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## THE BATTLE FOR THE SECESSION: Catalonia versus Spain

Joan Barceló-Soler

### ***I. Introduction: Historical Background and Contemporary Facts***

Spain's transition to democracy with the constitution of 1978 was expected to offer the political basis for social and national peace. After forty years of Franco's dictatorship, the decentralization of power to the historic national communities was seen as the end of the national rivalries between Galicia, Basque Country, and Catalonia versus Spain, and the start of an era of regional stability. The rapid instauration of regions during the eighties homogenized the political power of the historic nationalities with the rest of newly created regions, excepting for the differentiated fiscal treatment of Basque Country and Navarra. Unlike what would be expected by some (Norris 2008; Wolff and Yakinthou 2012), in regions such as Catalonia, the power-sharing process did not terminate aspirations for increasing self-government powers (Martinez-Herrera 2002, 421-453), as evidenced by increasing secessionist claims (*Figure 1*). Although secessionist claims in Catalonia are not new, they are at their highest peak and constitute a large proportion of the population. The contemporary scenario is characterized not only by increasing polarization between Catalan and Spanish leaders, but also by growing social pressure from this pro-secessionist majority for the celebration of a referendum for self-determination.

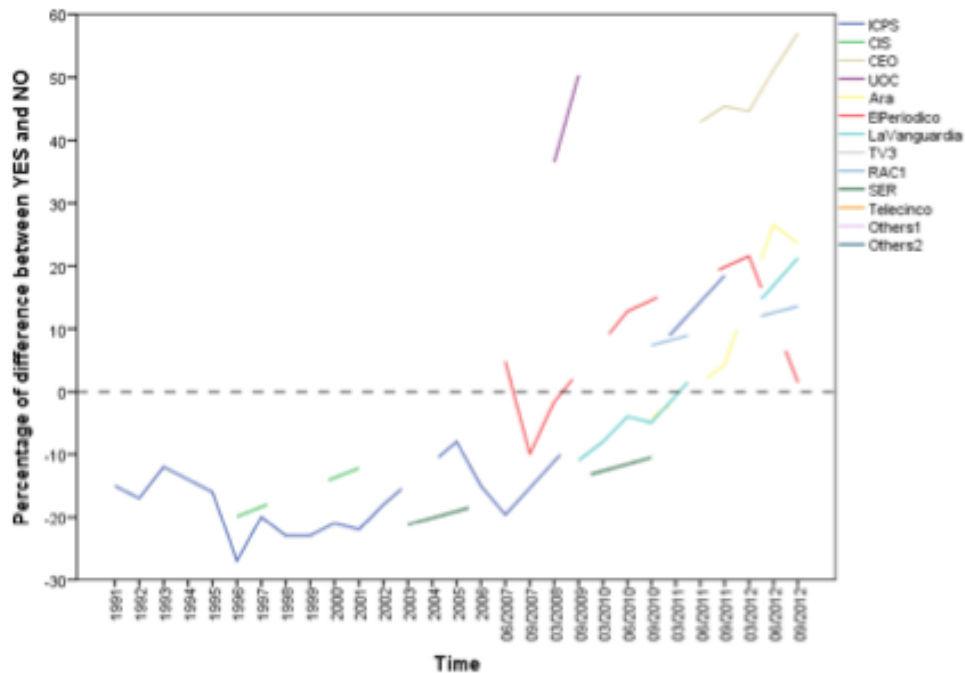
Until recently, Catalan nationalism had never been characterized by secessionist claims; in fact, very few Catalans wanted full independence. The

main Catalan nationalist coalition, *Convergència i Unió* (CiU), which governed Catalonia for the first twenty-three years of democracy (1980 – 2003), supported the *Partido Socialista Obrero Español* (PSOE) (1993 – 1995) and the *Partido Popular* (PP) (1996 – 2000) when they were minority governments in Madrid. In doing so, CiU guaranteed the stability of Spain. Although CiU has always defined Catalonia as a nation, it had not historically questioned Spain's unity (Guibernau 2000, 55-68). However, all this has changed in recent years due to an increasingly perceived lack of recognition to the particularities of Catalonia (unique language, history, and traditions) on the part of Spain and the severe economic crisis that hits the country since 2008. Additionally, many Catalans believe their region transfers an unfair and disproportionate amount of money to the central government and Spain's poorest regions. In this context, CiU regained control of the Catalan government after seven years in the opposition (2003 – 2010) with a clear intent to relieve the amount of net fiscal transfers<sup>1</sup> from Catalonia to the rest of Spain. However, failed agreement between the leaders of Catalonia and Spain has engendered an escalation of tension that may put the struggle for Catalan independence in the spotlight of European political affairs in the years to come.

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<sup>1</sup> The annual net transfer ("fiscal deficit") is calculated to have moved between 6.7 percent to 10 percent of the Catalan GDP in the last twenty years with an increasing trend in the last decade as shown in Artadi (2012, 58-

**Figure 1: Vote intention in a secessionist referendum (percent difference between YES and NO)**

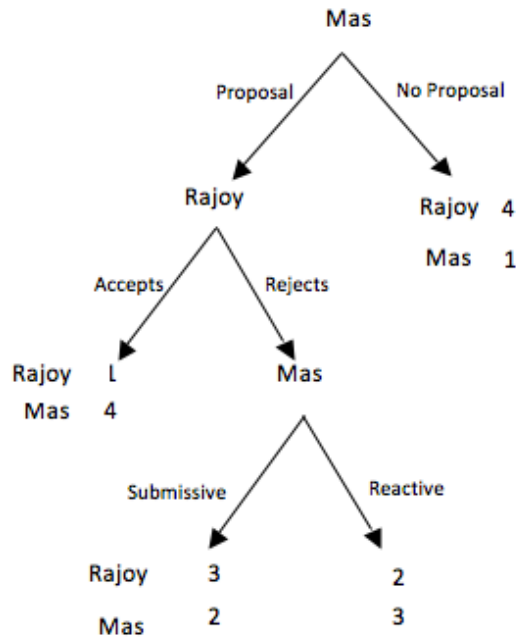


In light of the contemporary political landscape, it is clear that the secessionist aspirations of Catalonia will invariably clash with the Spanish government's long-term policy of denial. However, making sense of the rational strategies on the part of both parties by means of game theoretical tools may shed some light on new paths of dialogues and understanding that cannot be seen by the naked eye. This essay proceeds as follows. Firstly, I show the sequence of the games starting from the meeting between Artur Mas, leader of CiU and prime minister of Catalonia, and Mariano Rajoy, leader of PP and prime minister of Spain, in September of 2012 and the elections to the Parliament of Catalonia of November 2012. Next, I travel to the future and predict the nature of the legal and constitutional dispute between Catalonia and Spain, the referendum, and a prospective post-referendum scenario.

Finally, I provide some conclusions and discuss the implications of my findings.

## ***II. The Sequence of Games: Predicting the Process***

The first key point was the meeting between Artur Mas, leader of CiU and prime minister of Catalonia, and Mariano Rajoy, leader of PP and prime minister of Spain, on September 20, 2012, which occurred only nineteen days after a mass demonstration in Barcelona under the slogan: "Catalonia, New State of Europe." The aim of the meeting was to discuss the economic situation of Catalonia and Mas presented a proposal of asymmetric fiscal agreement. The worst option for Mas had been not to try to reach the agreement, because it would have been against his electoral promise and against the demands of the demonstration, which he had

**Figure 2: Extensive Game, Meeting Rajoy – Mas on September 20, 2012**

supported days earlier. At the meeting, Rajoy could either accept or reject the proposal. Although Rajoy wished he had never received the proposal in the first place – it is less costly not having to reject a proposal than actually having to reject it – chose to reject it as acceptance would have imposed unacceptable constraints over Spain’s financial situation<sup>2</sup>.

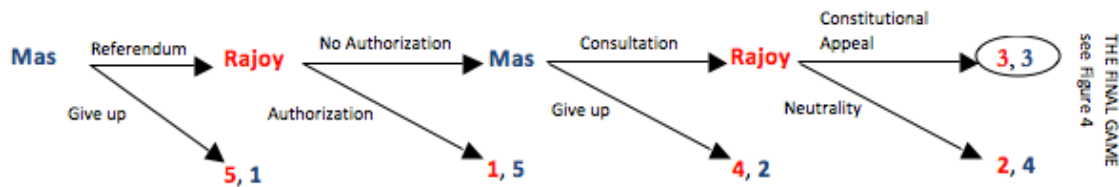
Given Rajoy’s rejection, Mas could either be (a) reactive, triggering some political action to step up the process; or (b) submissive, accepting the rejection without resistance. In this case, Mas clearly preferred to react against the decision in order to increase pressure on Spanish leaders rather than submit to Rajoy’s decision and display weakness. In a

nutshell, the subgame perfect Nash equilibrium is proposal-rejection-reaction (see *Figure 2*). To the surprise of many observers, this was what transpired, with Mas announcing both the celebration of elections in Catalonia and the celebration of a referendum in the next legislative period for Catalan independence.

The November 25, 2012 elections gave an absolute majority to the secessionist bloc, which triggered the process for a secessionist referendum. Based on the results of information gathering about the effects of a referendum, the referendum might be attempted. *Figure 3* shows the sequence of moves wherein Mas has clear political power to push the process forward despite Rajoy’s potential resistance, with the former’s payoffs in blue and the latter’s payoffs in red. First, Mas can try to put forth a secessionist referendum via article 122 of the *Catalan Statute of Autonomy*, Catalonia’s constitution. However, such a move requires Rajoy’s authorization. For his part, Rajoy must decide whether or not to accept the celebration of the referendum. If Rajoy does not authorize the referendum, then Mas must either (a) call for a “public consultation” – a juridical artifact similar to the referendum but one that does not require Spain’s authorization – or (b) give up. However, a public consultation bears less juridical value, as only the municipal census can be used, not the official electoral census. If Mas chooses public consultation, Rajoy must decide whether to appeal its constitutionality. If Rajoy chooses to make a constitutional appeal, the outcome becomes less certain.

<sup>2</sup> Catalonia is a rich region in Spain and, therefore, a net contributor to the national balances. Thus, if a different fiscal treatment was accepted, the rest of Spain would lose a great source of money. See above reference, (Artadi 2012, 58-71; Fuente 2012) for more information in this respect.

Figure 3: The judicial ongoing game between Mas and Rajoy



Thus, the final game arrives when Mas decides whether or not to proceed with the public consultation after it has been appealed to the Constitutional Court. The Catalan prime minister could either (a) call for plebiscitary elections, with all the parties for the independence under the same electoral list and the rest on the other side, or (b) issue a unilateral decision from the Parliament. Alternatively, if Mas gives up and forgoes a public consultation, he abandons the process and may try to negotiate a better accommodation within Spain. We might find either a weak or a strong Rajoy. While the former indicates Rajoy's neutrality in front of the Catalan process, the latter would be attended by Rajoy's intervention in the process by using two possible tools at hand: (a) political intervention through the suspension of Catalan autonomy (art. 155 Spain's Constitution) to stop the consultation, or (b) military intervention through the use of the force.

The game can be analyzed as sequential or simultaneous. In both cases, I assume that Mas decides his positions based on the likelihood that a strong Rajoy would mean a military or political intervention of Catalonia. With respect to the political intervention branch, the best outcome for Mas would be to go ahead with the process, with the passivity of Rajoy, and the second best when he goes ahead even with the suspension of autonomy. Mas could speed up the process by call plebiscitary elections or declaring the

unilateral secession from the Parliament before the suspension can be implemented. In this scenario, the referendum could be held without requiring Spain's legal approval. The second worst outcome for Mas would be to give up the process after Spain's political intervention. Mas could excuse himself from abandoning the battle in front of the Catalan electorate as a consequence of intervention. Finally, the worst scenario would be if Mas abandons the project while Spain remains weak as the Catalan prime minister cannot excuse himself for this decision.

As for the military intervention branch, Mas would invariably prefer anything else to Spain's military occupation of Catalan territory, given that he is a risk-averse politician. If the process resulted in Spanish military intervention, the Catalan electorate would ostracize Mas for having led the country to a military conflict; as such, this scenario constitutes the worst possible outcome for him. His best option is still to go ahead when Rajoy is weak, yet his second best outcome is to give up when he perceives the military threat. Even though he has little excuse in front of the Catalan society, his second worst outcome is to give up when Rajoy is weak, but he prefers to do so rather than to go ahead with a military intervention.

In terms of Rajoy's preferences, we have two scenarios. In terms of political intervention, Rajoy's ideal scenario would be when he only needs to politically threaten Catalonia to force Mas to give up

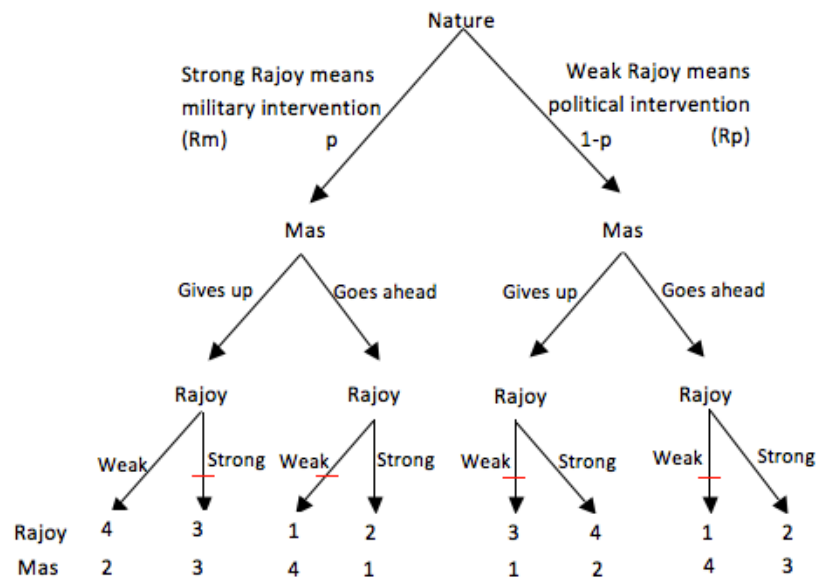
the process. This can be easily sold as a political triumph for Rajoy, with clear electoral benefits. By contrast, Rajoy does not capitalize the victory if he remains neutral and Mas abandons the process, so although this is also a good scenario for Rajoy, it is second best. The worst possible outcome for Rajoy would be when he remains passive while Mas attempts to destroy Spain's integrity. The second worst case is when Mas holds the referendum to break away from Spain, and Rajoy at least has done as much as he could to avoid it by intervening politically.

When military intervention is on the table, Rajoy's ranking preferences will change. He will prefer to avoid making military threats Catalonia to dissuade Mas. However, Rajoy would rather militarily intervene than Mas going ahead, and if Mas goes ahead with the referendum, then Rajoy prefers to stand firm and send the army to stop what would be seen as an internal coup d'état. Finally, the worst option for Rajoy is to do nothing in front of Spain's dissolution.

