assist with the country's development, human rights, and government.²⁰ In reality, little is being done to actually support development because of the necessity to maintain trade in Angola's oil. In his study of the emerging oil economies in central Africa, Patrick Bond notes that corrupt countries such as Angola are propped up by trade with oil-purchasing countries. He further comments that for foreign powers trading with Angola,

petroprofits vastly outweigh human and environmental considerations... as a result, it is crucial to look deeper at the revitalized pro-Africa rhetoric, and to unearth the more durable, exploitative factors associated with allegedly increased amounts of aid, credit and debt relief to dictatorial regimes.²¹

After meeting with MPLA President dos Santos, President George W. Bush issued a statement asserting that “trade is the surest path to sustainable development” and praised dos Santos and his corrupt regime.²² It quickly becomes clear that the US, by propping up the corrupt regime in Angola through trade, is the very power that is perpetuating corrupt rule. Just as American support of UNITA prolonged the Angolan Civil War, so does American support for the corrupt MPLA government perpetuate the damaged and deteriorating state of Angolan society.

There can be no doubt that the results of development in Angola are ones which have failed to live up to the grandiose promises made by foreign actors. As Wolfgang Sachs noted, “the idea of development stands as a ruin on the international landscape.”²³ Though Sachs was speaking of development across the world, one can certainly surmise that Angola is the perfect example of this. Instead of being helped along the path of development, the Angolan people have been deluded into embracing false promises and hopes delivered to them by foreign actors. There can be no doubt that some form of involvement in the global political economy is necessary in order for Angolans to receive the promises made by “development”. At the same time, however, there can be no doubt that in order for this to occur, an independent and indigenous Angolan political and economic narrative must be pursued, which is free from the selfish interference of foreign jackals. Should this occur, Angola can pursue a course of its own interest and self-development, instead of fuelling the development of others.

In African mythology, there is a tale of the time that Jackal offered to help Trusting Lion hunt, with the promise that if they caught a small animal it would be Jackal’s, and if they caught a larger animal it would be Lion’s. No matter what the two caught, Jackal claimed it was his, always telling Lion that the animal they caught was smaller than another animal they could see. Jackal’s pups grew strong, while Lion’s cubs starved due to Jackal’s trickery.²⁴ The story is not only an example of the kind of indigenous African cultural knowledge and oral tradition that has been subjugated or placed in the periphery; it is also a fitting metaphor for the political rhetoric of development. No matter what Lion catches, Jackal takes it, convincing Lion that he will help him do better. No matter what promises are made to the people of Angola in the name of development, foreign actors are only concerned with their own aims. The fruits of the partnership ‘hunt’ - that is, development in Angola - were obtained through aims and ambitions that only suited the Jackals in Lisbon, Washington and Moscow. Despite the false promises

made, Angola remains one of the poorest nations in the world in terms of actual average income.²⁵ The indigenous people have been swept aside in Angola, as the rhetoric of development opens them to political intervention from foreign powers in the name of humanitarianism.

Throughout modern Angolan history, development has been a tool used for political intervention in the country. In the colonial era, the Portuguese jackals openly exploited the country to suit their own aims and goals, with promises that they would civilize Angola. In the post-independence era, both the US and the Soviet Union armed their own packs amidst promises of “peaceful development” and “non-capitalist development” that abandoned the country to civil war for almost thirty years. In the most recent era, international agents support their own pack of jackals in Angola itself, while running off with Angola’s oil profits – ninety-two percent of the economy – just as Jackal stole Trusting Lion’s food. All of this is done with that most hypocritical of promises; that the actual process of theft and intervention itself is done in the best interest of the people of Angola. Development itself has been a false flag of humanitarian concerns, while being the largest force that perpetuates those very humanitarian crises. It has been a method of self-motivated political intervention, causing Trusting Lion’s cubs to starve, while Jackal repeatedly runs away with the kill.

¹ Kenneth Maxwell, *The Making of Portuguese Democracy* (Cambridge: Cambridge UP, 1997), 19.

² Ole Gjerstad, *The People in Power: An Account from Angola’s Second War of National Liberation* (Detroit: University of Michigan Press, 2006), 11.

³ Douglas Brinkley, *John F. Kennedy and Europe* (Washington: LSU Press, 1999), 158.

⁴ Dickson A. Mungazi, *The Struggle for Social Change in Southern Africa*. (New York: Taylor & Francis, 1989), 45.

⁵ Mungazi, 115.

⁶ Ibid.

⁷ Rukhsana A. Suddiqui, *Sub-Saharan Africa in the 1990s: Challenges to Democracy and Development*. (Westport, CT: Greenwood Publishing, 1997), 39.

⁸ Senyo B-S K. Adjibolosoo, *Addressing Misconceptions about Africa’s Development* (Detroit: University of Michigan Press, 1998), 180.

⁹ Thomas M. Leonard, *Encyclopaedia of the Developing World* (New York: Routledge, 2006), 1087.

¹⁰ Joseph Hanlon, *Beggar Your Neighbours* (Bloomington, IN: Indiana UP, 1987), 170.

¹¹ Ibid.

¹² George Wright, *The Destruction of a Nation: United States’ Policy Toward Angola Since 1945* (London: Pluto Press, 1997), 89

¹³ Arnold Hughes, *Marxism’s Retreat from Africa* (London: Frank Cass & Co., 1992), 16.

¹⁴ Frederick Cooper, *Africa since 1940: The Past of the Present, New Approaches to African History* (Cambridge: Cambridge UP, 2002), 143.

¹⁵ Andrea E. Goldstein, *Regional Integration, FDI and Competitiveness in Southern Africa* (Paris: OECD Publishing, 2004), 10.

¹⁶ James J. F. Forest, *Oil and Terrorism in the New Gulf: Framing U.S. Energy and Security Policies for the Gulf of Guinea* (Plymouth, UK: Lexington Books, 2006), 34.

¹⁷ *Ibid.*

¹⁸ Patrick Bond, *Looting Africa: The Economics of Exploitation* (Durban, South Africa: University of KwaZulu-Natal Press, 2006), 58.

¹⁹ Council on Foreign Relations, *Toward an Angolan Strategy: Prioritizing U.S.-Angolan Relations* (New York: Council on Foreign Relations Press, 2007), 3.

²⁰ *Ibid.*

²¹ Patrick Bond, 105.

²² Office of the Press Secretary, "President Meets with African Leaders", 7 February, 2002, available from <http://www.whitehouse.gov/news/releases/2002/02/20020226-3.html>; Internet; accessed 17 September, 2008.

²³ Wolfgang Sachs, *The Development Dictionary: a Guide to Knowledge as Power* (London: Zed Books Ltd, 1992), 5.

²⁴ Jay Heale, *African Myths and Legends* (Cape Town: New Holland Publishing, 2001), 48.

²⁵ Sergio Pereira Leite, *Angola, Recent Economic Developments* (Washington, D.C.: International Monetary Fund Press, 1995), 1.

**GLOBALIZATION AND DEVELOPMENT:
MANAGING INTEGRATION THROUGH THE
USE OF STATES, INSTITUTIONS AND
INNOVATION**

Simon Kelly

This article is a response to the frequently considered question of whether economic globalization – a seemingly inevitable phenomenon – presents the developing world, primarily, with new and greater challenges, or instead, promising opportunities for growth and prosperity. Rather than offering a particular view on a problem that indeed, is endlessly debatable, attention here is focused on cases in which new forces of globalization have been managed successfully in ways that maximize the prospects for development, and simultaneously minimize the risks. Within this narrative, the author builds an argument around the crucial necessity of strong state capacity, effective institutions, and the indispensability of innovative mindsets.

Introduction:

The notion of ‘globalization’ has garnered mixed responses from scholars of development studies, ranging from euphoric enthusiasm to cautious trepidation over the possible opportunities for abuse and exploitation. This sceptical perspective includes both those who perceive international economic integration as little more than a tool for the world’s rich and industrialized nations to prolong their dominance in the post-colonial era, and those who realize the potential benefits of involvement in a broader global economy, but question the ability of this involvement to provide real and sustainable gains in development.

Nevertheless, economic globalization – in the sense of greater levels of trade between nations and increased flows of financial capital – has proven to be a source of prosperity for a number of the world’s key developing economies – most notably China, India, and Korea. However, to understand why this has been the case, especially when globalizing policies elsewhere have resulted in such failure, there is a need to deconstruct assumptions about what economic ‘globalization’

actually means, and a need to examine how it is that certain countries have been able to develop their own unique appreciation for what economic integration can and cannot accomplish, and how it should be approached.

In this paper, I argue that developing nations that have benefitted the most from globalization are those that have been able to 'manage' its implementation. In doing so, these countries have relied upon active state involvement characterized (and facilitated) by strong and appropriately constituted institutional settings. In this way, countries like China, India, and South Korea have been able to pursue innovative approaches to kick-starting growth at home, alongside methods for expanding economic activity and business transactions at the global level. Moreover, this has been accomplished through strategies that account for the inherent strengths and weaknesses of their respective domestic economic structures, sometimes using unorthodox formulas to achieve integration in ways that maximize the potential benefits for growth and development.