In an international context where democratic countries do not solve their internal

conflicts through war but political negotiation, and within a European Union highly risk-averse to military adventurism – particularly, within its territory – Rajoy would have difficulty generating a credible military threat. For this to constitute a workable action, Rajoy must construct a credible military threat (perceived  $p(Rm) > 0,5$ ) that would deter Mas. Therefore, we can safely assume that the perceived likelihood between political and military military intervention before the game should be  $p(Rp) > 0,5 > p(Rm)$ . Thus, Mas' dominant strategy is to be strong and, with a probability higher than 0.5, it will result in the right-hand subgame

Figure 4: The Final Game for the referendum, Mas versus Rajoy



The distribution of preferences described above yields the following expected payoffs for Mas:

- Weak strategy:  $2p + 2(1 - p) = 2$
- Strong strategy:  $p + 3(1 - p) = 3 - 2p$

As a result of this, Mas strategy will be the following:

$$\text{If } \begin{cases} p(Rm) > 0,5 > p(Rp); \\ p(Rm) = p(Rp) = 0,5; \\ p(Rp) > 0,5 > p(Rm); \end{cases} \quad \begin{cases} \text{then Mas dominant strategy is to be weak.} \\ \text{then Mas is indifferent between being weak or strong.} \\ \text{then Mas dominant strategy is to be strong.} \end{cases}$$



**Table 1: Pros and Cons of the Independence Negotiations**

		<b>Mas</b>	
		Secession	No Secession
<b>Rajoy</b>	Friendly	<ul style="list-style-type: none"> <li>▪ International recognition</li> <li>▪ Direct entry into the EU, the European Single Market</li> <li>▪ Catalonia assumes approximately a 20 percent of the Spain's national debt (proportional to the weight of Catalonia within the national GDP).</li> <li>▪ Catalonia stops the net transfer sent to Spain every year (<math>\approx 8.5</math> percent GDP/year)</li> <li>▪ Catalonia receives <math>\approx 20</math> percent of Spain's assets</li> </ul>	▪ Status quo.
	Conflictive	<ul style="list-style-type: none"> <li>▪ International recognition not guaranteed</li> <li>▪ Potential denial of entry into the EU, European Single Market</li> <li>▪ Spanish boycott of Catalan products at private level (decrease Spain's demand) and public level (tariffs)</li> <li>▪ Catalan tariffs leave Spain effectively locked-in in the peninsula with no connection to Europe</li> <li>▪ Catalonia stops the net transfer sent to Spain every year (<math>\approx 8.5</math> percent GDP/year)</li> <li>▪ Spain assumes the totality of its national debt (Catalonia would decide not to share it), and Spain has to confront the same amount of debt even though it has lost about 20 percent of the national GDP.</li> </ul>	▪ Status quo with more internal conflict.

where Rajoy is also strong and attempts unsuccessfully to intervene politically as Mas goes ahead with the electoral call. Even though recent polls indicate a potential close race between the two options, the result of the popular consultation is far from predictable. If the result is negative, the status quo prevails, but if it is positive – in favor of the independence – a new process of negotiations must start. Thus, the decision hinges on whether or not Mas chooses to secede, and if Rajoy chooses to make the separation friendly or conflictive. Each position has its advantages and drawbacks that are summarized in *Table 1*.

Based on the information provided in *Table 1*, *Table 2* depicts the payoff matrix, taking into account a pure rational choice

perspective. Mas would prefer a friendly process to a conflictive one, but a no-secession to a conflictive secession. Rajoy, by contrast, would prefer a friendly independence to a conflictive one, but always a no-secession to any sort of secession, as the fragile Spanish economy favors stability over disorder. The Nash-equilibrium is located in the friendly secession.

**Table 2: Matrix of the Negotiations for the Independence**

		<b>Mas</b>	
		Secession	No Secession
<b>Rajoy</b>	Friendly	2*, 4*	4*, 1
	Conflictive	1, 2	3, 3*

### III. Conclusions and Final Prediction

The battle for Catalan secession in Spain is a topic that is likely to attract much

attention in the coming years. Beyond simple reconstruction or interpretation of particular events, this analysis empowers game theory for empirical purposes to generate new testable and falsifiable predictions about the world. If the strategies, strategic rationality, and payoffs assumed throughout this essay are correct, then my findings should accurately predict the outcome.

Firstly, Mas sends the proposal for the fiscal agreement, which Rajoy subsequently rejects. In response, Mas prompts the celebration of elections in late November. Next, Mas would push the process forward from the referendum to the consultation, moving toward what has been called the final game, wherein Rajoy would not concede. In the final game, assuming lower than fifty percent likelihood of Rajoy using military intervention, Rajoy would use political intervention to stop the process, even though Mas would go ahead anyway. The analysis in this paper indicates that the unique option for Rajoy to convince Mas to abandon the project is by projecting a credible threat of military force throughout the process, with a perceived likelihood of over fifty percent.

Finally, in front of a positive result of the consultation call, the most plausible scenario would be a friendly secession, as it is in the self-interests of both players, given the consequences of each strategy. This would eventually lead to the creation of a new state in the international community: Catalonia.

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## **AID-FOR-POLICY DEALS: The Logic of U.S. Military Aid to Colombia**

**Kyle Barron**

### ***I. Introduction***

Until the wars in Iraq and Afghanistan, only Israel and Egypt received more U.S. aid than Colombia. Under Plan Colombia, the United States has contributed more than \$5 billion since 2000 (Dube and Naidu 2010, 6). The United States ostensibly sends aid to Colombia to fight the War on Drugs, and since September 11, Colombia has become a front for the War on Terror. Despite the failure to eradicate the international drug trade or global terrorism, the United States continues to contribute huge sums to Colombia in the form of military aid. Using selectorate theory and the political economy of foreign aid model, this paper explores the rationality behind U.S. aid to Colombia.

To ensure the political survival of U.S. leaders, this aid provides a public good for U.S. citizens by demonstrating that actions are being taken to address the drug flow from Colombia to the United States and the terrorist activity associated with the armed conflict in Colombia. In turn, the foreign aid is diverted to the leader's supporters—namely the military and paramilitaries, which benefit from military spending—to ensure their loyalty. While leaders and their supporters in both the United States and Colombia stand to gain from these transactions, the common citizen in Colombia fails to share in the benefits of aid-for-policy deals.

### ***II. Literature Review***

Some studies contend that foreign aid cannot only fail to achieve development goals, but potentially can have harmful effects such as aid dependency and economic distortions. Researchers have shown that aid can lead to perverse incentives for those receiving it and exacerbate the very problems it tries to solve (Easterly 2001, 137), as well as create dependency in developing countries (Jackson 1990, 115). Using a rational choice model, Herschel Grossman theorizes that foreign aid increases the incentives for insurrection due to the struggle over resource allocation between non-state actors and the state itself (1992, 287). Scholarship has also shown that military aid has negative effects. Military aid has been found to be “at best ineffective in reducing the risk of international conflict” and may raise the incidence of civil war resulting from regional arms races (Collier and Hoeffler 2007, 2). Both development and military aid have been found to have unintended effects on the receiving countries.

Building on these general theories, scholars have studied the consequences of military aid in Colombia. By comparing Colombian municipalities with army bases to those without, Dube and Naidu use micro-level data to demonstrate that U.S. military aid leads to a rise in violence by non-state actors, or paramilitaries, in municipalities that receive military assistance. The authors claim that military aid can translate into increased violence through “diversion,” where a lack of state

capacity can “enable capture and diversion of given resources” (2010, 2) and that by diverting aid to non-state actors, “donor countries may find themselves fueling the very groups that military aid is designed to suppress” (ibid., 3). Military aid is given to those countries that lack state capacity; a state would not need military aid if it had a sufficiently powerful military. This state weakness increases the chances that military aid finds its way into non-state hands, because a weak state lacks sufficient mechanisms to ensure the effective distribution of resources. Therefore, military aid can exacerbate conflict through the diversion of resources to non-state actors. Dube and Naidu also demonstrate that increased military aid leads to diminished political participation in municipalities with bases compared to those without.

With so much evidence showing the negative effects of foreign aid, why would the United States continue pouring money into the coffers of another country? The rationality behind foreign aid can be explained using Bueno de Mesquita and Smith’s model of the political economy of aid, which utilizes selectorate theory to explore the incentives that leaders have to both give and receive foreign aid.

### ***III. Selectorate Theory and the Political Economy of Foreign Aid***

Selectorate theory assumes that “political leaders seek to maximize their tenure in office,” by drawing on support from the selectorate, or the individuals who can potentially choose the leader (Bueno de Mesquita et al. 2003, 38). The leader’s political survival is contingent on the loyalty of their winning coalition—a group drawn from the selectorate (Bueno de Mesquita

and Smith 2009, 314). Leaders are endowed with the power to “raise money and allocate resources,” (Bueno de Mesquita et al. 2003, 38) and they can ensure their political survival by apportioning resources as a combination of both public and private goods. “Leader” is used as shorthand for leadership, since very often the power of the purse lies in the hands of more than one individual (ibid., 39). Leaders can choose whether to allocate resources in the form of public goods that benefit everyone, or as private goods that only benefit their core supporters. The composition of expenditures depends on the size of the winning coalition. Leaders who depend on few supporters for their political survival buy loyalty primarily through the distribution of private goods. However, providing private goods to a great number of individuals becomes untenable as the size of the winning coalition increases, and therefore the leader chooses to distribute resources as public goods in a large coalition system (ibid., 51).

All leaders provide a mix of public and private goods. By their very nature, most goods have both a private and public component. Nonetheless, small coalition systems (e.g. autocracies, unconsolidated democracies) tend to skew toward the distribution of private goods, while large coalition systems (e.g. consolidated democracies) allocate benefits primarily in the form of public goods (Bueno de Mesquita et al. 2003, 37; Bueno de Mesquita and Smith 2009, 315-16). Leaders strategically distribute resources in the manner best suited to ensure their political survival.

Bueno de Mesquita and Smith extend selectorate theory to model the political economy of foreign aid. The authors’ conception of foreign aid assumes

that leaders, not nations, make aid decisions, and that aid is fungible, thereby giving leaders discretion on how to distribute the resources. In this formulation, foreign aid is distributed in the form of an aid-for-policy transaction, in which the donor state receives policy concessions for giving resources to the recipient state. The policy concessions translate to a public good in the donor country, garnering support from the donor leader's winning coalition, and amounting to a public bad in the recipient country. The larger the policy salience for the public in the donor country, the more likely that aid will be given. The recipient country's leader, on the other hand, can dole out the resources received to ensure loyalty from the relatively smaller coalition (Bueno de Mesquita and Smith 2009, 316). Foreign aid is most likely to be given to small coalition countries, because leaders in these systems are more susceptible to the corruption that makes policy concessions possible. This is because leaders in small coalition countries do not rely on broad support, but instead cater to the needs of a smaller group of supporters (ibid., 336).

Donor countries give aid in order to extract a policy concession from the recipient country. Bueno de Mesquita and Smith claim that the group with the most suboptimal outcome is the average resident in the recipient state who sacrifices the policy concession but who is unlikely to enjoy the private benefits diverted to the winning coalition. One could imagine an aid-for-policy deal in which a donor country gives aid in order to increase the likelihood the recipient country grants access to fishing in their waters. This would adversely affect neither the leader in the recipient country nor the winning coalition in the recipient country, but it would in fact

impact the broader public that conceivably relies on fishing for food or their livelihoods.

The political economy of foreign aid model states that the alleged beneficiaries of aid are most often people in need of humanitarian assistance, but shows that they do not actually receive assistance. Because aid is distributed to the population already receiving benefits (the winning coalition), the intended recipient fails to share in the benefits of the deal (ibid.).

Moreover, the authors show that although states claim to give foreign aid for humanitarian reasons such as alleviating poverty, the motivating factor is to extract policy concessions. They predict that donor states should choose to give foreign aid based on the policies they seek, as opposed to the actual humanitarian needs in the states receiving aid. Indeed, their findings reflect that the "neediest do not receive the most" (ibid.). Aid-for-policy deals often fail to achieve their declared goals but do increase both leaders' chances of political survival. This prediction is consistent with the motivations behind aid-for-policy deals between the United States and Colombia.

#### ***IV. Case Selection***

Colombia represents a typical case for the aid-for-policy model (Seawright and Gerring 2008, 299) because it is representative of leaders' incentives in giving and receiving aid predicted by selectorate theory. Bueno de Mesquita and Smith discuss the failure of foreign aid to address poverty alleviation goals, but their measurements of foreign aid do not differentiate between development aid and military aid. Their inclusion of Israel in some models demonstrates that their conception of aid-for-policy deals applies to countries

that receive resources overwhelmingly in the form of military aid. Examining Colombia extends their conclusions by focusing primarily on the motivations in aid-for-policy deals that provide military assistance.

First, I examine the winning coalition size of the United States and the public goods leaders provide by addressing the public's concerns over illegal drugs. Next, I explore the key players in Colombia's relatively smaller coalition—the military and the paramilitaries—and the private goods they receive. The case of Colombia reveals that the rationality behind military aid conforms to the predictions of selectorate theory.

### ***V. U.S. Winning Coalition***

Selectorate theory measures winning coalition size using polity data for regime type, selectivity of executive recruitment, and political participation (Bueno de Mesquita et al. 2003, 135). The United States is coded as a 1, the largest possible winning coalition size, on a scale from 0 to 1 (Marshall, Jaggers, and Gurr 2006). Similarly, Freedom House describes the United States as being “free,” scoring a 1, the most free, on a scale from 1 to 7 (Freedom House 2012). It is sensible for a leader in a large coalition system to provide non-excludable benefits in the form of public goods because providing private goods to tens of millions of constituents is too costly. Because the United States is a large coalition country (Bueno de Mesquita et al. 2003, 473), leaders strategically seek out policy concessions that translate to a public good in order to increase their chance of political survival.

### ***VI. Policy Salience***

In aid-for-policy deals, the salience of the policy in question for the donor country is an important consideration (Bueno de Mesquita and Smith 2009, 322). The United States receives a policy concession from Colombia because Colombia in the form of the latter's allowance to wage the War on Drugs (and subsequently the War on Terror) on its territory. This translates to a public good for the United States because, as Russell Crandall writes in his analysis of U.S. drug policy, “the American public was paranoid about illicit drugs such as cocaine, [and] national politicians faced tremendous pressure to ‘do something’ about the drug trade” (2008, 87). Addressing salient political concerns increases a leader's chance of maintaining political survival in a large winning coalition system. The salience of the drug issue was such that the U.S. government was willing to invest a large number of resources to procure this policy concession from the Colombian government.

News coverage at the dawn of the War on Drugs reflects the American public's preoccupation with illegal narcotics, particularly crack cocaine. Headlines in the 1980s warned of “An Epidemic: Kids and Coke” (Newsweek 1986), and “New Drug Sends Youth From Heaven to Hell” (Cotter 1986). Crack was being blamed for traffic fatalities, a rise in heroin use, murder, arson (Gaines-Carter 1989), the spread of AIDS and syphilis, prostitution, budget deficits (Kerr 1989), sick babies, burglary, vigilantism, the decline in business and property value, dishonest employees' performance (Morgenthau et al. 1986) and increased spending on social services, police, and home security systems.

Newspapers described in great detail how crack led to overcrowding in prisons, orphanages, and rehab facilities, and proclaimed that it “has even begun to destroy whatever civility was left to daily hospital life” (New York Times 1989). The spread of crack was likened to genocide, the Vietnam and World Wars, the Great Depression, and most commonly—an epidemic (Kerr 1986).

Reporting on the crack problem in New York, an article in the London-based *Advertiser* warned:

*Users call it God at first, then curse it as Satan. A doctor's wife has sold her baby to feed her craving. A young laborer has sworn he was ready to kill an 80-year-old man to buy it. Crack, a powerful form of cocaine, is spawning tales of ravage and raising fears among authorities that it may propel America into a new and possibly unstoppable drug crisis (Cotter 1986)*

The article goes on to warn that the epidemic plaguing urban centers will eventually “sweep small town America” (Cotter 1986). While perhaps the *Advertiser* could be forgiven for exaggerating a problem across the pond, even the newspaper of record in the United States warned that crack “is reaching out to destroy the quality of life, and life itself, at all levels of American society” (New York Times 1989). Thus, drug policy was a salient issue in the United States during the 1980s and 1990s.

On a state and local level, policymakers made attempts to address the problem. New York Governor Mario Cuomo advocated life sentences for selling as little as fifty dollars’ worth of crack cocaine (Schmaltz 1986). As U.S. Attorney, the future Mayor Rudolph Giuliani disguised

himself in order to make a public display of buying crack on the streets of New York. The publicity stunt resulted in calls for the federal government to address the drug problem. One *New York Times* editorial insisted: “Easing cold war tensions makes clearer than ever the threat to national security from the crack invasion. It requires a national mobilization as if for war [...] how much more must the crack disaster destroy before the United States Government grasps its dimension?” (New York Times 1989).

### ***VII. The Public Good: The United States Does Something***

The War on Drugs soon eclipsed the Central American civil wars and communism as the primary hemispheric concern of the United States. In response, leaders attempted to assuage public demands to reduce the flow of drugs into the country (Crandall 2008, 87). By utilizing Colombian territory through the funding army bases and the spending money to fight the War on Drugs, U.S. leaders provided a tangible public good by demonstrating to the winning coalition in the United States that leaders were “doing something” to address the apprehensions of U.S. citizens.

The first Bush administration launched the Andean Initiative, which allocated more than \$2 billion to fight the War on Drugs. Subsequent U.S. administrations have bolstered this program. Between 2000 and 2005, Colombia received over \$4 billion from the United States under Plan Colombia, over three quarters of which went toward military operations (Youngers 2006, 77) and also included the U.S. transfer of military

hardware, including Blackhawk helicopters (Crandall 2008, 91).

After September 11, the second Bush administration shifted national security rhetoric to include the War on Terror. The focus of foreign aid to Colombia was not just drug eradication but also to counter insurgency (ibid., 94) and terrorism (Avilés 2006, 405). With banners splashed across national network news announcing the daily Terror Threat Level, this new focus translated to a public good that addressed U.S. citizens' concerns about terrorist threats. Colombia has now become "the primary country in which U.S. counter-drug counterinsurgency and counterterrorism agendas converge" (Youngers 2006, 77). Just as waging the War on Drugs was a public good in the United States, fighting the War on Terror gives the perception that leaders are allocating resources to make citizens safer—translating to a benefit for the winning coalition in the United States.

### ***VIII. Aid Fungibility***

Under Bueno de Mesquita and Smith's model, foreign aid is assumed to be fungible. Aid is funneled from the United States to Colombia through a myriad of channels. Aside from the basic military aid earmarked as Foreign Military Financing (FMF) and International Military and Education & Training (IMET), funding also comes from Foreign Assistance emergency authorization, Excess Defense Articles, the State Department, loan guarantees, the Drug Enforcement Agency (DEA), as well as the Central Intelligence Agency (CIA) (Arnson and Kirk 1993, 130). This patchwork system limits accountability and transparency-tracking regarding where the aid is spent: "there are not effective mechanisms to ensure that the weapons

transferred for anti-narcotics operations are not diverted for other purposes" (ibid.).

The aid-for-policy deal model is evidenced by the disconnect between the War on Drugs rhetoric and the actual use of military aid in Colombia. With full knowledge of officials in the United States, the majority of military aid has not been channeled towards anti-narcotics efforts, but instead has explicitly been used by Colombia for the guerrilla war that Colombia has been fighting for the last fifty years (ibid., 132). As the continuance of military aid would suggest, leaders in the United States are largely unconcerned with the fate of foreign aid after it satisfies the interests of their winning coalition.

### ***IX. Colombia's Winning Coalition***

Colombia can be described as democratic, "but different forms of democracy may produce substantially different coalition sizes" (Bueno de Mesquita et al. 2003, 73). In aid-for-policy deals under selectorate theory, leaders of recipient states divert foreign aid to secure loyalty from their winning coalition. Because most recipient countries do not have large winning coalitions, these benefits are distributed in the form of private goods in the exchange for support. This is most likely to occur in unconsolidated democracies with weak institutions.

According to the Polity Project, Colombia's coalition size has been coded as a 0.75 for the past several decades (Marshall, Jaggers, and Gurr 2006). This score marks the threshold between what are considered large coalitions and small coalitions, which, according to selectorate theory, explains the large amount of aid the United States gives Colombia. Aid for policy



deals occur most often between large coalition countries (as the donors) and small coalition countries (as the receivers). However, of the countries that receive aid, the ones with the largest coalition sizes receive the most because those leaders must supply more private goods to ensure the loyalty of their winning coalition. Conversely, leaders of smaller coalition countries with a relatively smaller number of supporters are able to remain in power by allocating relatively fewer resources. The larger the receiving country's winning coalition, the larger the amount of aid must be.

While Colombia straddles the border between large and small coalition systems, limits on political participation explain the tendencies of Colombian leaders to provide private, as opposed to public, goods. Historically, Colombia has restricted political eligibility to either the Conservative or Liberal parties. De facto exclusion is also prominent due to widespread illiteracy, social divisions, and poverty (Dix 1980, 304). The last decades of the twentieth century were marked by administrations that "worked to co-opt and repress political opposition" (Avilés 2006, 384). Voter abstention and elitist party structures have resulted in narrow political participation (*ibid.*, 385) and a weak civil society (Watson 2000, 545). Despite the independent position of the judicial system, two important features of democracy—public contestation and political competition—have been undermined, especially during the Uribe presidency (Soares 2009, 36).

Furthermore, according to Freedom House, Colombia's democratic institutions are marred by corruption, resulting in Colombia being described as only "partly free," with a rating of 3.5—the fourth least free country in Latin America after Cuba,

Venezuela, and Haiti (Freedom House 2012). The features of a robust democracy are conducive to large coalitions and states like Colombia that lack meaningful citizen participation are likely to be comprised of small winning coalitions. Although Colombia is technically a democracy, the political institutions in Colombia fail to incentivize the allocation of resources in the form of public goods.

### ***X. Colombia's Military***

According to the political economy of foreign aid model, leaders with small winning coalitions should distribute aid as a private good for the benefit of their crucial supporters. The most obvious beneficiary of military aid is the military itself. While no aid is purely a public or a private good, in a small coalition state resources should bias toward private allocation. While military aid does contribute to national security (a public good), it also translates to job security, salaries, and political influence (private goods) for members of the military who occupy a position in the winning coalition.

Historically, there have been close ties between the Colombian civilian leadership and the military. In the 1950s, Colombia had a formal military government followed by a military junta (Dix 1980, 305), and the military continues to wield influence over leaders in the country. The military performs the traditionally civilian tasks of border control and routine policing (Watson 2000, 542), and widespread violence and counterinsurgency have justified granting the military "significant leverage over the civilian authorities, especially in questions of national security and public order" (Richani 1997, 51). The military has remained highly influential in

the political process even after 1991 reforms that ceded civilian control to the ministry of defense (ibid., 52). Further, the militarization of anti-narcotics efforts since 2001 “works against efforts across the region to professionalize and bring police forces under civilian control” (Youngers 2006, 83). Political influence over civilian authorities grants the military a place in the winning coalition.

Military aid conveys clear benefits to the armed forces. Military spending tends to produce private goods, especially in a small-coalition system where often little is done in the way of a public good for national security because resources are diverted to benefit the winning coalition—the military in this case (Bueno de Mesquita et al. 2003, 245). Three quarters of the \$5 billion of Plan Colombia aid has gone toward the military. This aid has been dedicated toward the public good of national security to some extent but more significantly has been converted to a private good for the military brass. In the early 1990s, salaries of lower level officers increased by 200 percent, while compensation for generals increased more than twice that percentage (Richani 1997, 50). Between 2000 and 2007, the number of military personnel more than doubled from 160,000 to 380,000 (Richani 2010, 34). Thus, the military receives private benefits when aid is directed toward the military.

### ***XI. Colombia's Paramilitaries***

While a number of non-state actors contribute to the violence in Colombia, only the right-wing paramilitaries are integrated into the winning coalition. Scholars (Avilés 2006, 396; Youngers 2006, 84; Dube and Naidu 2010, 10), human rights groups (Human Rights Watch 2010, 106), and even

the U.S. State Department (U.S. Department of State 2012) have extensively documented collusion between the Colombian state and paramilitary forces. This collusion is the result of the “symbiotic relationship with specific politicians holding power: paramilitaries deliver votes to politicians with preferences relatively close to theirs, while politicians they helped elect leave them alone, and possibly, implicitly or explicitly, support laws and policies they prefer” (Acemoglu et al. 2010, 2).

In 1968, a counterinsurgency law legalized citizen militias (ibid., 16), and in the 1980s, these paramilitaries consolidated power as a response to left-wing violence and kidnapping (Watson 2000, 534). These armed non-state actors are mostly composed of landowners and agribusinessmen who represent the interests of the paramilitaries (Richani 1997, 63; Acemoglu et al. 2010, 17). Various paramilitary groups converged in 1997 to form the Autodefensas Unidas de Colombia (AUC), a right-wing group organized to fight the left-wing guerrillas and protect landholdings as well as strategically influence electoral politics (Acemoglu, et al. 2010, 18). Paramilitaries were officially outlawed in 1989 (Watson 2000, 535) but only formally demobilized between 2003 and 2006. However, even after their official demobilization, these groups have continued to operate under numerous monikers throughout the country (Human Rights Watch 2010, 3). Militarily, they support the state's fight against the left-wing groups through military confrontation against groups such as the Revolutionary Armed Forces of Columbia (FARC) and the National Liberation Army (ELN).

Alvaro Uribe, president from 2002 to 2010, “appointed individuals with past links with paramilitary operations and activities

to advisory positions within his presidential campaign (General Rito Alejo del Rio), to his cabinet (Fabio Echeverri Correa), and as head of the armed forces (General Carlos Ospina Ovalle)” (Avilés 2006, 406-7). Over fifty of his supporters have been accused of having ties with paramilitary groups (Carroll 2011, 20). Uribe seemed to have a cozier relationship with these non-state actors than most presidents of Columbia. He received their support before he was elected, and he garnered even more electoral support from these groups after he supported policies favorable to them (Acemoglu et al. 2010, 28). Their permeation throughout all levels of the state demonstrates the political influence paramilitaries hold over leaders.

Other influential politicians also have paramilitary links. Paramilitary groups gave crucial support to Army Colonel Blas Arvelio Ortíz Rebolledo’s successful run for governor, as they “presumably helped him with resources, pressed persons to vote for him, and in some cases [...] manipulated the elections and the results” (Human Rights Watch 2010, 106). Acemoglu, Robinson, and Santos claim that paramilitaries influence around 30 percent of legislative elections in Colombia (2010, 2). Paramilitary members have used violence and fraud, stuffed ballots, and intimidated both voters and politicians to influence elections (ibid., 21). Further, paramilitary members founded new political parties in 2002, which all but institutionalized their influence on elections (ibid., 18).

Collaboration has occurred with officials as influential as Guillermo Valencia Cossio, the chief prosecutor of Medellín and brother of the Minister of Interior (Human Rights Watch 2010, 10), who was convicted in 2011 to fifteen years in prison for his connections with paramilitaries (Caracol

2011a). That same year, the ex-senator Ciro Ramírez was sentenced to seven and half years for his involvement with the paramilitary leader Gilberto Saavedra (Caracol 2011b). Oscar de Jesús López Cadavid, the governor of Guaviare, was also accused of working with paramilitary groups (Human Rights Watch 2010, 106). As of 2009, eleven members of the Colombian Congress and Senate had been charged with having paramilitary links (Acemoglu et al. 2010, 19), as the relatively independent judiciary has managed to expose the close relationship between the state and the paramilitaries.

The fungibility of military spending is evident. Military spending results in higher salaries and job security, and the money the state does not have to spend on the military equipment they receive from the United States translates to private benefits. Paramilitaries on the other hand receive private benefits through a more circuitous route, most often through the military. Private benefits for the paramilitaries have included military resource diversion, as well as land seized they have seized from citizens accused of left-wing sympathies.

Research on violent non-state actors predicts this collusion between the Colombian military and the paramilitaries (Mulaj 2010, 9). Paramilitary operations are tolerated because they achieve the state’s military objectives by extralegal means (Avilés 2006, 385). In a weak state, the government often relies on non-state security forces to act as proxies to enforce control over territory. Paramilitaries in Colombia are granted great latitude because they achieve the security goals of the state without the national and international oversight to which state security forces must conform. State forces are often reported to vanish from an area in

which paramilitaries are operating (Freedom House 2012). The violent groups are permitted to carry out attacks with the full knowledge of state military operatives.

However, collusion goes far beyond tolerance for illegal activity. Human Rights Watch has extensive documentation of the military sharing sensitive information with paramilitary forces (2010, 102). More explicit links are demonstrated through testimony describing blatant state support and collaboration with these violent non-state actors. For example, state security forces helped in population displacement in the valleys surrounding Jiguamiandó and Curvaradó in 2008 by moving left-wing sympathizers off land that was subsequently given to the paramilitaries (Avilés 2006, 385).

The fungibility of state resources is demonstrated further through the material support provided to the paramilitaries by the military. For example, there are reports of paramilitary forces utilizing army trucks during a raid on a pro-FARC rally in Policarpa (Human Rights Watch 2010, 103). Separately, over half a dozen high-ranking military officers, including Brigadier General Carlos Gil Colorado, were charged with allowing paramilitaries to use state helicopters to transport weapons, as well as helping to establish paramilitary bases (Arnson and Kirk 1993, 29). Additionally, Dube and Naidu find that with increased military aid, municipalities with army bases see a rise in paramilitary-linked violence (2010, 22), which underscores the connection between military spending and the diversion of resources to paramilitary fighters.

## ***XII. Colombia's Citizens***

Despite the fact that military aid to Colombia has been framed in terms of security, it has largely translated to private instead of public goods, failing to benefit the average Colombian citizen. Between 1985 and 2002, shootings accounted for 17 percent of deaths of Colombian men (Aguirre et al. 2009, 32) and human rights and labor activists face violent intimidation in the country (Youngers 2006, 84). There were over five hundred union killings during Uribe's presidency alone, with only fourteen prosecutions (Carroll 2011, 20).

Interestingly, as U.S. military aid to Colombia has diminished in the last decade, violence has also decreased. American military aid to Colombia went from \$800 million in 2000 to just over \$230 million in 2012 (WOLA 2013). Violence has similarly dropped since then, with seventy homicides per one thousand people in 2002 to thirty-four per one thousand people in 2011 (Small Arms Survey 2012). Although murder and kidnapping rates have been falling worldwide, Colombia still ranks fifteenth in the world with 33.4 murders per one hundred thousand residents (UNODC 2011).

Bueno de Mesquita and Smith argue that aid-for-policy deals can be successful, even if the stated goals of the donor country are unmet (Bueno de Mesquita and Smith 2009, 336). Despite the overwhelming failure of the ostensible aims of U.S. military aid to Colombia, leaders of both states, as well as their winning coalitions, benefit from these deals, while the common Colombian citizen loses out.

### ***XIII. Conclusion***

Colombia receives the highest amount of U.S. foreign aid in the western hemisphere. This aid-for-policy deal helps assure the political survival of leaders in both countries. American leaders gain the support of their large coalitions by addressing concerns about narcotics and terrorism, thereby distributing the public good. Colombia allows these battles to be fought on its soil as a policy concession for military aid. The diversion of these resources secures loyalty from the relatively smaller winning coalition in Colombia, comprising primarily the military and paramilitary forces. However, aid-for-policy deals between the United States and Colombia have not translated to a public good for the average person in Colombia. To the contrary, the resources diverted to the winning coalition in Colombia have been “increasing both extra-legal violence and electoral manipulation, with no apparent reduction in drug production” (Dube and Naidu 2010, 3).

Examining aid-for-policy deals through the lens of strategic decision-making can help shape foreign policy. For the United States, the publicly stated goal is to fight the War on Drugs and, more recently, the War on Terror. Colombia has averred that U.S. aid is used to fight their narco-insurgency. There is broad agreement that the U.S. goals have not been met, and Colombia remains entangled in a civil war occurring across multiple fronts. These results could lead to the conclusion that military aid to Colombia has not had its desired effect. However, viewing the relationship through the lens of the selectorate theory reveals that leaders are indeed getting their money’s worth.