I begin with a discussion of how, in the formative years of international economic integration, attention to the importance of the 'state' was neglected, and why this has been problematic for much of the developing world. I then look at ways in which state involvement has been a key force in the process of development within successful globalizing economies, drawing attention to the significance of state capacity versus its scope. Next, I provide a discussion of the importance of domestic institutions – both within the context of globalization, and in the more general field of development studies. Lastly, I emphasize the value of unorthodox approaches, as well as the need for developing countries to craft dynamic strategies in maximizing the benefits of reform and integration, while simultaneously minimizing the risks.

Reconsidering the Importance of the State:

For many poor countries in Latin America, Sub-Saharan Africa, and parts of Asia, prescriptions for openness to international trade and finance have met with less than optimal outcomes for poverty reduction and growth. For these countries, prescriptions for global integration have been promoted almost as an end in themselves, usually involving combined programs of rapid trade liberalization and financial deregulation – but also sweeping structural reforms that aim to minimize the extent of state involvement in the economy. Designed to harness the comparative advantages of individual economies (while

creating market-based incentives free from state interference and other distortions), the now infamous Washington Consensus reflects policy arrangements that have been successful in a number of advanced Western economies, but that have been exported under the misguided view that they constitute a necessary and sufficient means to development under other circumstances.¹

Contrary to the anticipated outcome of rapid and spontaneous growth, many developing economies adhering to these stringent policies of privatization, austerity, and liberalization suffered, instead, intense levels of new unemployment, social unrest, and, as a result of a greatly reduced state capacity, the inability to mitigate shocks and macroeconomic instability wrought by exposure to the global economy. Members of the international globalization establishment, including the International Monetary Fund (IMF), World Bank (WB), World Trade Organization (WTO), and United States Treasury, were crucially mistaken. Although in certain emerging economies the size of the state sector had grown to such an extent that, in certain areas of activity, its functions needed to be reduced, Western policy leaders failed to acknowledge that “they needed to be simultaneously strengthened in others.”² Moreover, as the experiences of India and China, and other successful globalizers of East Asia demonstrate, the state in fact provides an essential role both in directing industrial development and in managing the complex process of integration.

The Role of the State in Directing Development:

In many cases, sustained economic growth has *not* been the creative product of unbridled market forces; rather, success has been the result of varying degrees of state involvement, ranging from courtship of the business sector to more conventional forms of central government planning. With the groundwork of economic development achieved through a variety of state-directed approaches to industrialization, these economies have all been characterized by a virtuous duality of state and private sector activity. As Stiglitz points out, successful countries were those whose governments actively “[chose] which sectors their economies would develop rather than leaving it up to only the market to decide.”³ In such cases, where states successfully directed the creation of new industries, a partnership arrangement between the public and private sectors supported emerging enterprise, often with the state ensuring the availability of necessary inputs for export-oriented production.⁴ For example, by structuring incentives that have ensured the supply of crucial inputs like plastic,

governments in Taiwan, South Korea, and Malaysia have actively supported the burgeoning and highly profitable industries of electronics and computer manufacturing.⁵ In this way, governments have been crucial partners in the expansion of private enterprise, ensuring the ability of producers to supply goods demanded by a rapidly evolving global economy.

On the other hand, withdrawal of the state through rapid liberalization has, more often than not, failed to generate the sort of spontaneous market activity hypothesized by economic fundamentalists. Development literature now draws attention to information and coordination externalities that, in the absence of state direction, can hamper the emergence of private enterprise. Economies looking to integrate globally are often faced with information problems concerning the cost structures of production, as well as the “discovery costs” of finding export activities that can be undertaken profitably given the relative strengths and weaknesses of domestic economic structures.⁶ Similarly, in sectors for which an economy possibly holds a comparative advantage, there may still exist coordination failures that obstruct the supply of necessary inputs, thereby potentially weakening the international competitiveness of export-processing industries.⁷

Governments play a key role in overcoming these challenges. In South Korea, support from the public sector has promoted export success by overcoming potential coordination problems between primary and secondary levels of production.⁸ In the case of information externalities, experience in South Korea again demonstrates that state participation is key, and that the socialization of risk through the promise of bailouts and other protections can encourage experimentation with, and investment in new and potentially profitable enterprises.⁹ Although it is inevitable that some projects will result in failure, governments can encourage the development of many successful industries whose prosperity will compensate for these mistakes many times over.¹⁰ Of course, on the other hand, it may be argued that overly active governments in East Asia were partly to blame for the onset of the 1997 Financial Crisis. Yet, even so (as I will describe below), the institutional capacity of certain affected countries such as Thailand and South Korea, and the ability of their policymakers to act decisively, is precisely what enabled their comparatively swift recovery.

An Emphasis on State Capacity:

Proposing means by which governments can encourage investment, promote industrialization, and motivate the emergence of private enterprise presupposes well-developed state capacity. Key globalizing economies – in this case, China, India, and Korea – have all relied on the active involvement of government in their drive to ‘globalize’ their very different economies. Here, the vital commonality has been the *capacity* to act, rather than the chosen methods or extent of the actual involvement. In describing “stateness,” Fukuyama draws attention to the *strength* of the state versus the *scope* of its functions.¹¹ He argues that while both are important in the pursuit of growth and development, it is *strength* that is the key variable in the long run.¹² In terms of the *strength-scope* continuum, an important finding is that while the world’s most advanced economies exhibit varying degrees of scope (for example, most of Europe maintains a much higher level of social spending than the United States), nearly all advanced economies feature a comparable degree of strength.¹³

Unfortunately, many external policy prescriptions aimed both at reducing ‘bloated’ public sectors in developing states and eliminating barriers to global integration, overlook the continued importance of strength and capacity. In the obsessive campaign to eradicate what is perceived as the excessive and problematic scope of the state, the world’s key international financial institutions have forced many countries in Sub-Saharan Africa and elsewhere to adopt policy packages that result in simultaneous reductions of both scope *and* strength.¹⁴ This disastrous combination produces weak states without the capacity to orchestrate sectoral development (as discussed above), or the option to undertake policy aimed at mitigating the potential social consequences of openness (such as rising unemployment). On the other hand, developing countries that have made openness work are those that have been able to resist these paths, instead reforming the scope of state activity while maintaining, and in some cases strengthening, capacity.

The Need for Institutions:

Within the broad subject of state capacity lies the crucial issue of domestic institutions. As economies move toward new levels of integration, they require a contiguous institutional framework for accommodating the introduction of new economic (and society-altering) forces. For Rodrik, these may include “participatory political

institutions, civil and political liberties, free labour unions, non-corrupt bureaucracies, high-quality independent judiciaries, and mechanisms of social insurance such as social safety nets.”¹⁵ However, institutions that have led to successful experiences with integration extend beyond the list of sound political and economic structures observed in most Western democracies. In addition to the value that these democratic institutions provide for developing economies, an emphasis on institutions highlights the need for ingenuity and innovation within each unique domestic setting. It also emphasizes how successful approaches may hinge on strategies for strengthening less formal market institutions, such as an effective domestic banking sector capable of extending reliable credit to local enterprise. In light of this discussion, Russia’s transition from communism provides a powerful demonstration of what may occur when radical economic reforms are undertaken without a view to the importance of basic institutional development.

In this unfortunate case, the radical abandonment of state planning (coupled with a drastic move towards liberalization and integration) had disastrous consequences for growth and development, as millions of Russians suffered a rapidly deteriorating standard of living. Key economic figures involved in the transition pushed for *shock therapy*, a radical approach problematic in a number of ways, but none more so than its tragic inattention to the importance of institutional development. With an adherence to textbook economics, proponents quickly imposed a façade of Western-style capitalist democracy, but without the crucial legal and regulatory framework that, in the world’s most successful market-based economies, had been developed over the course of decades.¹⁶ Reformers paid only lip service to this agenda, establishing *de jure* institutions with the right titles (for example, “private property rights”, “contract enforcement”, “independent judiciary”, “securities commission” etc.), but lacking the underlying infrastructure necessary for true efficacy.¹⁷ As a consequence, the transition in Russia was marred by endemic corruption, market failure, and extreme poverty.

Institutions for Meeting the Challenges of a Global Economy:

If a complete restructuring of the domestic economy were not challenging enough, Russia’s simultaneous exposure to global markets greatly exacerbated the internal shocks. This failed transition has shown that globalization, though a source of potential wealth and prosperity, can also bring many ‘downsides’ that, if unaccounted for by

the appropriate institutional safeguards, present developing (and transitioning) countries with crippling macroeconomic instability.¹⁸ These safeguards, which are seen as critical means for ameliorating potential distributional conflicts and the intensification of inequality brought about by openness, have been termed “institutions of conflict management” by Rodrik.¹⁹ Without the ability to moderate the potentially harmful consequences of exposure to the global market, countries cannot be expected to direct the sustainable development of new sectors. Instead, opportunities for productive state-led cooperation with the private sector (as described above) will remain both an elusive goal and improbable outcome.