When forming policy decisions,

consideration of selectorate theory could improve the effectiveness of military aid. The aid-for-policy model only examines bilateral aid agreements, so analysis of multi-lateral foreign aid could provide more mechanisms for transparency and compliance to reach the stated goals of aid (Bueno de Mesquita and Smith 2009, 337). For bilateral agreements, the quid-pro-quo is contingent on the salience of a specific policy concession that the recipient state can provide to the donor country. Because there is a smaller chance that two or more donor countries will demand the same policy concession from a potential recipient country, the introduction of more players into the equation can increase the number of monitoring mechanisms that work to ensure the effectiveness of aid. These added safeguards could prevent the diversion of foreign aid into the hands of the winning coalition of the recipient country. Indeed, altering the incentives of the strategic decision-making influence change whether military aid is given at all. Further research into the incentives of multi-lateral foreign aid could provide policymakers with the knowledge to increase the chance that outcomes more closely resemble the stated goals of foreign aid.

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## HOW THE INTERNATIONAL CRIMINAL COURT EXCEEDS EXPECTATIONS

Lauren Bishop

### ***I. Introduction***

On July 17, 1998, 120 states adopted the Rome Statute, creating the first permanent international criminal court to try individuals for genocide, crimes against humanity, and war crimes. The Rome Statute entered into force on July 1, 2002, but not all scholars were confident that the International Criminal Court (ICC) would succeed at carrying out its mandate. Eric A. Posner and John C. Yoo predicted that the Court's reliance on State Parties to conduct investigations, gather evidence, arrest suspects, and surrender defendants without independent ICC enforcement would render the Court ineffective. Have the concerns of Posner and Yoo been realized, or has the ICC exceeded expectations? After more than ten years since the institution of the Rome Statute, it is now possible to examine closely the Court's case history and either verify or falsify their predictions. Although there are many subjective factors to consider when defining effectiveness, and the passing of more time will allow for a more definitive conclusion as to the Court's overall usefulness, this study reveals that, so far, the ICC has been far more effective than Posner and Yoo imagined.

The paper will proceed as follows. First, outline the predictions made by Posner and Yoo and then briefly compare these to a model created by Michael J. Gilligan, who argues that enforcement is not necessary for effectiveness, contrary to the critics' assumptions. After establishing this theoretical foundation, I discuss my hypotheses concerning the Court's effectiveness. In the following three

sections I use examples from cases that have been brought before the ICC to test the predictions of Posner and Yoo. Lastly, I give concluding remarks about the overall effectiveness of the ICC.

### ***II. Predictions of Posner and Yoo***

In 2005, Posner and Yoo made specific predictions about the Court's future. First, they hypothesized that states will pressure other states to violate the Rome Statute so that the only remaining abiding State Parties will be those that do not conduct significant military operations abroad (Posner and Yoo 2005). The authors stressed that countries with military forces abroad will fear that their troops will be forced to appear before the Court and tried for war crimes, which at minimum will be inconvenient and embarrassing. Posner and Yoo also believed that states with troops in foreign lands will be concerned that their military personnel may be tried for crimes that their home country considers legal. These concerns, Posner and Yoo stated, explain why the United States has not ratified the statute and has pressured other states to follow suit. Second, the authors forecasted that most states will not comply with extradition requirements, given that the Court cannot sanction a country or use force to apprehend suspects. Third, the authors predicted that only nationals of a defeated state will appear before the Court as part of the new government's attempt to earn legitimacy, which will largely limit the number and types of crimes tried. Overall, Posner and Yoo expected that the ICC will be reduced to fulfilling the functions of a

classic ex post tribunal, whose power and jurisdiction are defined after the atrocities are committed so that states may immunize themselves. Fundamentally, the authors stated that, "With its wings clipped, the ICC will become just another dependent international tribunal" (ibid., 70).

### ***III. Is Enforcement Necessary?***

In contrast to Posner and Yoo's pessimistic predictions, Michael J. Gilligan created a model to show that enforcement is not necessary for the Court to be effective when charging dictators with atrocious crimes. He argues that the existence of the ICC allows asylum-granting states to credibly refuse to provide a haven for dictators, which may prevent dictators from committing abuses at the margin (Gilligan 2006). His argument follows logically from the payoffs of both dictators and foreign countries. Utility for atrocity-committing dictators is greater if they expect to receive asylum when they lose grip on power and face domestic retribution if they remain in their country. Foreign countries prefer that other nations are not ruled by atrocity-committing dictators, and, therefore, cannot credibly commit to denying asylum to a dictator willing to leave his country and cease committing crimes. Gilligan states that a dictator will prefer asylum to surrendering to the ICC, but prefers surrendering to the ICC than to domestic retribution. Although the ICC has yet to make a ruling, Gilligan safely assumes that domestic vengeance will be worse than any punishment imposed by the Court. The existence of the ICC allows foreign countries to credibly reject requests for asylum, because dictators will voluntarily surrender to the ICC rather than be deposed by their domestic opposition. Therefore, the ICC

lowers dictators' expected value for committing the crimes in the first place, because there is the chance that foreign countries will deny them asylum and they will be forced to surrender to the Court or face domestic retribution. Lastly, the existence of the Court does not force dictators to hold onto power to avoid prosecution. Surrender is voluntary and the ICC only reduces the incentive for foreign countries to grant asylum if the dictator prefers surrendering to the Court to staying in power. If the dictator would rather stay in power than surrender to the Court, foreign states can still offer asylum and these asylum-granting states will not be punished by the Court (ibid.). This aspect of the model, however, rests on the assumption that potential asylum granters are aware of the preferences of dictators. In sum, Gilligan's model "allows states to credibly refuse asylum in some cases, when, without [the ICC] they would prefer to offer it, and it does so without prolonging the reign of atrocity-committing dictators" (ibid., 943).

Posner and Yoo, on the other hand, predict that State Parties will not comply with extradition requirements. By not extraditing a foreign suspect, the countries that do not comply with the Rome Statute are, in effect, providing asylum. A lack of compliance with extradition requirements, the authors argue, will render the Court ineffective (Posner and Yoo 2005). Gilligan's model, however, demonstrates that the existence of the ICC offers foreign countries another option. While states may not have complied with extradition requirements before, the existence of an international court may alter their preferences (Gilligan 2006). Furthermore, Posner and Yoo state that only nationals of a defeated state will appear before the Court, but Gilligan

provides for the possibility of voluntary surrender, an option not addressed by Posner and Yoo. Overall, Gilligan's model predicts that the ICC can be effective without the enforcement mechanisms that Posner and Yoo believe are necessary (*ibid.*).

#### **IV. Hypotheses**

To determine if Posner and Yoo's predictions are accurate or if I can extrapolate Gilligan's model beyond dictators to explain the effectiveness of the ICC, one must examine the ICC cases since the Court's creation in 2002. If it is true that countries will pressure other states to violate ICC obligations so that the only remaining abiding State Parties are those that do not conduct military operations abroad, we should observe three outcomes. First, State Parties that once ratified the Rome Statute will withdraw their ratification. Second, those nations that withdraw will be states that conduct significant military operations on foreign land. Third, none of the remaining State Parties that have ratified the statute will conduct significant military operations abroad. If Posner and Yoo's second prediction – that states will not comply with extradition requirements – is accurate, most State Parties will not have extradited suspects to the ICC. Lastly, Posner and Yoo predict that only nationals of a defeated state will appear in Court due to the new government's quest for legitimacy. If this is true, only suspects that were previous members of a now defeated state structure will arrive at The Hague. Although it is difficult to determine the individual motivations of state leaders, a new government would also need to be in place of that defeated state structure in order to

substantiate the claim that the new regime hopes to gain legitimacy by bringing defeated nationals before the ICC. If Posner and Yoo's predictions are accurate, the ICC is an ineffective international tribunal, but I disagree. By examining the Court and each of its cases, I find that few nations withdrew their ratification, not all State Parties refrain from military operations abroad, State Parties do comply with extradition requirements, and suspects other than defeated nationals appear before the Court. Overall, the International Criminal Court is more effective than Posner and Yoo predicted.

#### **V. Testing Predictions: State Withdrawal**

To reiterate, Posner and Yoo predict that, "as time passes and more states put pressure on other states to violate their ICC obligations [...] the only remaining State Parties will be states that do not conduct significant military activities on foreign territory" (2005, 70). This statement suggests that powerful nations, such as the United States, will pressure other states to withdraw their ratification of the Rome Statute. Although one can also interpret the prediction to mean that states will pressure other countries not to ratify the statute, the word "remaining" suggests that Posner and Yoo believe that nations will withdraw after already ratifying. Furthermore, Posner and Yoo specifically use the word "withdrawal" when referring to the United States (*ibid.*, 69). This is misleading. The United States was never a State Party, and therefore, could not withdraw from the statute. Although the United States did retract its signature, the distinction between being a signatory and a State Party is important when determining if Posner and Yoo's prediction is true. The Vienna Convention

on the Law of Treaties states that:

*A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed (1969, Article 18).*

On May 6, 2002, the United States "made its intention clear not to become a party to the treaty" and thus withdrew its signature. On August 28, 2002, Israel also informed the Secretary-General that it did not intend to become a party to the treaty. On August 26, 2008, Sudan withdrew its signature as well (United Nations 1998). Assuming that Posner and Yoo's prediction refers to the withdrawal of State Parties from the statute, not the retraction of signatures, none of the aforementioned countries fulfilled the prophecy. If one interprets their statement more broadly to include the withdrawal of signatures by nations that currently conduct military operations abroad, then Israel and the United States do fulfill the authors' prediction. While the United States is not shy about promoting its anti-ICC stance and encouraging countries to sign the Article 98 Agreement to prevent the surrender of U.S. soldiers to the ICC (ibid.), several State Parties, such as the United Kingdom, France, Poland, Australia, and South Korea, conduct significant military activities abroad and have not

succumbed to pressure to withdraw from the Rome Statute.

Before looking more closely at State Parties to determine whether or not Posner and Yoo's prediction is true, it is first necessary to clarify the vague phrase "significant military activities." Posner and Yoo do not offer a definition of "military activities," which can range from a declaration of war to the presence of military advisers abroad. In order to develop a working definition for military activities, I have adopted Ann E. Story and Aryea Gottlieb's framework, which divides military operations into three categories – combat operations, noncombat operations, and an overlapping category that may or may not involve combat depending on the situation. To address Posner and Yoo's use of the word "significant," I consider combat operations and the overlapping category as "significant." Therefore, "significant military activities" include war, operations to restore order, retaliatory operations, combating terrorism, exclusion zone operations, ensuring freedom of navigation, noncombatant evacuation operations, and recovery operations (Story and Gottlieb 1995). In order to adhere to what I interpret as Posner and Yoo's meaning of "significant" and to restrict my findings to make them as robust as possible, I did not include noncombat operations, such as show of force, truce keeping, and support and assistance operations.

Based on this definition, at least five State Parties to the Rome Statute can be classified as conducting significant military operations abroad. Although I chose only a few of the most apparent cases, there are more countries conducting military activities abroad that have ratified the Rome Statute than countries that have withdrawn from the ICC, even when

interpreting Posner and Yoo's prediction in its broadest sense. The United Kingdom, for example, has 40,880 troops deployed around the world. After the official end of the Iraq War in April 2003, UK troops have remained in the country to restore infrastructure and provide security. In Afghanistan, UK forces are stationed mainly in the southern province of Helmand to combat the Taliban. Until 2007, UK forces in Northern Ireland were also deployed to combat terrorism and maintain public order (British Broadcasting Company 2008). The French military is engaged in operations around the world as well. In Afghanistan, 3,800 armed troops are working to secure the country and allow for development and reconstruction. With 1,300 soldiers, France is the third largest supporter of the United Nations Interim Force in Lebanon. French naval forces have also been deployed off the coast of Somalia to prevent piracy and armed robbery and are presently in Chad and Kosovo to ensure stability and security. Most recently, France launched a military operation to support the Malian armed forces and stop the advancement of jihadi groups to the south of Mali (Ministère de la Défense et des Anciens Combattants). Like France, Poland is currently contributing to many international operations with a total of 3,500 deployed forces. Poland participated in a stabilization mission during operation Iraqi Freedom in 2003 and sent an anti-terrorism contingent to Afghanistan in 2002. Today, the country's largest mission is contributing to the NATO operation in Afghanistan (Ministry of National Defense Republic of Poland). Furthermore, Australia has a military presence on the world stage with 1,550 troops combating terrorism, improving maritime security, and countering piracy, as well as managing humanitarian relief,

recovery, and reconstruction in Afghanistan. (Australian Government: Department of Defense). Lastly, the South Korean military has deployed troops to help the United States in every major conflict throughout the last fifty years. With 3,300 troops that fought in northern Iraq, South Korea is the third largest contributor to the Iraq War effort after the United States and Britain (South Korea Government). With troops stationed around the globe and continued ratification of the Rome Statute, these countries have failed to live up to Posner and Yoo's expectations of withdrawal.

#### ***VI. Testing Predictions: Compliance with Extradition Requirements***

Posner and Yoo's prediction that countries will not comply with extradition requirements has also failed to materialize. Of the fourteen cases currently being investigated by the ICC, four different countries have extradited suspects. Mr. Thomas Lubanga Dyilo, for example, was arrested on March 17, 2006 by Congolese authorities and transferred to the International Criminal Court. Lubanga is the alleged founder and leader of the Union des Patriotes Congolais (UPC) and has been charged with committing the war crime of conscripting and enlisting children less than fifteen years of age to be used actively in hostilities (International Criminal Court "First Arrest" 2006). A Rwandan citizen, Callixte Mbarushimana, was also arrested in France for allegedly committing war crimes and crimes against humanity in the Democratic Republic of the Congo (DRC). Mbarushimana is believed to be the Executive Secretary for the Forces Démocratiques pour la Libération du Rwanda (FDLR) and is allegedly responsible

for committing five counts of crimes against humanity, including murder, torture, rape, inhumane acts, and persecution, as well as six counts of war crimes (International Criminal Court “Callixte Mbarushimana” 2010). In the suburbs of Brussels, far from the “trail of death and destruction behind him,” Jean-Pierre Bemba was arrested for allegedly committing crimes against humanity and war crimes in the Central African Republic (CAR) (International Criminal Court “ICC Arrest of Jean-Pierre Bemba” 2008). As chairman of the Mouvement de Libération du Congo (MLC), Bemba actively participated in the MLC intervention in the 2002-2003 armed conflict in the CAR. He has been accused of terrorizing innocent civilians and carrying out a massive campaign of rape and looting. Prosecutor Moreno-Ocampo stated, “We are grateful to all the countries involved, including Belgium which immediately executed the Arrest Warrant in accordance with their obligations under the Rome Statute” (ibid.). As these cases demonstrate, State Parties to the Statute have executed their commitment to extradition and are in compliance with the Statute.

In addition, Cote d’Ivoire, which is not a State Party to the Rome Statute, also extradited an ICC suspect. In a close November presidential election, Alassane Ouattara won fifty-four percent of the vote, but his opponent Laurent Gbagbo refused to leave office. Gbagbo’s supporters quickly took up arms to fight for his presidency, and in April of 2011, the Republican Forces of Cote d’Ivoire, with the backing of French troops, arrested Gbagbo (Lynch and Branigin 2011). On April 18, 2003, Cote d’Ivoire accepted the jurisdiction of the ICC and on October 3, 2011, the Prosecutor of the ICC was granted his request to

investigate alleged crimes committed in the Ivory Coast and later opened the case of *Prosecutor vs. Laurent Koudou Gbagbo* (International Criminal Court “Situations and Cases”). Gbagbo is charged with murder, rape and sexual violence, persecution, and other inhumane acts allegedly committed during the post-election violence (International Criminal Court “Cote d’Ivoire”). Although never having signed or ratified the Rome Statute, the Ivory Coast has declared its acceptance of ICC jurisdiction and extradited one of its own citizens to face trial.

Furthermore, nine suspects voluntarily surrendered to the Court and, therefore, did not require extradition (International Criminal Court “Situations and Cases”). Bahr Idriss Abu Garda, for example, voluntarily arrived in The Netherlands aboard a commercial plane and appeared at the Court on May 27, 2009. After charging Abu Garda with three counts of war crimes committed on September 29, 2007 against the African Union Mission in Sudan (AMIS), the Court issued a summons for his appearance rather than release a warrant for his arrest. Silvana Arbia, the Registrar of the Court, was very pleased by Abu Garda’s response to the summons and hopes that, “The voluntary appearance of Abu Garda might serve to encourage other suspects currently at large to come before the Court to be heard with all guarantees of a fair trial” (International Criminal Court “Bahr Idriss Abu Garda” 2009). Her wish was granted a year later when Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus responded to a summons and voluntarily arrived at the ICC on June 16, 2010. Like Abu Garda, the suspects are charged with committing war crimes during the September 29 attack, which killed twelve AMIS soldiers and

wounded eight others (International Criminal Court “New suspects” 2010). In addition, six Kenyan citizens responded to a summons by appearing before the Court on April 7 and 8, 2011 in order to face charges for human rights abuses committed when post-election violence broke out in 2007 and 2008 (International Criminal Court “Situations and Cases”). It is possible, as Arbia hoped, that Abu Garda’s voluntary surrender motivated others to seek a fair and balanced trial, which may not have been available in their own respective countries. Perhaps, more in line with Gilligan’s model, these nine suspects preferred to surrender to the Court rather than face domestic retribution at the hands of their opposition. Although the counterfactual can only be considered theoretically, it is possible that if the ICC did not exist to offer an alternative option to the committers of these human rights abuses, they may have prolonged their destructive and violent acts in order to deter punishment from their respective domestic opposition. Regardless of their personal motivations for surrender, however, suspects’ voluntary appearance at The Hague would not have been possible without the existence of the Court.

Despite these optimistic findings, there are countries that have failed to fulfill the Court’s requests for extradition. The ICC issued an arrest warrant for President Omar Hassan Ahmad al Bashir, but he has since traveled to Kenya, Chad, Malawi, and Djibouti without being apprehended or extradited, despite these nations’ ratification of the Rome Statute and obligation to comply with the ICC’s request for arrest (International Criminal Court “Pre-Trial Chamber I informs” 2010; International Criminal Court “Pre-Trial Chamber I requests observations” 2011;

International Criminal Court “Pre-Trial Chamber I informs” 2011). The President of the Republic of Sudan is allegedly responsible for five counts of crimes against humanity, two counts of war crimes, and three counts of genocide (International Criminal Court “Darfur, Sudan”). After Al Bashir’s visit to Kenya, however, a Kenyan judge issued an arrest warrant for Al Bashir if he were ever to return to Kenya (British Broadcasting Company “Sudan to Expel Ambassador” 2011). Al Bashir also planned to travel to the Central African Republic, however, when the ICC learned of Al Bashir’s travel plans, it requested that the CAR take all measures necessary to arrest Al Bashir (International Criminal Court “Pre-Trial Chamber I requests the cooperation” 2010), and Al Bashir cancelled the trip (Goldberg 2010). Given the CAR’s previous voluntary involvement with the ICC and the Court’s direct appeal to the country, Al Bashir may not have wanted to risk extradition by traveling to the nation.

As such, Posner and Yoo’s prediction is validated in the case of Al Bashir. It seems unlikely that Al Bashir will be denied asylum and thus be forced to surrender to the ICC given the support he enjoys among many members of the AU. Although many African Union members have agreed to ignore the ICC’s arrest warrant, others, such as Zambia, remain committed to their obligations under the Rome Statute. The Director of the Southern African Centre for the Constructive Resolution of Disputes stated that, “Zambia has an obligation to assist the ICC in enforcing its outstanding warrants against al- Bashir [...] If al-Bashir is granted entry into Zambia and then not arrested, it would send the wrong signal to victims in Darfur” (Human Rights Watch 2010). It is encouraging that not all nations intend to

disregard their ICC obligations and that the Lord's Resistance Army rebels, Al Bashir, and other Sudanese suspects, have been restricted as a result of the Court's existence. Overall, there has not been complete compliance with the Court's extradition requirements, but the arrests that have been made and restrictions on travel that have been placed as a result of the Rome Statute have allowed the Court to function more effectively than Posner and Yoo anticipated.

### ***VII. Testing Predictions: Nationals of Defeated States***

In addition, the suspects who failed to surrender voluntarily and were arrested were not "nationals of a defeated state." This fails to support Posner and Yoo's prediction that, "War criminals will appear before the ICC only in those rare cases where they are nationals of a defeated state whose new government seeks to acquire international legitimacy" (2005 70). Their statement depicts a scenario in which a state is overthrown and replaced with new leadership, which strives to gain legitimacy by holding the previous leaders or supporters of the old regime accountable for their crimes. None of the alleged war criminals facing trial at the ICC are "nationals of a defeated state." The case of Jean-Pierre Bemba almost fulfilled Posner and Yoo's prediction, but fell short because Bemba is not a citizen of the Central African Republic, which referred the investigation to the ICC.

In 2002, the president of the Central African Republic, Ange-Felix Patassé, asked Bemba, a citizen of the DRC, to help put down an attempted coup. A year later, Bemba laid down arms and was sworn in as vice-president in charge of finance in the

DRC (British Broadcasting Company 2010). Meanwhile, Francois Bozizé, the former Army Chief of Staff of the CAR, launched a coup against President Patassé and overthrew the government in March of 2003. Under Bozizé's government, the judicial authorities in the CAR began proceedings in 2004 against Patassé and military commanders for crimes against the civilian population committed during the 2002 coup attempt. The case was later referred to the ICC (Human Rights Watch 2007). Across the border in the DRC, Bemba ran for president against incumbent Joseph Kabila and lost during the run-off election in 2006 (British Broadcasting Company 2008). He was then accused of refusing to disarm his militia and of promoting violence in Kinshasa, DRC. In March 2007, the army and his bodyguards clashed in the capital and Bemba fled to Belgium where he was arrested and surrendered to the ICC in May 2008 (British Broadcasting Company 2010). It is likely that President Bozizé hoped to gain legitimacy in his newly usurped position by referring the crimes committed by the previous administration to the ICC. Thus far, however, the ICC investigation has only led to the arrest of Congolese national Bemba. Therefore, the hypothesis that only "'nationals of a defeated state'" will appear before the court does not hold true because Bemba is not a citizen of the CAR. If the investigation later leads to the arrest of members of Patassé's administration, the situation in the Central African Republic will offer evidence for Posner and Yoo's prediction.

The story of Laurent Gbagbo's arrest is similar, but fundamentally different in that the state itself was not defeated. After Gbagbo lost to Alassane Ouattara in the Ivory Coast's presidential elections, Gbagbo



supporters took up arms and caused an explosion of post-election violence. The Ivory Coast had previously accepted the jurisdiction of the ICC in April 2003, but also reconfirmed its acceptance in 2010 and 2011, after Ouattara was inaugurated (International Criminal Court "Situations and Cases"). Ouattara may have chosen to reaffirm the country's commitment to the Rome Statute immediately following his election in order to encourage ICC involvement in the post-election crisis, which led to Gbagbo's arrest and trial. By holding Gbagbo accountable for the atrocities he committed after the election and preventing the spread of more violence, Ouattara garnered further legitimacy both domestically and on the international stage, where we was already widely accepted. Regardless of his motivations, however, the situation in the Ivory Coast fails to support Posner and Yoo's hypothesis. Although the transition of power that resulted from the Presidential election unfortunately led to violence, the state as a whole was not defeated and the government remained intact. Therefore, Gbagbo is a defeated national, but not a national of a defeated state.

Similarly, the suspects arrested for crimes committed in the Democratic Republic of the Congo can also be considered defeated nationals, but not citizens of an overthrown or dismembered state. President Joseph Kabila referred the country for investigation by the ICC on April 19, 2004. He may have been seeking to gain legitimacy as an interim president by allowing the Court to open cases against alleged war criminals, such as Thomas Lubanga Dyilo, Germain Katanga, Mathieu Ngudjolo Chui, and Callixte Mbarushimana. None of these men, however, were involved with the state structure, ousted

politicians of a defeated state, or war criminals that lost power in a coup. Therefore, despite their downfalls at the hands of Congolese authorities, none of these militia leaders could be termed "nationals of a defeated state." Furthermore, the DRC has not experienced a complete state defeat since Mobuto was ousted from power in the late 1990s (British Broadcasting Company "Democratic Republic of Congo Profile" 2011), and Kabila did not use the ICC to prosecute members of Mobuto's regime. Therefore, although Kabila may have referred the DRC to the ICC for investigation to gain legitimacy, he was not seeking to prosecute nationals of a defeated state.

## ***VII. Conclusion***

Despite the ICC's lack of enforcement mechanisms, the Court has failed to fulfill Posner and Yoo's predictions. As such, the ICC has proved to be more effective than the critics anticipated. Although the ICC is still a relatively new establishment and it will take several more years to determine the full extent of the Court's effectiveness, this preliminary survey has produced optimistic results. Not only have very few states withdrawn from the Rome Statute, but also many countries are committed to the ICC despite conducting significant military activities abroad. Several states have extradited suspects to the ICC and, even more promising, nine alleged war criminals have voluntarily surrendered without the issuance of arrest warrants. Posner and Yoo's assumption that only nationals of a defeated state will be brought before the Court has also been proved inaccurate. Overall, the Court has not devolved into another dependent international tribunal as Posner and Yoo

expected, but appears to be solidifying its role as an irreplaceable asset to ending impunity at an international level.

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## **INSTITUTIONAL FAILURE IN KENYA AND A WAY FORWARD**

**Mongoljingoo Damdinjav, Isabel Garcia, Emily Lawson, David Margolis, and Ben Nemeth**

### ***I. Introduction***

On December 27, 2007, Kenyans cast their ballots for the fourth time since multiparty elections were introduced in 1991. Although the country had become notorious for its election violence during the 1990s, the relatively smooth transition of power from Daniel arap Moi to Mwai Kibaki in 2002, and the tangible progress that had been made between 2002 and 2007—including real average GDP growth of 5.4 percent (Norad 2009)—led to a general consensus that the 2007 elections, while susceptible to some degree of conflict, would be relatively peaceful. However, when Kibaki's highly contested victory resulted in mass protests, state-led violence, and coordinated displacement, many observers struggled to understand what had gone awry.

The reasons for the outbreak of the 2007–2008 post-election violence are numerous, but many of them have a strong correlation with one of the most fundamental impediments to development in Kenya since the introduction of multiparty politics: institutional failure. This paper explores how weak institutions have obstructed Kenya's path to sustainable development, focusing primarily on institutional failure since 1991, with a particular focus on the election cycles in 1992, 1997, and 2007. We define institutional failure in the Kenyan context as the lack of credible restraints on state actors, particularly the executive, allowing for excessive discretion in the absence of effective accountability mechanisms. Five factors are identified as central in keeping

Kenyan institutions weak: a powerful executive, corruption, ethnic polarization, poorly enforced property rights, and violence.

After examining these five factors and their impact on development, we turn to the sweeping devolution reforms in the 2010 Kenyan constitution and offer a brief analysis of how these reforms address each of these components that contribute to institutional failure. Finally, we make recommendations on how to capitalize on devolution efforts given the identified patterns of institutional failure.

### ***II. Executive Power***

A central feature of all four post-independence political transitions has been the survival of a political structure in which a powerful executive rules through a highly centralized system of administration (Cheeseman 2006, 4). Beginning with Kenyatta in 1963 and lasting until the constitutional reforms in 2010, the president of Kenya has enjoyed almost absolute power, with only nominal checks and balances. Even the transition to multiparty politics in 1992 under the longest-standing president, Daniel Moi, did not bring about effective decentralization of power (*ibid.*). Because the president had complete control over the federal budget due to the winner-take-all characteristics of Kenya's political system, he was able to commandeer state resources and keep power within his ethnic group (Shikwati 2012). This, in turn, has exacerbated economic inequalities along ethnic and regional lines.

Until the promulgation of the new constitution in August 2010, the law did not restrict the president's ability to make decisions without consulting the cabinet or undermining the independence of the judiciary, nor did it restrict the chief justice's ability to compromise the decisional independence of judges, nor legislators' ability to become hired mercenaries for the highest bidder (Akech 2011, 344). Due to the disorganization and fragmentation of the opposition parties at the time, they were unable to deliver meaningful oversight of the government. Ultimately, the absolute power bestowed upon the president through the previous constitution resulted in weak political and economic institutions that hindered economic development, particularly economic equality.

Under the 1963 Independence Constitution, the president was given the ultimate authority to appoint the judiciary, dissolve parliament, and control the federal budget. It was not until the early 1990s, under pressure from the International Financial Institutions (IFIs) that President Moi tacitly agreed to make constitutional reforms, including the establishment of multiparty elections. While the constitutional reforms prior to the 1992 multiparty elections established an independent election commission, it left the appointment of the commission members and the chair wholly to the discretion of the president (Ndegwa 1998, 10). After 1992, the government neither initiated nor permitted any steps to consolidate democracy or improve institutions beyond the mere holding of legally required elections, despite the fact that Moi's Kenya African National Union (KANU) regime was a minority government (Harbeson 1998). At best, by holding elections, the Moi

government paid lip service to the international donor demands to reduce high-level corruption. The troubling aspect of the donor demands, however, is that while they may have been uncomfortable with the idea of the excessive executive power held by the Kenyan president, their focus was mainly on the reduction of corruption, ostensibly to improve the economic environment for foreign direct investment. The lack of comprehensive, institutional restructuring after this transitional election undermined further development of democratic governance in Kenya and led to the even more problematic elections of 1997 (Ndegwa 1998).

The IFIs continued to be troubled by the Moi government's inability to curb high-level corruption in the lead-up to the 1997 election, culminating in the decision by the International Monetary Fund (IMF) to halt an Enhanced Structural Adjustment Facility (ESAF) loan of two hundred fifteen million dollars in late July. Two months later the European Union opted to withhold an aid package, which immediately deepened the country's economic problems (Southall 1999). Both decisions were, in part, intended to prompt Moi to make political concessions to the opposition (then riding on the back of popularly based demands for constitutional reform), but more particularly, these actions registered impatience at Moi's failure to confront graft (ibid.).

It was in response to the IFI pressure that Moi ultimately agreed to constitutional reforms that would require him to vacate office before the 2002 elections, although he had a successor—former President Kenyatta's son—in mind. In December 2002, the National Rainbow Coalition (NARC) and its candidate Mwai Kibaki

defeated the incumbent KANU candidate, Kenyatta, and promising comprehensive political and economic reforms, including the completion of the constitutional review process. Despite NARC's election promise, the draft constitution that was finally approved by parliament failed to reduce the powers of the president, reflecting President Kibaki's desire to maintain Kenya's "top-heavy" structure of government ahead of the general elections scheduled for December 2007 (Cheeseman 2006, 4). The new draft constitution was submitted to Kenya's voters for ratification in a national referendum held during November 2005 and was overwhelmingly rejected. The principal reason for defeat, in the eyes of its opponents, was that the proposed constitution, much like the one it was meant to replace, ensured the survival of a powerful executive branch (Mwangi 2008, 2).