To take another example, mineral rents in Zambia provided a growing source of employment and national prosperity throughout the 1960s and early-1970s, but President Kenneth Kaunda observed the potential consequences associated with over-reliance on a single resource, and envisioned instead a development trajectory where cooperation between state and private sectors would solve key market failures, diversify the economic base and sustain continued growth and development.²⁰ Yet in 1975, rapid price declines resulted in sudden and extreme rates of unemployment, rising debt and the occurrence of debilitating social unrest.²¹ Had Zambia, before this moment, been able to build a more diversified tax structure for generating alternative sources of government revenue, better social safety nets for accommodating rising unemployment, a more open and participatory political environment for constructively channelling discontent, and stronger policy mechanisms for maintaining macroeconomic stability (in the face of drastic commodity price fluctuations), perhaps the country would have fared better under these negative external pressures, maintaining a stable development trajectory in the wake of a temporary setback.

In contrast, although South Korea and Thailand suffered extensively during the Asian Financial Crisis of 1997 – ironically, in this case, because of inadequate regulatory institutions for monitoring international finance and short-term capital flows – they were able to achieve relatively quick recoveries thanks to their more advanced political institutions. As Rodrik explains:

Even though democratic institutions developed relatively recently in Thailand and South Korea, they helped these two countries adjust to the crisis in a number of ways. First, they facilitated a smooth transfer of power from a discredited set of politicians to a new group of

government leaders. Second, democracy imposed mechanisms of participation, consultation, and bargaining, enabling policymakers to fashion the consensus needed to undertake the necessary policy adjustments decisively. Third, because democracy provides for institutionalized mechanisms of “voice,” the South Korean and Thai institutions obviated the need for riots, protests, and other kinds of disruptive actions by affected groups, and, furthermore, undercut support for such behaviour by other groups in society.²²

Unfortunately, Zambia, when faced with its own crisis in the late-1970s, lacked the solid foundation of political institutions necessary for mitigating the social consequences of the country’s involvement in a turbulent global economy. Likewise, in the context of the 1997 Asian Financial Crisis, Indonesia was without such a framework and was unable to cope with riots and generalized disorder, thereby prolonging the painful consequences for development precipitated by the opaque behaviour of international financiers.²³

Innovation (and Institutions that Work):

While acknowledging that in many cases establishing the institutional environment observed in both Korea and Thailand is an idealized luxury, I underscore the benefits to transitioning economies in undertaking unorthodox approaches in the creation of unique institutional solutions. In this way, policymakers are able to experiment with innovative ideas for making important shifts in economic orientation and in the nature of their engagement with the global economy. In such cases, ingenuity of design can furnish new incentives for economic activity without the overwhelming risks observed in Russia and elsewhere.

In China, where former President Jiang Zemin once stated that “innovation sustains the progress of a nation,”²⁴ economic reforms have been approached cautiously, accompanied by the creation of new institutions necessary for facilitating the monumental – albeit still gradual – transition from central planning to market-oriented economics. Perhaps most intriguingly, in the case of China, despite an institutional structure that contrasts greatly with the conventional wisdom of Western economic models advocated in Russia and Sub-Saharan Africa, the effectiveness of these innovations has been markedly higher. Although the legal protection of private property is

often seen as an essential component of market capitalism, China demonstrates that alternative approaches to the institution of property rights can achieve the confidence necessary for promoting substantial levels of “private” investment.²⁵ In light of this, Rodrik has suggested that more important than the rules themselves, is how the rules are perceived.²⁶ Although Chinese investors do not possess the same (formal) legal protection of their assets and investments by independent courts (as is theoretically the case in Russia), surveys have found a significantly higher degree of confidence in the rule of law.²⁷

The key feature in this narrative has been the creation of township and village enterprises (TVEs), wherein partnership between private entrepreneurs and local government provides the basis for stable and innovative approaches to the recognition of property. In the sense that these partnerships are mutually profitable, officials have little incentive for expropriating enterprises, and investors feel that their assets are secure.²⁸ Again, this demonstrates that development success is often achieved when governments are able to work cooperatively with the private sector in ways that take advantage of domestic circumstances, but that also account for potential obstacles and limitations. Perhaps most important in the story, however, is the centrality of unique and innovative approaches to economic reform, particularly in terms of new institutions.

A New Approach to Globalization:

Noting that successful reformers are most often those that make effective use of the state while simultaneously seeking to develop innovative institutional designs, the most successful globalizers are those countries who have managed these transitions through committing to globalization on *their* terms, and not necessarily those prescribed by economic dogmatists in the industrialized West. For developing countries, success is about finding ways to control and direct external forces, to take “advantage of globalization, without being taken advantage of.”²⁹ To this end, China and India have been extremely cautious in their embrace of integration, noting the risks of financial market deregulation, and saying ‘no’ to the liberalization of short-term capital flows.³⁰ In China, this restraint is what insulated the domestic economy from the ravages of 1997, and what has so far prevented the country’s greater exposure to the current global financial crisis.

In India, implementation of a national globalization agenda has created enormous trade benefits, but has been able to restrict

exposure to the potentially harmful effects of overzealous financial integration. Moreover, the Indian approach has been characterized by cautious gradualism.³¹ In light of the heavy criticism it has received in the past for its large public sector and heavy reliance on state planning, India's gradual liberalization in the 1990s has extended new opportunities to private entrepreneurs,³² ensuring the successful transition to market-oriented economics that was so elusive in Russia.

Common in all cases of successful globalization has been an adherence to "nonstandard practices in the service of sound principles."³³ In South Korea and Taiwan this has meant protectionist trade strategies combined with subsidies to non-traditional industrial activities. Taiwan, through a restructuring of tax incentives, and South Korea, through state directed credit, were both able to fashion highly profitable export sectors.³⁴ In China, success has been found through "pioneering a new route towards development that is based on innovation, asymmetry, [and] human-up development."³⁵ Here, an adherence to "nonstandard practices" has revolved around key "institutional innovations suited to the local conditions – the household responsibility system, township and village enterprises, special economic zones, [and] partial liberalization in agriculture and industry."³⁶ In short, developing countries' differing (and unconventional) approaches to reform and integration have succeeded through their common adherence to "higher-order principles of sound economic governance – property rights, market oriented incentives, sound money, [and] fiscal solvency."³⁷

Conclusion:

In the debate over whether economic globalization provides a constructive force for development, experience has shown that if managed correctly, this indeed can be the case. However, those countries that have benefited from this integration in the form of national economic growth and development have cautiously managed its implementation, resisted external pressures that threaten the capacity of the state, and devised innovative approaches in order to create effective institutions. Governments, by harnessing the power of the state and public sectors, have found ways to stimulate valuable economic activity and development through their cooperation with, and support of emerging enterprise. Most importantly, however, success has been found in countries that have been "adaptive" rather than "adoptive" in the face of globalization.

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- ¹ Joseph Stiglitz, *Globalization and its Discontents* (New York: W.W. Norton & Co, 2002), 53.
- ² Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Ithaca: Cornell University Press, 2004), 5.
- ³ Joseph Stiglitz, *Making Globalization Work* (New York: W.W. Norton & Co., 2006), 32.
- ⁴ Dani Rodrik, *The New Global Economy and Developing Countries: Making Openness Work* (Washington D.C.: Overseas Development Council, 1999), 54.
- ⁵ Stiglitz, *Making Globalization Work*, 32.
- ⁶ Dani Rodrik, *One Economics, Many Recipes: Globalization, Institutions, and Economic Growth* (Princeton: Princeton University Press, 2007), 104.
- ⁷ *Ibid.*, 107.
- ⁸ Stiglitz, *Making Globalization Work*, 32.
- ⁹ Rodrik, *The New Global Economy and Developing Countries*, 53.
- ¹⁰ Rodrik, *One Economics, Many Recipes*, 107.
- ¹¹ Fukuyama, 11.
- ¹² *Ibid.*, 19.
- ¹³ *Ibid.*, 12.
- ¹⁴ *Ibid.*, 15.
- ¹⁵ Rodrik, *The New Global Economy and Developing Countries*, 18.
- ¹⁶ Stiglitz, *Globalization and its Discontents*, 139.
- ¹⁷ *Ibid.*, 138.
- ¹⁸ Jagdish Bhagwati, *In Defense of Globalization* (New York: Oxford University Press, 2004), 231.
- ¹⁹ Rodrik, *The New Global Economy and Developing Countries*, 19.
- ²⁰ Jeffrey A. Frieden, *Global Capitalism: Its Fall and Rise in the 20th Century* (New York: Norton, 2006), 446.
- ²¹ *Ibid.*, 448.
- ²² Rodrik, *The New Global Economy and Developing Countries*, 91-92.
- ²³ *Ibid.*, 94.
- ²⁴ Joshua C. Ramo, *The Beijing Consensus* (The Foreign Policy Centre: London, 2004), 13.
- ²⁵ Rodrik, *One Economics, Many Recipes*, 189.
- ²⁶ *Ibid.*
- ²⁷ *Ibid.*
- ²⁸ *Ibid.*
- ²⁹ Stiglitz, *Making Globalization Work*, 31.
- ³⁰ *Ibid.*, 34.
- ³¹ Rodrik, *One Economics, Many Recipes*, 42.
- ³² Frieden, 314.
- ³³ Rodrik, *One Economics, Many Recipes*, 24.
- ³⁴ *Ibid.*, 42.
- ³⁵ Ramo, 55.
- ³⁶ Rodrik, *One Economics, Many Recipes*, 239.
- ³⁷ *Ibid.*, 39.

**REAPING WHAT YOU SOW: GMO
REGULATORY POLICY AND PATH
DEPENDENCE IN CANADA AND THE
EUROPEAN UNION**

Sverre Frisch

This paper argues that, in order to be understood properly, the diverging Genetically Modified Organisms regulatory policies of Europe and North America must be viewed within the context of path dependence theory. The United States and Canada are seen as pioneers, heavily invested in the future of GMOs, influenced by strong interest groups, situated in politically stable environments constraining options for policy change, while the member states of the EU are seen as reserved actors, having been slower to embrace and incorporate GMO technologies on a large scale basis.

In a world in which the complex and often contradictory nature of globalization is becoming increasingly apparent, governments, stretched between the demands of global markets and the interests of their citizens, face growing tensions. Of the many conflicts bred by this problematic relationship, none captures the paradoxes of globalization better than the battle over the research, production and consumption of Genetically Modified Organisms (GMO). Spanning spheres as diverse as technology, health, human progress, global trade, environmental protection, food security and cultural identity, the debate over GMOs is situated at the crux of globalization. Subsequently, the complex and symbolic nature of the debate has split the world into two polarized camps, with countries such as the United States and Canada favouring relaxed regulation and implementation, while member states of the European Union (EU) call for strict precautionary measures. This presents the important question of how to explain this regulatory divergence. Specifically, why has Canada chosen to side with the United States in adopting a lax regulatory stance towards GMOs, while the EU has moved in the opposite direction?

The acuteness of the GMO issue has spawned a wealth of theories and responses seeking to explain this divergence in regulatory

policies across different countries. Scholars have focused on economic explanations such as trade protection (Faulkner 2000 and Newell and Mackenzie 2000), political explanations such as the differing structure of political institutions, ideological considerations, or the influence of interest groups (Tiberghien 2006 and Bernauer and Meins 2003), anthropological explanations such as culture, and the impacts of single events such as the outbreak of mad cow disease in Britain, translating into public outrage (Andree 2002 and Vogel 2001). However, these explanations tend to focus on regulatory differences between the United States and the EU, excluding the important question of why Canada has chosen to side with the United States in this issue despite a prior history of close cooperation with the EU in norm and institution building and rising popular support for stricter legislation of GMO research, production and consumption within Canada.¹

Neither institutionalism, cultural factors, economic considerations, geography, or interest group influence *alone* are enough to explain why Canada has instituted and continued to support lax GMO policies, while the EU has chosen a strict regulatory path. In order to be understood properly, the issue must be viewed within the context of path dependence theory, in which the United States and Canada are seen as pioneers in the field of GMOs. As such, they are heavily invested in the future of GMOs, influenced by strong interest groups, situated in politically stable environments that constrain options for policy change. The divergent parties, the member states of the EU, are seen as reserved actors, having been slower to embrace and incorporate GMO technologies on a large scale basis. Lacking the same depth and commitment to GMO technology, these countries have, at critical junctures, been able to switch paths without the political and economic costs which both Canada and the United States would suffer attempting to do the same.

In this paper I will proceed as follows: first by looking at the history of GMOs both in North America and Europe, then at the prevailing explanations for regulatory divergence in political science literature, followed by an explanation of the ‘nuts and bolts’ of path dependence theory, using examples from other studies within the genre. Then I will show why path dependence theory explains the regulatory divergence that has evolved among the key countries in the GMO debate. I conclude with remarks on the future of GMOs and globalization.

The United States:

Biotechnology as a science emerged in the 1970s and was initially welcomed both in Europe and North America as a revolutionary contribution to modern agriculture. In 1986, President Reagan created a 'Cabinet Working Group' which issued the *Coordinated Framework for the Regulation of Biotechnology*, locking in the prevailing assumption that commercial biotechnology should *not* be viewed as posing risks for human health or the environment.² In 1987, after rapid development, the first field test of GMO crops was conducted in the United States, and demonstrated the ways in which genetic manipulation could promote herbicide resistance, improved ripening, better taste and more durable vegetables suitable for transport. Throughout the 1990s, the United States' regulatory agencies continued to relax their GMO approval policies, and in 1992, the Food and Drug Administration declared that genetically engineered foods are not inherently dangerous and do not need require special regulation beyond what is already in place for other types of food.³ Following this approval, genetically modified crops were introduced for commercial production in the United States in 1996, transforming North American agriculture and facilitating the rapid expansion of the American biotechnology industry into the world's largest.⁴

Canada and Europe:

Like the United States, the Canadian government approached GMOs from the perspective that biotechnology should not be viewed as posing risks for human health or the environment, and subsequently invested heavily in GMO technology in the 1990s. The Liberal government of the day assigned responsibility for monitoring GMOs to Health Canada, providing a regulatory framework approving 'science based regulation', meaning that novel food products that have the exact same functions (nutrition, composition, intended use) as traditional ones should not be regulated differently. This became known as the 'principle of substantive equivalence.'⁵ In 2001, the Royal Society of Canada, a senior national body of Canadian scientists and scholars, published a report on GMOs, offering a precautionary perspective on how the Canadian regulatory system could be improved. The panel recommended that, in order to better protect the environment and human health from unknown possible side effects of GMOs, the reliance on substantive equivalence should be replaced by rigorous scientific assessment; however, little changed in terms of regulatory

rules.⁶ As a result of the Canadian government's approach to the regulation of GMOs, the Canadian biotechnology industry, heavily subsidized by the federal government, has expanded massively. This expansion, in turn, has transformed Canadian agriculture into a GMO dominated sector, making Canada one of the main producers of GMO foods in the world.⁷

Like the United States and Canada, member countries of the EU started out seeing GMO technology as a great opportunity, which was reflected in the regulatory consensus reached by OECD countries in the 1990s. Out of this evolved the 1994 WTO 'Sanitary and Phytosanitary Measures' (SPS) agreement, in which member countries committed to a science-based assessment of food safety, based on the principle of substantive equivalence.⁸ However, the limitations of the agreement soon became apparent as EU member states had different views on how to approach the GMO question; disputes over conditions for approval led to, among other things, delays in the approval process, as well as uneven implementation of the agreement.⁹ That several GMO varieties already approved by the EU for commercial use were rejected by member states, created a dilemma for the Competent Authorities of the EU, which responded with gradually stricter policies of regulation as a means to facilitate a consensus among the member countries. As a result, the EU moved gradually towards acceptance of the precautionary principle for guiding policy regarding GMOs, and away from the substantive equivalence theory, which had been the bedrock of the 1994 WTO agreement. By 1999 the EU had instituted what can be considered a moratorium on the import of GMO foods and crops, where very few crops have been approved for commercialization, and the number of field trials have remained low.¹⁰

Literature Review:

In order to explain this divergence in regulatory policy approaches between North America and Europe, scholars have focused on different areas, some which provide valuable pieces to the puzzle in question. Thomas Bernauer and Erika Meins (2003) focus on collective action capacity of producer and consumer interests and the institutional environment in which regulation has taken place. Their main argument is that public outrage in the EU, following GMO mishaps, galvanized the collective action capacity of NGOs, who in turn were able to influence EU policy making through the multilevel system of regulatory policies. The United States, on the other hand, has not experienced a shift in regulatory policy due to a lack of public outrage,

a well organized coalition of pro-biotechnology producers and farmers, and centralized regulatory policy making – stifling the impact of anti-GMO NGOs on policy making. While Bernauer and Meins present a solid argument, and no doubt collective action and institutional structures are an important part of the answer, their framework falls short of explaining the case of Canada, which has a different political institutional structure than that of the United States, and has also seen activity of anti-GMO NGOs, following incidents like Schmeiser vs. Monsanto.¹¹

Andree (2002) argues that it is the unique composition of Canadian political culture which is responsible for the divergence in regulatory policies between Canada and the EU. In Canada, national norms have given shape to a Foucauldian biopolitical struggle which pits scientists framing GMOs as a manageable risk, against scientists believing in the precautionary principle. To Andree, the discourse rooted in the Canadian ‘science based’ approach applying terms such as ‘novelty’, ‘familiarity’, and ‘substantive equivalence’, have been mobilized to narrow the horizon of what can be expected to be risky about genetic engineering, allowing swift approval of many GM crops. Thus, science interpreted as absolute truth is being used by the government to limit the discourse of GMOs in Canadian society. Subsequently, in Europe, where people are naturally more sceptical towards science than Canadians, an ‘immediate struggle’ in which people criticized the instances of power which were closest to them, ensued after the introduction of GMOs in domestic markets in the 1990s.¹² This explanation leaves us with the question of how countries with presumably diverging cultural values, such as the United States, Canada and Brazil, adopt the same type of regulatory policies. Neither does it explain how Brazil, which until 2003 was GMO free, suddenly initiated large scale import of GMOs and technology.¹³

Tiberghien focuses on the impact of civil society groups in order to explain regulatory divergence. To him the shift towards a precautionary approach to GMOs by the EU and Japan was facilitated by the strength of NGO networks coupled with the existence of a ‘crisis of trust’ in governing institutions. In both Japan and the EU, trust in governing authorities had already been weakened by the respective governments’ poor handling of other issues relating to the balance of globalization and democracy. This, in turn, granted the civil society actors the leverage needed in order to capture the public agenda and fulfil their aims. Yet, while the civil society organizations trigger change, they do not control the outcome, which is dictated by the balance of power between ministries, bureaucratic institutions and

politicians.¹⁴ The crucial part of this argument is the realization that even when NGOs manage to capture the public agenda, it is not by itself enough to facilitate political change. There has to be a substantial weakening of public trust in present political institutions, a gap which can be represented by this issue, propelling it to the forefront of the political agenda.¹⁵ As we shall see, this gap, or the lack of it, is a crucial part of path dependence theory, in which political actors have a unique, albeit often fleeting, possibility to change paths.