The excessive executive authority has had detrimental economic results, particularly in the area of economic equality. Recent studies by Acemoglu and Robinson suggest that sustainable economic progress requires institutional constraints on the authority of the chief executive (2000a) and have also provided evidence showing that concentrating power in a monarchy or a ruling coalition blocks the path to prosperity (2000b). Assuming these authors are correct, leveraging power-sharing reforms is therefore crucial to economic development (Mwangi 2008, 2). The Kenyan example adds additional evidence that concentrated executive power impedes economic progress and that it can lead to systematic corruption.

### ***III. Corruption and Institutional Failure***

Kenyan political elites have resorted to corrupt methods to exploit their influence over public resources for self-interested purposes. The effects of this widespread corruption have been detrimental to Kenya's development, as anti-corruption efforts have been ineffective and even prolonged by the same individuals who hold the responsibilities of combatting it (Lawson 2009).

Corruption in the form of petty bribes has penetrated the daily lives of the Kenyan population (Hope 2012). According to the Kenyan Permanent Secretary of the Ministry of Finance, more than three billion dollars of public funds were lost to corruption and mismanagement, a sum equal to 25 to 30 percent of the government's budget for 2010/2011 (ibid.). The high rates of corruption increase transaction costs and reduce the interest of would-be foreign investors to enter Kenyan markets. As such, corruption remains the largest obstacle to doing business in Kenya and is likely to persist in the presence of weak institutions that lack genuine adherence to democratic governance and the rule of law (Mwangi 2008). Consequently, the majority of Kenyans' livelihoods and overall national development have been continuously exposed to the negative impacts of systematic corruption.

In a historical context, it is evident that the rampant corruption did not receive adequate attention during Moi's administration, and while there were some improvements at the beginning of Kibaki's presidency, the Goldenberg and the Anglo-Leasing scandals under both leaders revealed that corruption continued to remain widespread. In the Goldenberg



Affair, the Kenyan government received fifty million dollars annually “in exchange for a monopoly on gold and diamond exports from Kenya” (Lawson 2009, 80). In the Anglo-Leasing case, the government was paying a nonexistent company for public goods and services that were never completed for the purposes of party and electoral financing (ibid.). Both of these instances involved state leaders engaging in fraudulent activities that only benefited a few elite individuals. While the corruption under Moi’s rule may be explained by the authoritarian domination of the single-party state, Kibaki’s presidential victory was won through a campaign that promised responsible and accountable governance. Following his win, Kibaki appointed John Githongo as Permanent Secretary of Governance and Ethics and head adviser of Kenya’s anti-corruption efforts (ibid.). Kibaki also instituted multiple institutional reforms, including the establishment of the Kenya Anti-Corruption Commission (KACC), and through the Anti-Corruption and Economic Crimes Act of 2003 (Hope 2012, 132). These changes were designed to diminish the incidence of corruption but proved to be relatively ineffective in the absence of institution capacity and government support (Lawson 2009). Many of Kibaki’s early progressive stances on corruption weakened substantially over time not only because those in power continued to benefit from the status quo, but also because the competition amongst the political elites further influenced officials to constrain their anti-corruption efforts (ibid., 74). In withdrawing his initial support of the anti-corruption movement by removing Githongo, Kibaki immediately diminished the influence of the KACC, as it lacked the leadership, legitimacy, capacity,

and the autonomy to carry on the fight against corruption.

Another key obstacle to the progress of the anti-corruption initiatives was Kenya’s recent transition to democratic governance and the adoption of the multiparty elections. Competing parties vied for and exploited public resources to finance their political campaigns (Mwangi 2008). As such, the dawn of electoral competition saw the investment of the major political parties, the presidential candidates, and their inner circles in restricting the anti-corruption movement. Because the transition from authoritarianism to democracy took a long time, this allowed new institutions meant to guarantee democratic checks and balances (including the KACC) to become exposed to harmful political interests (ibid., 272).

#### ***IV. Ethnicity and Institutional Failure***

Since the end of British colonial rule in 1963, Kenya has been dominated by political systems that are maintained by ethnically centered patronage systems. These systems are incredibly damaging to the maintenance of effective institutions and economic development. A patronage network is one that Cherotich defines as “an unequal relationship of mutual dependence and reciprocity.” (2010, Slide 2) As was common in post-colonial states, the Kenyan government groomed a ruling class dominated by the Kikuyu ethnic group that continued to be sympathetic to the British and their economic interests. This patronage system ensured that members of this group ruled unopposed and maintained a monopoly on resources such as land and political appointments until the introduction of multiparty elections in 1991 (Branch & Cheeseman 2009).

An essential feature of autocratic or near-autocratic rule is the establishment of loyal coalitions that enhance stability within the government (Kimenyi and Shughart 1989) and come at the exclusion of large sections of the population. Ethnicity enables the creation of easily maintained coalitions that have high barriers to entry and low costs to maintain loyalty. Because of the winner-take-all nature of Kenya's political system, there is a strong incentive for members of ruling ethnicities to rally behind their candidate because of the benefits the winner can confer, such as land and lucrative contracts. After a ruler exits office under this arrangement, there is typically evidence of government growth and the culling of previous political appointments (*ibid.*). One such instance came after the inauguration of President Moi in 1978 when Moi sacked civil service employees from his predecessor's government and stacked his new government with people from his own tribe. Also, he dramatically increased the size of the government to create new positions for additional supporters and by the end of Moi's first term in 1997, only 3 percent of Kenyatta's ethnic group remained in the cabinet (*ibid.*, 3).

Even after the 2005 constitutional referendum, ethnicity proved to be the deciding variable in the vote (Kimenyi and Shughart 2008) with the majority of "yes" votes coming from the ruling ethnic groups in the form of the Gikuyu, Embu, and Meru Association and the majority of "no" votes coming from the other ethnic groups that have not benefited from government largesse. The constitutional referendum was defeated by a large margin (62 percent) and with a strong nationwide turnout (60 percent)—because of its preservation of gross executive power (*ibid.*). Those

benefiting from the largesse of the government desire to maintain the status quo, while those that are not benefitting prefer to see change, namely in the form of a devolved federal government.

The effects of this patronage system on the population are evidenced in economic data. While 47 percent of Kenyans live above the poverty level, this rate varies by ethnicity: 65 percent of Kenyans in the Central Province, the home of the Kikuyu tribe, live above the poverty level while 56 percent of those in the Rift Valley live below the poverty line (*ibid.*). It is no surprise that the regions with the most wealth have also been home to past and current presidents. It is also no surprise that the majority of violence and displacement in Kenya has happened to those groups that live in the poverty-stricken Rift Valley.

The forty years of high levels of patronage has created a great institutional deficit that continues to affect ordinary citizens. As decisions were made by elites and for elites, the systems of governance needed by the rest of the population were left to languish and atrophy. By not allowing a great number of people to access services — essentially locking them out of the process of governance simply because of their ethnic affiliation — they are deprived of the basic right to governance and economic self-determination. The unfair distribution of resources, poor infrastructure, and inadequate government services are the more benign manifestations that common people experience with patronage systems: such arrangements can also lead to physical violence as seen in Kenya in 2007.

## ***V. The Failure of Property Rights Institutions***

Weak property rights institutions were a central component in the displacement and violence of 1992, 1997, 2002, and 2007, and have significantly obstructed Kenya's chances for sustainable development. Prior to the 1992 multiparty elections, property rights institutions in Kenya were thought to be relatively strong (Onoma 2010). Land was not allocated equitably under Kenyatta or Moi, but formal understandings of property rights and ownership were fairly clear. These administrations made significant investments in the Ministry of Land's Department of Land Adjudication and Settlement (DLAS), which worked to establish and enforce rules regarding property acquisition and disposal (*ibid.*). When land disputes arose, the DLAS used its division leaders to resolve them, relying on a regulatory framework that was enforced by local police (*ibid.*).

All attempts to strengthen property rights institutions –most notably those dealing with land management – came to a screeching halt when Moi and his KANU allies faced multiparty elections in 1992. For the first time in several decades, KANU politicians were exposed to the possibility of electoral defeat and, in response, devised new strategies to maintain their grip on power. The reallocation and sale of land, particularly in the Rift Valley, became a central strategy to ensure political survival. Boone argues, "Land rights were used as an incentive and a reward for grassroots actors who mobilized and acted on the exhortations of ruling politicians" (2012, 86). Although patronage networks played an important role in Kenyan society well before the 1992 elections, the return

to a multiparty system unquestionably intensified their importance and a scheme in which land was exchanged for votes necessitated the weakening of the same property rights institutions that KANU had worked to strengthen over the previous three decades. The central government stopped providing the DLAS with basic resources needed to carry out its work, even withholding paper to register titles (Southhall 2005). District and divisional officers with close ties to KANU politicians ensured that property transfers were not recorded and changes in registers were removed (*ibid.*). Through this process, the ruling elite caused the confusion necessary to advance their political aims – they were able to issue multiple titles to different people in exchange for political support or cash payments to fund their campaigns (Kamungi 2009). When it became apparent to potential land purchasers that titles might not be recognized legally, the Ministry of Land created Land Disputes Tribunals to settle conflicts of land adjudication. However, the state neither paid tribunal members' salaries nor provided them with the logistical support required to carry out their functions properly. As a result, formal or customary claims to property were subject to political interests, absent institutional constraints.

There was some expectation that the 2002 triumph of Kibaki would lead to the institutional reforms necessary to allow property rights regimes in Kenya to operate effectively. Kibaki promised to do away with the violent land grabbing that had defined his predecessors' rule and to establish the legal framework to restrain the power of the presidency by means of a new constitution (Gibson & Long 2007). After Kibaki's election, however, land continued to play its historical role as political capital,

as well-functioning property rights institutions posed the same threat to Kibaki's political livelihood as they did to Moi's. Kibaki, in a manner similar to that of his predecessor, continued to undermine property rights institutions and use his power to arbitrarily distribute and repossess land. For example, in 2005, Kibaki attempted to regain the votes of the Ogieks – a community that state agents had recently removed from their land under presidential orders – in order to push through a new constitutional referendum by issuing twelve thousand land deeds to the group in spite of a high court ruling that had placed an injunction on the arbitrary distribution of the land (Onoma 2010). This strategy was effective, as the Ogiek community voted overwhelmingly in favor of the referendum. At the same time, senior public servants, local land boards, and provincial administrators colluded to stifle the capacity of land management institutions (Kamungi 2009). Rather than strengthening property rights institutions, Kibaki's moves kept them weak and open to political manipulation.

Thus the violence surrounding the 2007–2008 election should have come as no surprise, given that weak property rights institutions increased the level of uncertainty in society. Control of the central state was inextricably linked with the allocation of access to much of the land in the country, particularly the farmland in the Rift Valley (Boone 2009). By recognizing the fact that the triumph of an opposition party has the potential to result in the displacement of the electoral losers, it becomes easier to understand the violence that has plagued the country for decades and continues to incite fear in the minds of Kenyans.

## ***VI. Violence and Weak Institutions***

Since the restoration of multiparty politics in 1991, Kenya has become prone to economically damaging conflicts caused by acts of institutionalized violence (Waki Report 2008, viii) that weaken the power of state institutions and defeat their purpose of promoting development and social protection. There is a strong correlation between higher levels of intra-national conflicts and weak institutions (Besley and Reynal-Querol 2012) and in Kenya, already weak institutions have been destabilized even further by the use of institutionalized violence that forces the country endure a cycle of fear, lack of integrity, and impunity. Violence has become widespread and part of everyday life, and is not limited to election time (Waki Report 2008). Four key factors contribute to this cycle of institutionalized violence, fear, lack of integrity and impunity: 1) the lack of coordination between security mechanisms; 2) the lack of accountability; 3) the use of organized ethnic gangs as a way to assert political power and provide public services; and 4) the personalization of presidential power to deliberately weaken public institutions (Waki Report 2008). The following discussion will focus on the evolution of these four factors from a historic perspective, while illustrating examples of the violence in Kenya post-1991.

The first form of institutionalized violence occurred shortly after independence as Kenyatta concentrated means of violence in the hands of the state to bully and harass opposition parties. As an alternative to violence, the opposition parties were lured back to Kenyatta's ideas through the use of a patronage system that allocated government positions and land to

those that were willing to support the president (ibid.). Even though most patronage networks in Kenya work on the basis of ethnicity, Kenyatta made an exception to this practice to maintain power and appease the opposition. Moi not only followed his predecessor's tactics, he instituted even stronger forms of state violence, including detentions without trial and routine torture of perceived and real dissenters (ibid., 24). His ability to remain in power until 2002 was a direct result of his use of violence as a means of securing political power and winning elections, both presidential and parliamentary (ibid., 26). Moi hired gangs in the Rift Valley and elsewhere to kill or displace people to prevent them from voting. Because these tactics were used in both the 1992 and 1997 elections, it attracted the attention of many NGOs such as the Kenya Human Rights Commission and Human Rights Watch.

In addition, two Kenyan government inquiries looked more in depth into the causes of the violence. The Kiliku Report in 1992, and the Akiwumi Report in 1999 documented the perpetrators' names, and "implicated politicians as the organizers of violence and killing for political ends, and noted that warriors and gangs of youth who took action were both paid and pressed into service" (ibid.). Neither of these reports resulted in any action against those perpetrators – instead, they set a precedent for a culture of impunity for those who maimed and killed for political ends (ibid.). Even though these inquiries marked the beginning of the dismantlement of the systematic form of violence in Kenya, they fell short of bringing the perpetrators to justice, as those in charge of enforcing it were part of the systemic violence as well. As a result, the marginalized ethnic groups

and displaced populations continued to form groups, such as the Mungiki, that use extra-state violence to obtain political power, knowing they would not be punished due to lack of enforcement (ibid., 27) and at times supported by high levels officials.

Because a good deal of government revenue since the 1990s was used to mobilize political support for the ruling party (ibid., 34), infrastructure and the provision of social services were underfunded. This situation has given an opening to violent gangs to provide social services and security, in addition to extra-state protection and enforcement services for those willing to pay, including members of the opposition or within the government itself (ibid.). These gangs became "shadow governments" that exercised control as a "state within a state" in various parts of Kenya and used violence to maintain such control (Hansen 2009, 4). These gangs bullied individuals and businesses using Mafia-like methods such as threats and extortion to control the Kenyan public transport sector (ibid.). They bullied business owners into making payments for services, including connecting electricity, providing pit latrines in the slums, and meting out justice (Waki Report 2008, 27). As such, the state no longer commanded a monopoly over the use of force or governance. Extra-state gangs continued to proliferate and diffuse into the rest of Kenyan society.

Centralized power in the executive arm of the government destabilized institutions further. Regardless of the laws established in other parts of the government such as the civil service, judiciary, and even parliament, the executive has the last word (ibid.), which resulted in the personalization of

presidential power. The Waki Report notes that checks and balances normally associated with democracies are very weak in Kenya, and deliberately so (Hansen 2009, 5).

This lack of accountability and trust in the government to regulate election fraud became a major factor in the violence during the elections of 2007. Although President Kibaki had made only minimal efforts to let the prime minister regulate power in the executive branch, there had been an informal Memorandum of Understanding (MoU) before his election. Yet his watered-down alternative to the MoU, and the changes in the 2005 constitution, minimized many of the provisions agreed upon prior to his election and increased political polarization along ethnic lines (Waki Report, 2008). Effectively, this drew the lines for the 2007 election in which the presidency was seen as all-important, which led people to believe that if a person was picked from their own tribe, it would secure benefits and protection against the opposing ethnic groups (ibid.). The Waki Report concludes that Kibaki's regime failed to unite the country and it allowed feelings of marginalization to fester into what became the most violent post-electoral period Kenya has ever seen.