Path Dependence Theory:

Path dependence theory was initially developed by economists studying the development and market performance of different types of technology, trying to explain how less efficient products would sometimes outperform more effective ones. The conclusion they came to was that under certain circumstances, less efficient products came under the influence of forces making them path dependent, rendering them almost immune to competition, even when more efficient products were available at the same price.¹⁶ The most well known example of this process is the QWERTY keyboard, which was initially developed for typewriters, allowing high usage keys to be spaced far enough apart to prevent jamming when typing quickly. However, when machines were invented that accommodated more efficient keyboard layouts, the QWERTY configuration was already so well-established that the competition could not penetrate the market.¹⁷ Studying examples like this, economists set about to discover the underlying processes behind path dependence.

Path dependence theory relies on positive feedback mechanisms generated by choices made at critical junctures. A good illustration is the 'Polya urn process' in which two different coloured balls are put into an urn, one ball is removed, and then returned to the urn accompanied by a new ball of the same colour.¹⁸ The process is repeated until the urn is full. In this experiment, draws made early on in the process have significant influence on the final distribution of the balls, and later draws much less, illustrating the mechanism behind positive feedback. More specifically, each step along a path produces consequences which make that path more attractive for the next step. Over time, as this effect accumulates, it generates a powerful feedback loop of self-reinforcing activity. Importantly, this process highlights two key properties of the positive feedback process: the rising cost of changing paths throughout the process, and the crucial importance of timing and sequence, demonstrating the importance of critical

junctures.¹⁹

Path dependence theory caught the attention of political scientists who applied the concepts of positive feedback and critical junctures to explain how political decisions influence the reality in which later decisions are made, and in some circumstances become embedded so deeply that they are almost impossible to reverse.²⁰ These works have highlighted the roles of collective action and institutions in politics as possible enabling vehicles for path dependence, in that their functions and structures may prohibit policy change. Paul Pierson identifies several factors contributing to path dependence in the political arena: the relatively short time perspectives of politicians, the adaptive expectations of interest groups as well as the general electorate, the coordination effects among beneficiaries of policies, and the status quo bias of political institutions.²¹ Importantly, to Pierson, path dependent policies may be reversed at critical junctures, in which significant social, economic or political events create conditions favourable to change.

Regulatory Policies and Path Dependence Theory:

In 2003, Canada, Argentina and the United States filed a claim against the EU arguing that its moratorium on approval of GMOs and EU member state ban on certain GMOs violated WTO rules.²² Finding that the EU moratorium resulted in undue delays, a WTO panel concluded in 2006 that the EU violated its prior commitments to the WTO and ruled in favour of the plaintiffs. The lawsuit marked a watershed, not only in the debate over GMOs, but also in Canadian relations with the EU. If anything, the previous decades had seen a progressively stronger relationship between Canada and the EU, not just in trade, but more importantly in shared views of norms, beliefs and values. During the 1990s and early 2000s, Canada proved instrumental in implementing initiatives designed to define the shape of global governance, often openly opposing American policy on global issues.²³ While agreeing on issues such as the Kyoto Protocol, the Ottawa Treaty and the International Criminal Court, how was it that at the same time Canada's path regarding GMOs came to diverge so strongly from the EU?

The most important factor determining the difference in regulatory outcomes between Canada and the EU is found in the timing and sequence of the implementation of regulatory policies regarding GMOs in Canada. Together with the US, Canada is considered an initial path-setter in GMO development, and both countries invested

heavily in GMO technologies in the 1990s.²⁴ As Canadian farmers embraced the new invention, the benefits soon became visible: higher yields and pest resistant crops represented large gains in both efficiency and productivity ultimately leading to major cost reductions.²⁵ Coupled with the implementation of the GMO technology came the question of regulating production and consumption. Spurred by the prospects of economic gains and increased trade with both the United States and the EU (which only later became hostile to GMO technology), the Canadian government adopted regulatory policies in the 1990s based on the substantive equivalence principle, facilitating fast and efficient implementation of new GMO products on Canadian fields and markets, at the expense of rigorous scientific testing.

The early adoption of the substantive equivalence principle by the Canadian government had far-reaching consequences for Canadian agriculture. Not only did it improve reliability and cost effectiveness of growing crops, it facilitated what Pierson calls 'coordination effects' among farmers, in which a growing amount of farmers choosing to use GMOs led to further expansion, as farmers using traditional seeds found it difficult to compete with the GMO crops being sold unlabelled on the market. At the same time, large biotech companies such as Monsanto expanded their operations in Canada, creating extensive networks with both farmers and politicians, profiting from lax regulatory policies and, at the same time, building influence as a future barrier to change in regulatory policies. Importantly, all this happened with no significant opposition in Canada at the time. It was not until years later, after GMO technology was firmly established in Canada, both through the extensive use by farmers, and the influence of biotech companies, that the anti-GMO backlash originated in Europe and spread throughout the world.

As Canada and the United States became prime movers on the research and development of GMO technology, the opinions within the EU on the issue were mixed. Although the EU had been a signatory to the SPS agreement in Marrakech in 1994, many smaller nations such as Denmark and Austria had been opposed to GMO technologies dating back to the 1980s. At the same time, countries such as France, Britain had large biotech companies within their borders.²⁶ This divergence led to an inconsistent policy response from the EU, in which research and development were encouraged and funded, but a regulatory cap was put upon distribution and consumption. Due to these incoherent policies, no coordination effects took place among European farmers and GMO technology did not get the early foothold within the political and agricultural spheres in Europe that it did in North America. Thus, when

public opinion shifted against GMOs in the late 1990s, the EU was left with more options than Canada, which had already become path dependent.

The timing of regulatory policy implementation explains how the EU was left with more options than Canada in the face of rising public pressure to abandon the technology, but it does not explain why the EU chose a moratorium on the import of GMOs, despite economic losses in trade, and negative impacts for its biotech industries.²⁷ The explanation can be found in a range of factors at work constituting a 'perfect storm', or what in path dependence parlance is called a 'critical juncture.' Most importantly, the EU was already experiencing an institutional crisis in the form of a democratic deficit and decreasing trust in the EU commission at the time when anti-GMO interest groups seized the public agenda. Faced with difficult political trade-offs, the way in which EU officials had handled prior issues relating to globalization had created a gap between policy and popular opinion. The GMO issue came to symbolize this gap.²⁸ At a time when it was crucial for the EU leadership to show unity and reclaim the legitimacy of their institution, political entrepreneurs within the Union seized the GMO issue, and used it as a vehicle to achieve this end. In this manner, the weakness of the EU institutions, coupled with public outrage, facilitated the adoption of strict GMO regulatory policies in Europe.

While the backlash against GMOs originated in Europe, it reverberated globally and was subsequently adopted in countries such as Japan, and even appeared in North America. However, the Canadian experience with anti-GMO interest groups differed from that of the EU. Not only were the Canadian anti-GMO interest groups poorly funded and organized, but more importantly, there was no institutional crisis to facilitate a critical juncture at the time of the protests. Quite the opposite: with the complete collapse of the Canadian Progressive Conservative Party in the early 1990s, the political right was both fragmented and dramatically removed from power, allowing the Liberals to dominate Canadian politics throughout the whole decade.²⁹ Furthermore, in contrast to the fragmented multilevel system of governance found in the EU, the Canadian parliamentary system provides fewer access points for interest groups, and concentrates power in the hands of the Prime Minister. Subsequently, the Liberal majority government had few institutional incentives to promote policy change on the issue of GMO regulatory policies in the face of strong farmer and industry lobbies and a disorganized opposition. Thus, both institutional structure and timing (Liberal hegemony) prevented a change of GMO policies for the Canadian government.