Violence has become a way of life in Kenya as more individuals report having experienced violence, even after the 2007 election (Kenya National Dialogue and Reconciliation Monitoring Project 2009, 3). This diffusion of violence has had repercussions in Kenya's political and economic spheres, which will likely continue to have an impact (Mueller 2011). According to Ksoll, Macchiavello and Morjaria, Kenya's key sources of revenue, which are tourism and horticulture exports, declined after the 2007 elections by

approximately 35 percent and 40 percent respectively (2009) and in a recent survey by Synovate, it was revealed that a large number of those in areas affected by the 2007 election violence predict more violence in the future (Mathenge 2010; Mueller 2011), all of which further impacts Kenya's subsequent development.

All of these factors have converged to make violence the method of choice to resolve differences and obtain power in Kenya, thereby rendering its devolution plan – the road to strengthen development and the fate of the nation – vulnerable. Additionally, because the violence surrounding elections has been ethnically directed, it has increased distrust among groups and damaged any sense of national identity. Along these lines, Besley and Reynal-Querol have concluded that historical conflicts are negatively correlated with trust and a sense of national identity, and are positively correlated with strong ethnic identity (2012). Hence, ethnicity has taken on a perilous connotation because it can rapidly propagate violence in the country.

A fundamental problem facing the nation is how to break this cycle of violence. Kenya must decide if it will let violence, corruption, and weak institutions prevail, or will introduce fundamental changes to the 2010 Constitution and government to deal with perpetrators of violence, like the Special Tribunal institution recommended in the Waki Report.

## ***VII. Constitution and the Devolution Plan***

The devolution plan – an integral component of the 2010 Constitution – provides a framework to strengthen Kenya's institutions and promote sustainable and equitable economic

development. The plan includes the establishment of forty-seven new counties and the diffusion of power from the national to local governments. Although it attempts to address as the catalysts of institutional failure, considerable uncertainty and skepticism regarding the implementation of the devolution reforms remain. The following discussion will outline how the 2010 Constitution addresses the problems of a powerful executive, corruption, ethnic polarization, poorly enforced property rights, and violence.

We agree with Akech's doubts as to whether the 2010 Constitution establishes principles and mechanisms that will circumscribe the exercise of power in all three branches of government (2011, 383). Furthermore, it remains to be seen whether the president will continue to have unfettered authority that undermines the judiciary's role, but it is clear that the arrangement fails to regulate the president's powers to appoint and dismiss (*ibid.*, 389). Thus, if the perceived inability of the constitution to curb the centralized powers of the political elites is borne out, this will impede the potential successes of the proposed reforms in addressing the main sources of institutional weakness and the lack of Kenya's long-term development. Although it is too soon to tell whether there are enough measures in the constitution to effectively constrain executive power, optimally, the devolution plan could reduce the excessive executive authority wielded by the Kenyan presidents and, if successfully implemented, could be the mechanism that will address the functional decentralization of the executive power.

The 2010 Constitution and the inscribed devolution plan provide the legal framework and courses of action to confront the challenges of corruption,

ethnic divisions, and ill-defined property rights. The document specifically prohibits "political parties [from] engag[ing] in bribery and other forms of corruption [...] to promote its interests or its candidates in elections" (Constitution of Kenya 2010, 58). Government attention given to the institutions implementing the anti-corruption programs has resulted in positive changes, such as a 62.5 percent increase in corruption reports by the Ethics and Anti-Corruption Commission (EACC) in 2009. The longevity of these outcomes is dependent on the devolution plan's ability – along with local governments – to limit the influence of Kenya's elite circles in the government.

Furthermore, in an attempt to address the stark ethnic divisions that facilitated inequality and violence, the devolution plan seeks to diminish the power of ethnicity in politics. Prior to the institution of the new countries, the previous regions of Kenya were divided according to ethnic group and were maintained by the ruling group as a convenient way to allocate resources according to the ruling group's own preferences. The reorganization is structured to prevent such unequal distribution of resources by reducing strong concentrations of ethnic groups. Moreover, the constitution prohibits discrimination and creates affirmative action plans (Akech 2010, 20). It further disallows any political party that "is founded on an ethnic, age, tribal, [...] basis" (Constitution of Kenya 2010, 58), which is meant to force politicians to reach across ethnic lines to represent all their constituents as well as decrease the amount of tension created along ethnic lines, all of which should benefit minority populations.

With respect to property rights, the 2010 Constitution takes away considerable power from both the executive and the Ministry of Lands, and redistributes it to other bodies such as the National Land Commission (NLC), an independent government group charged with managing public land on behalf of national and county governments (The Land Development and Governance Institute, 2012), and implementing sweeping land rights reforms, including the devolution of lands grabbed illegally by the state. Along with NLC management of these lands, constitutionally mandated land allocation powers are given to the new forty-seven semi-autonomous local governments (Boone 2012). The NLC's chairman, Ibrahim Mwathane, has recognized that considerable resources will be needed in order for institutional capacity building to take place and for property rights institutions to become more salient (Ndonga 2012). Thus, even with effective implementation of the devolution reforms, property rights institutions will be susceptible to political influences.

Considering the persistent doubt over the ability of the new reforms to ease the problems of property rights and the tensions caused by systematic corruption and ethnic divisions, it is unlikely that the 2010 Constitution and devolution plan alone will effectively deal with violence, especially if the catalyst to violence is another factor altogether unrelated to elections (Mueller 2011) such as the ethnic conflict. Additionally, the propensity for violence may be reinforced by the failure of the current government to deal with impunity and to establish the Special Tribunal recommended by the Waki Commission of Inquiry to Investigate the Post Election Violence (CIPEV). Mueller

states, "there has been no political leadership on how to address this proliferating violence whether from the political elite or ordinary politicians [...]" (ibid., 106). Currently, the message being sent to the victims, witnesses, and human rights defenders in the wake of the post-election violence is "keep quiet or watch out and suffer" (ibid., 110).

Violence in Kenya is no longer an issue under Kenyan jurisdiction: after Kofi Annan became tired of waiting for the Kenyan government to provide the institutions and mechanisms to address the cycle of impunity, the International Criminal Court (ICC) took up the case in 2010. Annan gave Luis Moreno Ocampo, first prosecutor of the ICC, an envelope with all the perpetrators names investigated by the CIPEV (ibid.). Although the trial was scheduled to start in January 2013, it has been postponed due to weather related issues and the March 2013 election, which has one presidential candidate, Uhuru Kenyatta, who has been indicted by the ICC for crimes against humanity in the 2007 post election violence.

## ***VII. Recommendations and Conclusions***

While recognizing its limitations, we believe that if successfully funded and implemented, the devolution plan presented in the 2010 Constitution offers the most comprehensive opportunity to address the current levels of executive power, corruption, ethnic division, property rights, and violence. The eventual ICC ruling, moreover, could further contribute to reducing violence. The devolution process, however, presents a number of implementation challenges and as such, we provide the following recommendations.



- The inclusion of the devolution plan in the 2010 Constitution by the Committee of Experts and Parliamentary Special Committee (PSC) points to a concerted effort to reduce the power of the executive branch in Kenya. However, a successful devolution plan requires sustained central coordination (Fengler 2011), and overcoming this challenge will depend upon efficacious intergovernmental communication and coordination between the central government and the new county authorities.

- In order to address challenges associated with corruption, in accordance with The Ethics and Anti-Corruption Commission (EACC), we recommend increasing the reach of the of the Public Service Integrity Programme (Integrity Assurance Officers trainings or IAOs) so that it “focuses on developing a pool of skilled officers in the public sector to support management of corruption risk mapping and management” (2011, 54). Additionally, we recommend increasing the number of local government leaders and staff to be trained on corruption risk assessment and the development of the Corruption Prevention Plan, the Corruption Committees-Corruption Prevention/Integrity Committee Capacity Programme (ibid., 55). Both of these actions will help to improve institutional capacity to combat corruption and may help to curb decentralized corruption as well.

- The devolution process can help to weaken the ethnically centered patronage systems that have been increasingly entrenched by Kenyan presidents. By giving county governments the responsibility to provide services to citizens (Constitution of Kenya 2010, 108), a more equitable provision of services can be realized for

ethnically marginalized groups as authorities would now be charged with ensuring the provision of such services (World Bank 2012, 1). Additionally, a clause requiring seats for marginalized groups on the county assemblies can ensure a more equitable distribution of services (Constitution of Kenya 2010, 109).

- The devolution process affords an opportunity to promote more equitable access to land than ever before; however, adequate funding and planning will be required to make this a reality. In order to address these challenges, we recommend providing substantial funding for the National Land Commission. A significant part of this funding should come from a reallocation of monies from the Ministry of Land’s budget. Establishing publically accessible NLC division offices in each of the counties would enable citizens to obtain information on titling and registration procedures as well as a forum in which to lodge grievances against violators at the county level. Giving NLC division offices the power to impose severe penalties on county officials who do not comply with the constitutional framework on land management and administration will ensure greater accountability of the county officials also (Syagga, 2008).

As this paper has demonstrated, multiparty elections have exposed the weaknesses of Kenyan institutions over the past two decades. While deeply entrenched in the Kenyan institutional framework, the lack of restraint on state actors and the absence of accountability mechanisms, became highly visible during the 1992, 1997, and 2007 election cycles. Therefore, the success or failure of the devolution process hinges upon the outcome of the election in March 2013. If the elections are conducted freely and

fairly, the results legitimized by the Kenyan population, and the leadership transition smooth, devolution, while not the panacea for development, can provide the opportunity to release the Kenyan population from the historic experience of excessive executive authority and strengthen the institutions needed to sustain economic development.

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## **STABLE SYSTEM, CHANGING CLIMATE: Capitalism and the Warming of the Arctic**

**Cecilia Gingerich**

### ***I. Introduction***

In recent years, the effects of climate change have grown increasingly evident. From rising temperatures and sea levels to persistent droughts and unseasonal hurricanes, the last few decades have contained more environmental deviations than can be attributed to natural variation. The scientific community has reached a consensus that climate change is manmade—a direct result of large quantities of greenhouse gasses being released into the atmosphere over the past few centuries. Yet few serious societal changes have been made, or even considered. Indeed, as I will explore in this paper, society has largely been—as the saying goes—open for business as usual.

I begin by examining some of the basic mechanisms of capitalism and why they are incompatible with ecological sustainability. Such mechanisms include profit motive, how value is measured in a capitalist system, the process of capital accumulation, and a systemic contradiction. I then briefly critique the inclusion of these mechanisms in the “green” capitalist solutions to climate change that have become popular today. Next, I present the case study of climate change in the Arctic, since it is one of the regions in which climate change is occurring most rapidly. I will consider how the problematic mechanisms of capitalism I identify have contributed to the recent warming of the Arctic, and how they currently influence the policies that will determine the region’s future. Lastly, having shown the basic mechanisms of capitalism to be ecologically

unsustainable, I ultimately conclude that climate stability cannot be achieved through them.

### ***II. Profit Motive and Value in a Capitalist System***

Perhaps the most discussed climate change issue during the past few years in the United States has been the construction of the Keystone XL Pipeline. The pipeline was proposed by the North American energy corporation TransCanada in 2008, and was designed to carry crude oil from the Athabasca Oil Sands of Alberta, Canada, to Steele City, Nebraska (Hovey 2008). People across the political spectrum have raised concerns about the environmental impact of the pipeline. Many cite the high probability of oil spills and the potential damage to several delicate ecosystems. However, it is the pipeline’s latent contribution to climate change that provoked famed climate scientist and activist James Hansen to proclaim that if the Keystone XL is built, it will be “essentially game over” for any hope of reestablishing a stable climate (McGowan 2011).

Of course, some argue in favor of the pipeline by claiming that it could create new jobs and make the nation more energy independent. Still, studies vary widely on the number of permanent jobs the pipeline would provide, and while the pipeline would certainly help to make the United States less dependent on foreign oil, it would do nothing to move the country towards independence from fossil fuels. Yet the pipeline was not proposed by the government or any elected body for the

“benefits” now under discussion. Rather, it was proposed by a mega corporation that was motivated by the sole objective of all companies in a capitalist system: profit.

Profit motive is perhaps the most commonly recognized mechanism of capitalism, and it is quite controversial. While there are many ways to debate profit motive, my purpose here is to determine why it is incompatible with ecological sustainability. To understand profit motive, it is essential to understand the meaning of profit in the context of capitalism. Colloquially, the term “profit” is used to express “a valuable return” (Merriam Webster 2013). In economics, we most commonly think of this return in terms of money. Yet money is, of course, merely a representation of value, and so it is really *value* itself that must be defined in order to understand profit. The question thus becomes: how is value measured in a capitalist system?

A useful starting point from which to approach this question is Karl Marx’s famous distinction between a commodity’s “use value” and its “exchange value.” In the first chapter of *Capital Volume I*, he writes that it is “the usefulness of a thing” that gives it a use value (Marx 1990, 126). He clarifies by stating that use value is “conditioned by the physical properties of the commodity,” or, in other words, is attached to the commodity’s nature as a material object (ibid.). He concludes that natural resources, such as “air, virgin soil, natural meadows, unplanted forests, etc.,” thus have use value, since they all can be useful to humans (ibid., 131). By this definition, oil (even from the tar sands of Canada) clearly has a use value, since it is a major energy source. However, it is equally clear that this is not the type of value that TransCanada is marking down in its ledgers.

In order to understand the nature of the value marked in ledgers, we must turn to the other type of value Marx discusses: exchange value. Essentially, he uses this term to refer to the type of value a commodity has in the market. This is not to suggest that a commodity’s exchange value is the same as its price; rather, exchange value is determined by the exchange relation between commodities. Marx uses the example of corn and iron, which have an exchange relation because a certain amount of corn equals a certain amount of iron (ibid., 127). Thus, all natural resources clearly also have this type of value in addition to their use values—including the oil that the Keystone XL Pipeline would transfer for later sale.

Joel Kovel elucidates why breaking value into these two categories is incompatible with ecological sustainability in his consideration of the nature of each type of value. In *The Enemy of Nature: The End of Capitalism or the End of the World?*, Kovel describes the nature of use values as “essentially concrete” and having a “qualitative function” (2007, 135). He goes on to explain, “Being qualitative, [use-value] retains the essential feature of differentiation, that distinct elements can recognize one another and form links and associations” (ibid.). An example of this is our relation to fresh water: through its use value we are able to recognize it as a liquid substance that is part of our environment and that we, as humans, depend on to live.

However, water is bought and sold in the market, and so also has an exchange value. Yet exchange value has a mystifying effect, which means that the qualitative function of water is no longer present. Explaining this characteristic of exchange value, Kovel writes, “Here, in sharp contrast to use-values, the sensuous and concrete

are eliminated by definition and *a priori*. All that is retained as the mark of exchangeability is quantity: this item, x, is exchangeable for so many of y, which in turn is exchangeable for so many of z, and so forth, with no intrinsic end” (ibid., 135-136). This process of quantification is particularly hard on natural resources, because the process obscures that those resources—and all products that rely on them—are not infinitely reproducible.

Quantifying natural resources obscures not only those resources’ positive qualitative functions, but also their negative qualitative functions. Not only is it important to be able to recognize that fresh water is needed for human life, it is also important to be able to recognize that, when burned, oil releases a gas that causes our planet’s climate to change. Yet since the exchange value of oil does not reflect this function, we cannot expect a company like TransCanada—which, like all companies in a capitalist system, recognizes only exchange values—to recognize it. The company’s ledgers are full of numbers, not a list of the qualitative functions of their product.

The discussion now returns to profit motive, since in a capitalist system profit is based on exchange values. Profit is therefore represented quantitatively: numbers on a balance sheet detached from the qualitative functions of the products they represent. Clearly, the qualitative function is still important because it dictates the demand for a product. However, even this nod to a product’s use value does not address the issue of its possible negative effects on the environment. For example, oil will be bought and sold only as long as it is used as an energy source. For however long that lasts, the profits from such transactions will represent only oil’s exchange value. Thus,

the companies that collect those profits need never consider anything outside that exchange value, and indeed should not if they hope to survive in a competitive market.