The way in which the institutional crisis in the EU facilitated policy implementation highlights the important role of the limited horizons of individual politicians in promoting path dependence. As Pierson argues, politicians operate on a limited time scale, and will only pay attention to long-term consequences when these become politically salient or when they have little reason to fear short-term electoral retribution.³⁰ With an already weakened institution, political entrepreneurs within the EU seizing the GMO issue had clear incentives to do so. In the short-term, pushing through these policies would not only rebuild EU legitimacy, it represented an opportunity for individual politicians to build political capital and influence norm building within the EU. In contrast, the Canadian perspective was radically different: a Liberal majority government facing poorly organized anti-GMO interest groups, saw a situation in which the negative political short-term costs of implementing strict regulatory policies against GMOs outweighed the benefits by far. Not only were GMOs so entrenched in Canadian agriculture that removing them would be almost impossible, the economic costs, both in terms of trade with the US and investments made by farmers would reflect extremely poorly upon the government. Thus, the short time horizons of politicians came to facilitate different outcomes in Europe and Canada in that political entrepreneurs within the EU had much stronger incentives to enact strict regulatory policy than their Canadian counterparts.

Conclusion:

The issue of GMO regulatory policy is particularly salient because it covers a broad span of potential conflict areas such as the debate over human progress, trade relations and food security. This multifaceted nature of the issue has been crucial in garnering public support for stricter regulation, which has taken different forms in different countries. However, public opinion in itself is not enough to influence change in policies. In explaining the divergence in regulatory policies between Canada and the EU, it becomes clear that a range of different variables determine the outcome of public policy. These variables include timing, institutional structures, and perspectives of individual political actors. In Canada, these variables facilitated path dependent policies toward GMOs, while in other circumstances such as the EU, decision makers were, as a result of previous policy decisions, left with more options. Looking at the two examples of Canada and the EU, the Polya urn experiment comes to mind: choices made early in a

process have a significant effect on the outcome of the process, and importantly, an event that happens too late may have no effect, although it might have been of great consequence if the timing were different.

Understanding that Canadian regulatory policy regarding GMOs comes under the influence of variables promoting path dependence suggests the questions of what a Canadian critical juncture might look like, and what future GMOs have in Canada as well as in the EU. A sign of how Canada is choosing to deal with implementation of GMOs in agriculture is how the Canadian Wheat Board opposed an attempt to introduce GMO wheat in the Canadian system, arguing that it would prevent important trade with the EU, and possibly cross contaminate Canadian non-GMO wheat crops.³¹ This example highlights two important future areas of enquiry: that the stand taken against GMOs in much of the world is shaping Canadian options in dealing with GMOs, and more importantly, that GMOs themselves inhabit path dependent qualities: once introduced into an ecosystem, GMO wheat has potential to cross contaminate unmodified wheat, preventing it from being traded with GMO hostile countries. Thus, once a country chooses to implement GMOs, such as has been the case with Canada and Canola crops, there might not be an option to backtrack, even if sometime in the future, the political will is there.

¹ Julian Dierkes and Yves Tiberghien, *Minerva's Rule: Canadian, European, and Japanese Leadership in Global Institution Building* (New York: Palgrave MacMillan, in press).

² Thomas Bernauer and Erika Meins, "Technological Revolution Meets Policy and the Market: Explaining Cross-National Differences in Agricultural Biotechnology Regulation," *European Journal of Political Research* 42, no.5 (2003): 643-683.

³ Yves Tiberghien, "The Battle for the Global Governance of Genetically Modified Organisms: The Roles of the European Union, Japan, Korea, and China in a Comparative Context," *Les Etudes du CERI* 124 (2006): 1-48.

⁴ Bernauer and Meins, 668.

⁵ Peter Andree, "The Biopolitics of Genetically Modified Organisms in Canada," *Journal of Canadian Studies* 37, no.3 (2002): 162-192.

⁶ The Royal Society of Canada, "Elements of Precaution: Recommendation for the Regulation of Food Biotechnology in Canada"; available from <http://www.agbios.com/docroot/articles/2001035-A.pdf>; Internet; accessed 27 February 2009.

⁷ Tiberghien, 6.

⁸ *Ibid.*, 10.

⁹ Bernauer and Meins, 651.

¹⁰ *Ibid.*, 653.

¹¹ Bernhard Simon, "Monsanto Wins Patent Case on Plant Genes," *New York Times*, 22 May 2004; available from

<http://www.nytimes.com/2004/05/22/business/worldbusiness/22crop.html?ex=1228280400&en=74c02af2b5151ef8&ei=5070>; Internet; accessed 01 December 2008.

¹² Andree, 164.

¹³ Tiberghien, 12.

¹⁴ *Ibid.*, 5.

¹⁵ *Ibid.*, 15.

¹⁶ Brian Arthur, "Competing Technologies, Increasing Returns, and Lock-In by Historical Events," *Economic Journal* 99 (1989): 116-131.

¹⁷ *Ibid.*, 125.

¹⁸ Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review* 94, no.2 (2000): 251-267.

¹⁹ *Ibid.*, 252.

²⁰ Margaret Weir, "Ideas and Politics: The Acceptance of Keynesianism in Britain and the United States," in *The Political Power of Economic Ideas: Keynesianism Across Nations*, Peter A. Hall eds. (Princeton: Princeton University Press, 1989).

²¹ Paul Pierson, *Dismantling the Welfare State?: Reagan, Thatcher, and the Politics of Retrenchment* (New York: Cambridge University Press, 1994).

²² Tiberghien, 11.

²³ Kim R. Nossal, "Canada's Minervian Agenda: Global Activism and Domestic Politics," in *Minerva's Rule: Canadian, European, and Japanese Leadership in Global Institution Building*, Julian Dierkes and Yves Tiberghien eds. (New York: Palgrave McMillan, in press).

²⁴ Tiberghien, 8.

²⁵ *Ibid.*, 7.

²⁶ Bernauer and Meins, 651.

²⁷ Tiberghien, 12.

²⁸ *Ibid.*, 17.

²⁹ Nossal, 9.

³⁰ Pierson, 261.

³¹ Derek Berwald and Colin Carter, "Rejecting New Technology: The Case of Genetically Modified Wheat," *American Journal of Agricultural Economics* 88, no.2 (2006): 432-447.

THE GLOBALIZATION PARADOX: EXPLAINING MISCONCEPTIONS ABOUT STATE ECONOMIC SOVEREIGNTY

Chris Malmo-Laycock

Citizens often attribute perceived loss of state sovereignty to globalization, despite many academic analyses which suggest states still matter. How can we explain this? This paper contends that popular attitudes towards economic globalization are misguided for a few reasons. First, it offers evidence that advanced industrial democracies are not as susceptible to the 'race to the bottom' as is often assumed. Second, the argument is advanced that while economic crises can constrain policy options and limit economic sovereignty, this feature of capitalism is nothing new. Globalization may only increase its visibility. Third, this paper concedes that international institutions such as the IMF can indeed impact the economic sovereignty of countries, especially those with developing economies. States then, while still as important as ever, ought to work to reform institutional aspects of global governance.

Each year the pace, visibility, and pervasiveness of globalization seem to increase, causing no shortage of citizen alarm. People see in this trend a negative relationship between further seemingly unstoppable worldwide integration of various political, social, and economic networks and the effectiveness of their states to exercise sovereign powers. One does not have to look far for evidence: witness the current global economic downturn, in which states are scrambling to enact policies to support their industries and financial sectors. This rapid switchover from boom to bust originated in America. But thanks to our world's interconnected economic system and America's integral position within it, the trouble quickly spread. Countries, firms, and individuals who were barely, or not at all, linked to American sub-prime mortgage debt are now facing major difficulties from Iceland to China. Even fiscally responsible countries, such as Canada, are in some measure forced to change their policies. In this

context it is easy to see how the public perception of globalization emphasizes its constraining effects on state power.

Nevertheless, many analyses point to the continuing importance of states on the global level. So how can we explain the often-expressed view that globalization is weakening citizens' democratic power? The ability of states to control their economic affairs is a large part of this debate. In light of that, this paper will argue that in the economic sphere, citizens' misguided view that globalization is eroding state capacity stems from two major sources: the market and the increased role of international organizations and their policy prescriptions. Markets in particular will be given the most attention. While these are both powerful forces capable of affecting state power, the selected cases suggest that their impacts are lopsided; poor countries have, in recent history, felt markets' effects, especially in crises, more often and more forcefully. Popular opinion gets a few things wrong in its assessment of economic globalization's impact upon democratic initiative. The growth-stability compromise is not eroding as quickly as some think, for reasons I shall discuss below. When it comes to international economic governance, citizens' concerns about accountability are much nearer to the mark. States are therefore still as important as ever but must work to address these issues.

Markets:

Of all the factors which make up the catch-all term globalization, markets are the strongest. Citizens contend that markets endanger their democratic power in many ways. In essence, this loss of democratic control results from actions taken by the private sector which change the economic situation in a country, sometimes drastically. Governments and peoples are then forced to act in unforeseen, unwanted ways, such as crafting financial-sector bailout packages, repealing industrial regulations to stay competitive, or running budget deficits. Here we will look at two different scenarios: first, when government efforts to stabilise the economy are hampered by international market forces, and second, when (and if) markets provoke a 'race to the bottom,' eroding national social protections. Finally, we will see how built-in market instabilities are not radically different from their past iterations.

There is strong evidence to support the argument that international markets undermine national democracy. Let us consider the 1997-98 Asian financial crisis, in which a Thai currency emergency

quickly spread through integrated networks to other regional countries. Global investors, panicking, quickly began pulling their money from the region, while governments scrambled to find imperfect solutions to a tricky problem. As Paul Krugman explains, central banks, deprived of foreign reserves, could no longer support their currencies, and were forced to raise interest rates and reduce money supply. But these actions, combined with devaluation, created a double problem for firms and government agencies with debts in local and foreign currencies.¹ How did the Thai economic malaise spread? Krugman identifies two major channels: he lays the blame on “emerging-market funds that lumped all the countries together” so that when one economy looked bad, the whole region did, as well as the association between the countries in the minds of international investors.² Investors, alarmed by the Thai situation, quickly pulled money from all the economies in the region. Krugman discounts as insignificant the actual physical “goods market spillover among the crisis economies.”³ In other words, the actual trade links between these countries were not significant enough to provoke the crisis: for example, if Thailand had completely stopped importing South Korean goods, this still could not have accounted for the calamitous decline in South Korea’s economy. Financial market linkages therefore take most of the blame for causing the economic contagion.

International forces also worked against many countries’ attempts to stabilise their economies. As Krugman notes,

Hong Kong...suffered from the Asian crisis. [But] it is hard to find any fault in the city’s own management...its economy was run according to the rule of law, with well-regulated banks and conservative budget policies.⁴

In other words, Hong Kong’s economy was stable, prosperous, and supposedly buffered against external shocks. Investors, by conventional measures, should not have lost faith in its economy. However, this was not enough to prevent international speculators, notably hedge funds, from making a “double play against Hong Kong,” shorting both its currency and its stock market.⁵ This forced the government to take drastic action which it otherwise would not have taken, spending millions of public dollars to support both its dollar and equity markets. Only quick thinking and clever policymaking saved Hong Kong. Other countries were not so lucky.

In this case, countries that had little to do with Thailand’s initial economic distress were quickly dragged into a situation with “no

good choices.”⁶ Citizens in these countries, many of them fragile or marginal democracies, had little say in the matter, since private actors worldwide were making the decisions of great importance. This is not to say that Asian countries were not at least partly responsible for their economic woes - mismanagement was rife in many states. But national governments were suddenly forced to take large international loans and were forced into accepting other obligations which would limit their options as sovereign states. It is notable that policy-constraining market crises can affect both democracies and non-democracies equally. I am therefore substituting state capacity and autonomy for citizen democratic leverage, in the (hopeful) assumption that democracies generally represent their voters’ wishes. Many, however, contend that international markets impact democratic leaders and elites much more than citizens. This leads to the next discussion.

The second perception about the global market is that it punishes governments for pursuing policies different from the ideological ‘Washington Consensus,’ a theoretical framework stressing neoliberal, free-market ideals and policies. Dani Rodrik frames the question well by asserting that “choices about social arrangements will vary across nations...it is national governments that are held responsible for producing outcomes that are consonant with national aspirations... [and if not] they can no longer be accountable to their electorates.”⁷ Many scholars argue that, in fact, this is taking place in many countries worldwide. Joseph Stiglitz attacks the notion of “disciplinary” capital markets exerting a positive effect on a country’s fortunes.⁸ Rather, he argues that these markets, focused only on short-term profit and full of highly mobile capital, encourage deregulation and low social spending.⁹ This could certainly hinder national democracy especially when people indeed prefer a different social arrangement. Kapstein also sharply criticizes “the spread of the dogma of restrictive fiscal policy,” and says that “states are basically telling their workers that they can no longer afford the postwar deal and must minimize their obligations.”¹⁰ Because global trade creates winners and losers but benefits the country as a whole, he argues, as many economists do, that governments need to compensate the losers instead of restricting trade. But Kapstein also draws attention to “special interest groups...entrenched around particular sets of policies,” notably those of small government, low regulation, low taxes, and low inflation.¹¹ From here onward, we can recreate the familiar argument about the ‘race to the bottom.’ Firms looking to invest will seek out countries with low inflation, taxes, social protections, and so on. Governments become beholden to an “international rentier class” that “rewards [such] behaviour, sustaining

the ideology” of free-market neoliberalism.¹² As well, as Rodrik points out, “since the early 1980s, tax rates on capital have tended to decrease in the leading industrial nations, while tax rates on labour have continued generally to increase.”¹³ Capital is using exit threats in this way to essentially handcuff governments into lowering their tax rates while they ‘free-ride’ the social benefits created by social spending. In this way, a relatively small group of private actors can override popular policy preferences for social cohesion, increased income equality, or robust social spending. However, we must be careful to not automatically associate these with democracy; in some countries, such as Canada and the United States, balanced budgets and low taxes often constitute the backbone of popular political platforms.¹⁴ The ideas behind the Washington Consensus may therefore not be unpopular or anti-democratic everywhere.

Furthermore, Geoffrey Garrett argues against the above view of a “collision course [as] the correct metaphor to apply to the panoply of relationships between interventionist national economic policies and global markets.”¹⁵ He gives two major reasons for his views. First, because global trade flows heighten “feelings of economic insecurity among broader segments of society,” the state has an increased incentive to use its policy instruments to compensate losers and redistribute wealth and risk.¹⁶ While this is correct, it is perhaps not always the case. Rather, we could improve this idea by combining it with Polanyi’s idea of great long-term trends of so-called ‘market self-regulation’ and the corresponding social backlash. So, states have incentives to drastically use their policy instruments, as we can observe in the current U.S. economic trouble, when great numbers of the public turn against the market. In effect, democratic preferences find their expression, but, in a delayed feedback loop. Garrett’s second reason for an agreement between state policies and global markets is that many smart government programs generate benefits that firms find attractive, such as social stability or a highly skilled and educated workforce. So, “increased market integration does [not] always exert lowest common denominator pressures on national economic policies.”¹⁷ Rather, it could actually attract investment and promote and sustain economic growth and job creation. National leaders are therefore not always pressured to win the ‘race to the bottom,’ despite the common conception that this is the case.

After making an important distinction between trade and production versus financial economic actors, Garrett concludes through quantitative analysis that the so-called relationships linking interventionist policies to less foreign investment are weaker than

conventional arguments suggest.¹⁸ For instance, he found that financial market integration does constrain policy much more than trade or multinational production, but warns against over-simplification of “various potential causal mechanisms.”¹⁹ Are financial markets truly ‘disciplining’ profligate states with high interest rates or loss of direct investment? Garrett reports that firms concern themselves more with a country’s relative deficit size than its total size of government. As long as a government’s tax revenues are close to its spending outlays, markets are ambivalent.²⁰ Investment therefore occurs not only in countries with low regulation or low social spending, but in most any country whose government has balanced its books. This is a blow to the common argument that social spending, such as the existence of a solid economic ‘safety net’ decreases national competitiveness. If citizens wish for robust social spending, it appears that they can also have a robust investment climate and private sector. One should note, however, that Garrett conducted this research almost wholly on OECD countries up until the mid-1990s. His conclusions cannot therefore be extended to developing economies. Nevertheless, Garrett’s findings are very useful, due to the OECD countries’ large share of world foreign investment.

I have just presented evidence arguing both that international economic linkages impair national democracy and that they have less effect than conventionally presumed. Given the concrete example of the Asian financial crisis, it is hard to believe that markets cannot impact policy options, and quite easy to believe that they can do so powerfully. Today’s global economic distress may yet prove to be another useful case study. It is thus easy to see how citizens feel that they are losing democratic control of their countries’ finances and their governments’ functions.

Nevertheless, Garrett makes a valid point when he compares the arguments about globalization and national autonomy to those made in the past about domestic market integration or other “past predictions of the effective demise of the nation-state.”²¹ A common thread throughout the literature on global markets is that they have a tendency to crash every so often, constraining national autonomy. Kindleberger, for instance, found that crises occurred on a ten-year cycle from 1816 to 1866, and then more raggedly after that,²² perhaps as governments learned how to better intervene in their respective economies. An article in the *Financial Times* by Gillian Tett tells virtually the same story.²³ Each crisis requires government action that would not necessarily have otherwise happened. Countries’ economic fortunes and political power also build and decrease over the passage of time.

But each time, states do not wither away. In fact, they are strengthened. Kapstein himself acknowledges this with his excellent summary of *The Great Transformation* and its after-effects: “Polanyi argued that it was the complete unravelling of economic and labour market regulations and traditions in the nineteenth century that caused such tremendous social and political upheaval in the early twentieth.”²⁴ Kapstein thereafter describes the new globalization compromise between states and workers that rose out of the ashes of World War II as “embedded liberalism,” which ensured that the state worked not only for economic growth but for equity and protection as well.²⁵ He then describes how states have apparently abandoned this compact at the behest of ‘responsible fiscal policy.’ But given Garrett’s evidence, this does not seem to have happened as forcefully in OECD countries as it did in the events analysed by Polanyi. So, while international markets may indeed constrain national autonomy, it is not a recent phenomenon. Rather, they have been doing so for at least a century and a half. Furthermore, when they do impact national policymaking in rich countries, evidence points to this impact being smaller rather than larger.

On a more psychological level, what could therefore explain citizens’ feelings of lost sovereignty? Perhaps they are unaware of the full history of the trend. The problems of one’s own age always seem to dwarf historical ones, which, by virtue of their passing, appear to have been solved. And it is easy to call an old phenomenon a new one when it acts through differently named actors. Even if globalized economic integration has sped up such things as foreign-exchange transactions, it has not wholly changed the pre-existing dynamic between states and voter preferences for the economy. So, people are somewhat misled in believing that international markets are having an unprecedented effect on state sovereignty. “National economies retain a considerable degree of isolation from each other, and national policymakers enjoy more autonomy than is assumed by most recent writings,” argues Dani Rodrik.²⁶ Markets, for their part, are mostly doing what they have historically done, which is to cycle through boom and bust and wrestle with society over the long term. This helps explain why objective analyses continue to show the importance of the state in the economy, despite popular sentiment. But I posit that another factor is also to blame for people’s low regard of globalization: the ineffectiveness of international non-democratic organizations like the International Monetary Fund (IMF), the World Bank, and the World Trade Organization.

International Organizations:

Let us return to the example concerning the Asian financial crisis. Joseph Stiglitz, in *Globalization and its Discontents*, writes that the IMF

contributed to an environment that enhanced the likelihood of a crisis by encouraging, in some cases insisting on, an unwarrantedly rapid pace toward financial and capital market liberalization.²⁷

So, the IMF promoted policies which endangered many Asian economies. Once the crisis had begun, it encouraged them to continue “following macroeconomic policies that exacerbated slumps instead of relieving them.”²⁸ It did this by demanding fiscal austerity, which worsened the situation as well as moralized structural reform (some of it useful, most of it not) to try to reshape the Asian economies. These were conditions of its loans. Krugman also argues that the IMF’s advice to Asian governments dealing with the crisis “at best avoided one vicious circle only by starting another.”²⁹ In his book he also describes how the IMF doled out poor advice and conditional loans to Russia and Latin American countries through the 1990s.

The problem with the situation is obvious: unelected ‘experts’ and first-world bureaucrats appointed by rich countries have been dictating policy to various nations around the world, both democratic and non-democratic. Critics of the IMF often charge that its composition overwhelmingly does not represent developing countries (whose interests it apparently serves). Stiglitz, for his part, also charges the IMF and WTO with being too ideologically committed to neoliberal policies - low tax rates, low interest rates, low government expenditure, and a distaste for budget deficits. He also contends that its prescriptions involve grave errors of policy sequencing, attempting to privatise government owned industry before the state capacity to protect private property is in place, for instance. Stiglitz calls the current situation “global governance without global government” and draws attention to the group of problems that currently stymie global governance: terrorism, climate change, pollution, and diseases.³⁰ He also argues that the current Bretton Woods arrangement has resulted in trade and other rules which benefit mostly rich countries and corporate or financial interests. By most measures, Stiglitz presents a convincing argument on these matters. Here then is a good explanation for part of the populist opinion that globalization is weakening democracy. In reality, not all

countries are losing; it is mostly the poor ones who suffer the worst. But the image is nonetheless presented to legions of citizens that private interests are hijacking the gains from globalization, enabled by policies dictated by unelected, first-world bureaucrats. To make matters worse, these organizations claim in their rhetoric to be working for the common good but end up exacerbating (or at least barely helping to fix) economic crises when they occur.

I will briefly return here to the aforementioned ‘Washington Consensus’. Scholars roundly criticize international organizations like the IMF, for their continued insistence upon this single and ideologically rigid development model. Ethan Kapstein,³¹ John Gray,³² Dani Rodrik,³³ Stephan Haggard,³⁴ Geoffrey Garrett,³⁵ and Jeffrey Frieden³⁶ all argue that countries should pursue their own form of capitalism. Indeed, the countries that have best adapted to globalization, such as China and Korea, have not always followed the IMF-endorsed model. Rather, they have combined social protection and private innovation with activist government policies. As John Gray argues, a strong, capable state is an essential precursor to a functioning free market.³⁷ For this reason, the state remains important. However, actions over the past two decades by international organizations like the IMF *have* undermined national democracy, particularly in the developing world. Governments have certainly been coerced into actions their populations would likely not have selected democratically, such as cuts to social spending or the privatization of public utilities. In this respect, citizens are not entirely wrong in their suspicion of global institutions.

Conclusion:

Here I have attempted to provide evidence for the state’s continuing importance and also to explain why, in face of this evidence, many people equate globalization with a loss of national sovereignty. Since this debate is often framed in economic terms, I have kept our discussion within these bounds. This paper has covered two aspects of globalization’s relationship to state power. First, I have argued that while the global markets do affect national policymaking via economic crises and the increased mobility of capital, these trends are but a continuation (often highly visible thanks to expanded media) of observed historical trends. Changes have occurred over the last half century, such as an increasing tax burden onto labour and away from capital. But evidence suggests these changes have yet to make any fundamental upheavals to the compromise of ‘embedded liberalism’. At

the individual level, we ought to be careful about over-simplifying the reactions against economic globalization: many citizens have nuanced views on the subject. For instance, in a recent survey “sixty-eight percent of [Canadian] respondents claim globalization has led to job losses in the country, but sixty-two percent think it is beneficial to Canada’s economy.”³⁸ Part, but not all, of the citizen reaction against globalization could therefore be explained in the context of Polanyi’s work as a legitimate social reaction against an overreliance on a destabilizing ‘self-regulating market’ ideology.³⁹

This explanation ties into international organizations, the second aspect of my paper. The IMF, the brief case study presented here, has exhibited the above ideological bent and actually undermined state autonomy, and thus citizens’ democratic initiative, in more than a few instances. Objective analyses indicate the necessity for nationally-based, proactive state solutions to problems of development and economic crisis. Too often, a single, western-centric model has been espoused by unaccountable organizations, and the state has been marginalized at the citizens’ expense. In this light, the popular reaction against globalization as a whole is understandable. While not all aspects of economic globalization are flawed, it is clear that the global institutions of economic governance need reform to be more inclusive and democratic. Sovereign states, in their continued relevance, ought to address their peoples’ concerns about democratic responsiveness by moving forward to make such reforms happen.

1 Paul Krugman, *The Return of Depression Economics* (New York: W.W. Norton and Co, 1999), 94.

2 *Ibid.*, 97.

3 *Ibid.*, 97.

4 *Ibid.*, 126.

5 *Ibid.*, 126-127.

6 *Ibid.*, 117.

7 Dani Rodrik, *The New Global Economy and Developing Countries: Making Openness Work* (Washington DC: Overseas Development council 1999).

8 Stiglitz, *Globalization and its Discontents* (New York, W.W. Norton and Co, 2002), 59.

9 *Ibid.*

10 Ethan Kapstein, “Workers and the World Economy”, *Foreign Affairs* May/June 1996, 4.

11 *Ibid.*, 16.

12 *Ibid.*

13 Dani Rodrik, “Sense and Nonsense in the Globalization Debate”, *Foreign Policy*, Summer 1997, 26

14 Whether or not this is because of a ‘false consciousness’-type ideology imbued in voters by the mass media is beyond the scope of this paper.

- 15 Garrett, "Global Markets and National Politics: Collision Course or Virtuous Circle?" *International Organization* 52 (1998), 789
- 16 *Ibid.*, 788-89.
- 17 *Ibid.*, 791.
- 18 *Ibid.*, 805.
- 19 *Ibid.*, 823.
- 20 *Ibid.*, 824.
- 21 *Ibid.*, 822-23.
- 22 Charles Kindleberger. *Manias, Panics, and Crashes* (New York: John Wiley and Sons, 2000 [4th ed.]), 13.
- 23 Tett, "Doomed to repeat it?" *Financial Times*, 27 August 2007.
- 24 Kapstein, 7.
- 25 *Ibid.*, 7-8.
- 26 Rodrik, "Sense and Nonsense in the Globalization Debate", 22.
- 27 Stiglitz, 104.
- 28 Krugman, *The Return of Depression Economics*, 114.
- 29 *Ibid.*, 116.
- 30 Stiglitz, 54-55.
- 31 Kapstein, 22.
- 32 John Gray, *False Dawn* (New York: The New Press, 1998).
- 33 Rodrik, "Sense and Nonsense," 35-36, "The New Global Economy and Developing Countries," 150-153.
- 34 Frisch, review of Haggard, *Pathways from the Periphery...* 1-5
- 35 Garrett, 822-824.
- 36 Jeffrey Frieden, *Global Capitalism: Its Fall and Rise in the Twentieth Century* (New York: W.W. Norton and Co, 2006) 418-420, 301-302.
- 37 Gray, *False Dawn*.
- 38 Angus Reid Strategies, "Online interviews with 1,009 Canadian adults, conducted on Jul. 16 and Jul. 17, 2008. Margin of error is 3.1 per cent." Available from http://www.angusreid.com/polls/view/canadians_appear_conflicted_by_globalization/; Internet; accessed 16 December 2008.
- 39 More subdued (so far) than the last one!