Although qualitative functions of commodities are outside the logic of profit motive, this certainly does not mean that companies have never been forced to consider such functions. However, the key word here is “forced,” since factoring in any negative functions—such as the fact that oil produces carbon dioxide, which causes climate change—would undoubtedly lead to additional costs, or less profit. Recently, some attempts have been made to remedy this conflict of interests, which I analyze in greater detail in a later section. For now, I will simply state that these attempts have been ineffective, which is unsurprising given that they aim to counter the natural progression of profit motive, one of the system’s basic mechanisms.

### ***III. The Process of Capital Accumulation***

No discussion of profit motive should be considered complete without considering the reason profit motive exists in capitalism and what its ultimate objective is. The reason can be found in one of the system’s even more fundamental mechanisms: capital accumulation. In Kovel’s words, this is capitalism’s foundation on an economy “geared to run on the basis of unceasing accumulation” in which “each unit of capital must, as the saying goes, ‘grow or die’” (ibid., 121). The mechanism is perhaps most obvious at the level of the individual capitalist, who needs to “constantly search to expand markets and profits or lose his position in the hierarchy” (ibid.). However, large corporations and national economies are



also organized around this capitalist principle, and so too seek to continually expand.

Indeed, even mega corporations in monopoly-dominated industries like oil and gas continue to accumulate more capital, despite the fact that they hold positions at the top of the hierarchy. This highlights one of the potential problems of capital accumulation: it can go too far. There are few who criticize the developments made possible in the technology sector during eras like the Industrial Revolution. However, as the wealth of the global capitalist system becomes concentrated in fewer and fewer hands—as the mechanism demands—the present benefits of the accumulation process might rightly be questioned.

While control of all wealth by a few elites undoubtedly bodes poorly for the future of societal structures like democracy, it could also jeopardize the future of our physical environment. If the CEOs of Exxon Mobil and Royal Dutch Shell alone were able to determine whether or not we embrace energy alternatives to fossil fuel, a sound bet could be placed against the embrace of viable alternatives. Although this example might be a bit extreme, the giants of the oil and gas industry do have a great deal of political and economic power both in the United States and globally, and—according to the process of capital accumulation—we can expect that power to only grow.

Considering this potential impact of capital accumulation on the environment, Kovel considers capital accumulation to be “the root of capital’s wanton ecodestructivity,” since “under such a regime the economic dimension consumes all else” (ibid.). He goes on to note that “nature is continually devalued in the

search for profit along an expanding frontier” and that “the ecological crisis follows inevitably” (ibid.). Here, he references the important relationship between the accumulation process and profit motive: accumulation is the *what* towards which profit motive is aimed, and also the *why* for which it occurs.

However, the process of capital accumulation does not always progress smoothly. Marx says one of the main causes of crisis in the system is an internal contradiction between the “forces of production” and the “relations of production.” Here, “forces of production” refers to the combination of human labor power and all the things that aid in production (tools, machinery, land, infrastructure, materials, etc.). The term “relations of production” refers to the relationship between the system’s two major classes, Capital and Labor, in which the former exploits the latter. The conflict of interest within this second element alone is thought to lead to social and political change. In addition, the contradiction is thought to lead to economic crises, and specifically to crises of overproduction.

A crisis of overproduction occurs when there is an excess supply of a commodity, or in other words, when there is not enough demand. Such crises have occurred throughout the history of capitalism, and are frequently studied. However, sociology and economics professor James O’Connor contends that there is another contradiction in capitalism that exists between the forces of production and relations of production on one side, and the *conditions of production* on the other (1998, 160). He predicts that this “second” contradiction of capitalism will eventually produce a crisis of supply rather than demand—a crisis of

underproduction of capital (ibid., 161).

Since the conditions of production are the added element in this second contradiction, it is important to know exactly how O'Connor defines them. He looks to Marx's definitions of the conditions, which include the "laborpower" of workers, "communal, general conditions of social production," and "external physical conditions" (ibid., 160). He then updates each category in modern terms, stating that laborpower is now discussed "in the terms of the physical and mental well-being of workers" and that communal conditions are discussed in terms like "social capital" and "infrastructure" (ibid., 160-161). He defines external physical conditions as "the viability of ecosystems," and provides some specific examples, including the stability of coastlines and watersheds as well as soil, air, and water quality (ibid., 160).

O'Connor asserts that the conditions of production are currently external to the system, and so constitute an added cost. More specifically, he states that "individual capitals" lower costs by externalizing (or not including) costs on the conditions of production, which ultimately causes those costs to rise for capital overall (ibid., 177). Perhaps the most obvious examples of crises that have been caused by such costs are those related to resource scarcity, like the resource-related crises of the nineteenth century (of coal, for instance). However, as some critics have pointed out, even these crises did not significantly affect the capital accumulation process overall, despite the fact that the depletion of a specific resource is detrimental to the environment (Foster 2002).

Still, crises directly related to resource scarcity will likely become more common with increased world population and unpredictable climate change. We have

seen such crises already, including the devastating drought of the summer of 2011 in Somalia, which cost tens of thousands of lives and has been linked to climate change (Straziuso 2013). The drought produced a food shortage: a crisis of underproduction. Of course, the economic effect of such a crisis in Somalia is different than it would have been in a more industrialized nation in which more food is produced to be sold on the market. However, there are already indications that similar climate change-related droughts are occurring elsewhere around the planet, including in the agricultural areas of the United States (Gaskill 2012).

By focusing on specific material resources used in production, O'Connor's critics have applied too narrow a definition to the term "conditions of production." Going back to O'Connor's original three-part definition, we can see that his concept of the conditions is much broader. One condition that stands out in light of climate change is infrastructure, which he lists as a "communal" condition of production. With two-thirds of the world's largest cities (of populations over five million) built at least partially on low-lying coastal areas, the infrastructures of these cities are increasingly at risk of damage by rising sea levels and extreme storms caused by climate change (Greenfieldboyce 2007). Such damage has already been shown to contribute unsuspected costs to infrastructure, and if climate change intensifies, it seems likely that these costs could lead to the type of economic crisis O'Connor predicted.

#### ***IV. The Limitations of "Green" Capitalism***

One of the primary reasons that it is important to clearly identify the

mechanisms of capitalism discussed in the previous sections as ecologically unsustainable is because they often form the basis of proposed solutions to environmental problems. Such solutions fall into the category of “green” capitalism, which is a broad term used to refer to solutions that aim to resolve environmental issues through a capitalistic, market-based system. Many of the most popular proposals to combat climate change fall into this category, and have been endorsed not only by the mainstream environmental movement, but also by many leaders in the business world. Indeed, the main draw of green capitalism seems to be that it allows business to continue as usual.

Specific green capitalist solutions to climate change vary widely, but here I consider a couple examples that illustrate how they encapsulate the mechanisms of capitalism. The first is the buying of carbon offsets, which allows governments, companies, and even individuals to pay a fee to “offset” their carbon emissions. The purpose of these offsets is to attach some value to carbon emissions, since those emissions cause climate change. Most are purchased in a compliance market in which governments or corporations must buy them in order to meet previously agreed-upon quotas (like those set by the Kyoto Protocol). These offsets allow such entities to pay to reduce fossil fuel use in general (by, say, investing in renewable energy) instead of limiting their personal fossil fuel consumption.

The fact that quotas on carbon emission are being set should not be underappreciated. However, carbon offsets seem to have little to no impact on the problematic mechanisms of capitalism. Their goal is not to curb the growth of large, fossil fuel-burning corporations, and as a

consequence such corporations are able to grow, and the process of capital accumulation is able to continue. Fossil fuel-dependent corporations maintain their positions at the top of the economic hierarchy, and the use of renewable energy remains limited. In fact, global carbon dioxide emissions reached a record high of 35.6 billion tons in 2012, and the rise has been directly attributed to an increase in carbon emissions caused by the burning of fossil fuels (“Global carbon dioxide emissions reach new record high” 2012).

In light of this general support for the status quo, it is unsurprising that there exists a growing voluntary market for carbon offsets. This market differs from the compliance market in that it relies, at least in part, on marketing to attract customers. However, many of the most common marketing narratives flaunt the fact that their product requires no significant change in behavior from customers. Heather Lovell, Harriet Bulkeley, and Diana Liverman examine several such narratives in their 2009 paper “Carbon Offsetting: Sustaining Consumption?,” including one that they refer to as “quick fix for the planet,” whereby “any consumer can purchase offsets now, rather than undertaking perhaps more fundamental and (so the argument goes) slower changes to corporate practices or individual behavior” (2365). This narrative clearly acknowledges that carbon offsets are not aimed at achieving fundamental, systemic change.

A second example of a green capitalist solution is the development of “green” products, particularly those that claim to support climate stability by requiring less energy in production. This solution, like carbon offsets, may have some minor benefits, such as raising awareness among consumers about how

much energy goes into making the products. However, most companies that produce such products certainly do not want consumers to buy fewer products, lest they should make less profit. Thus the products also depend on (and support) the process of capital accumulation. An example of this type of green product is Aquafina's 2009 water bottle design. It used less plastic and reduced the amount of petroleum used in manufacturing, but did not address any of the more fundamental environmental problems associated with bottling, shipping, and selling water for profit.

Alternatively, some companies may state that their products are "green" because they are made to last longer; these companies may even urge their customers to buy fewer products and consume less. Still, the goal of such companies is to make money, and so they must sell their "sustainable" products at a price that prohibits the majority of people from buying them. Relying on a niche market is not a problem for a company, however, so long as it continues to make a profit. In fact, targeting a niche market may even be the objective in some cases. This highlights once again the indiscriminate, quantitative nature of profits in capitalism and the inability of green capitalism to alter that nature in any meaningful way.

## ***V. The Warming of the Arctic***

While the effects of climate change can be seen around the planet already, they are perhaps nowhere more evident than in the Arctic. This is undoubtedly due to the fact that in the past half-century, temperatures in the region have risen roughly twice as much as the global average ("The Melting North" 2012). In Greenland,

for instance, this has meant an increase of 1.5°C since 1951, compared with an increase of just 0.7°C globally for the same period (ibid.). As temperatures have increased, the region's characteristic ice has thinned and melted at an alarming rate. This is due in part to the albedo effect, which occurs when light-reflecting snow and ice is replaced by more absorptive, darker-colored water or land (ibid.).

In July 2012, an unprecedented—and largely unpredicted—melting of the Greenland ice sheet occurred: a 97 percent surface melt over four days (Goldenberg 2012). The ice sheet contains almost seven hundred thousand cubic miles of ice, the second largest in the world after the Antarctic ice sheet (Walsh 2012). Scientists were so surprised by its melting that they admitted in a statement posted on NASA's website that they initially believed there was a mistake in their data (Goldenberg 2012). As the ice melted, it drained directly into the ocean and thus contributed to higher sea levels. For this reason, some scientists have even considered the 2012 melting of the Greenland ice sheet to be the "big X factor" in creating the devastating storm surges of Superstorm Sandy (Walsh 2012).

Arctic sea ice has been similarly shrinking. Head of the Polar Ocean Physics Group and Cambridge professor Peter Wadhams predicted in September 2012 that it might melt completely by 2015-16 (Vidal 2012). Sea ice does not contribute to rising sea levels like melting land ice, but the loss of sea ice could also severely disrupt the region's ecosystems. For example, ice algae depend on sea ice to live, since they grow within and on the underside of sea ice during the spring ("The Melting North" 2012). In turn, the lifecycle of the lipid-rich crustacean known as the

copepod revolves around the seasonal ice algae and phytoplankton blooms (*ibid.*). The copepod is a critical food source for many of the region's largest animals, including walruses and polar bears, and so these animals' futures could also be jeopardized by the disappearance of sea ice and its accompanying algae (*ibid.*).

The thawing of the region's permafrost could have even more widespread ecological consequences. Currently tons of carbon dioxide and methane (an even more potent greenhouse gas) are trapped in the permafrost, and they could be released in large quantities if warming continues (*ibid.*). The reason such emissions would be undesirable is of course because greenhouse gases cause climate change. We also know how and why greenhouse gas emissions increased so drastically over the past few centuries. They came with the development of fossil fuel-powered industry and the capitalist system that supported it.

Even though the region had little industrial development of its own, this historic link allows us to attribute the current climate change in the Arctic to capitalism. Allowing the system to continue unchanged can only lead to similar results, to continued warming in the Arctic and around the world. The recent transformation of the Arctic shows that the effects of climate change may occur significantly more quickly than initially predicted, which suggests that a gradual transfer from capitalism to a more ecologically sustainable system may not be drastic enough. Rather, it appears that what is needed to prevent further climate change is a rapid, fundamental break from capitalism.

## ***VI. Prospects for the Arctic***

Unfortunately, such a break does not appear to be taking place. The well-worn mechanisms of capitalism permeate nearly every position and policy that recently has been put forth regarding the region's future. Nearly all of society's most powerful actors—from corporations to states, and even international organizations—have welcomed the warming of the Arctic as a political and economic opportunity. They see in the region's natural resources the potential for profit, and in its melting sea ice the possibility of reduced shipping costs. Essentially, they see a new economic frontier.

Perhaps the most discouraging policies to have emerged are those concerning the Arctic's oil and gas reserves. The region is thought to contain 13 percent of the world's undiscovered oil and 30 percent of its undiscovered natural gas (*ibid.*). Of course, burning these reserves would further climate change and its accompanying disasters. Still, the United States, Norway, Russia, and Greenland have all opened their portion of the Arctic to offshore exploration (*ibid.*). Several major business deals have followed, including Royal Dutch Shell's payment of 2.2 billion dollars for exploration rights off the shore of Alaska in 2005 and 2007 (*ibid.*). Although Shell found oil and gas in the area in the 1980s, it chose not to pursue it at the time because oil was then worth only fifteen dollars a barrel (*ibid.*). The recent deal came when that price shot up to over fifty dollars a barrel.

Clearly the motivation behind Shell's deal in Alaska was profit. Profit was also the motivation behind the United States' entry into the deal. In fact, in the case of the

Arctic, states' policies have often seemed as motivated by profit as any corporation's, as evidenced in the extensive debates taking place over the rights to shipping routes in the region (provided that ice melts enough to open such routes). China, for example, has expressed interest in the North-East Passage above Russia and the North-West Passage above North America, since the passages would cut thousands of miles off the nation's current Atlantic-bound shipping route, which passes through the Strait of Malacca and the Suez Canal ("Banyan: Asia and the Arctic dragons" 2012).

New shipping routes have also attracted attention because they could allow for the extraction and transportation of the region's natural resources. These include not only oil and natural gas, but also elements like gold and uranium, rare earth minerals, and gemstones (*ibid.*). As access to these resources has expanded, the eight nations that claim land in the Arctic—Denmark, Canada, Finland, Iceland, Norway, Russia, Sweden, and the United States—have all reevaluated their boundaries. This preparation for development comes despite the fact that the eight nations belong to an intergovernmental organization known as the Arctic Council, which initially claimed conservation as one of its primary goals (Bloom 1999).

The Arctic Council recently denied the environmental organization Greenpeace observer status because several of the Arctic governments "have been put off by Greenpeace's aggressive methods" ("The Melting North" 2012). Similarly, all the nations that have been granted permanent observer status are European, and have expressed support for the economic opportunities that warming in the region present. One such opportunity

that has attracted considerable attention in Europe is Arctic tourism, which is expected to grow substantially with the more human-friendly environment that rising temperatures will create (European Commission 2005).

These development-oriented policies and positions provide a particularly clear example of the connection between profit motive and the process of capital accumulation. States seem particularly willing to exploit the economic potential of the Arctic, which reflects their need to recover after the economic crisis of 2008. In times of relative economic stability, it might be possible that pressure from below could force democratic governments and international organizations to consider the long-term environmental effects of their policies. However, during a period of economic instability, short-term economic interests will rise to the top of government agendas. The process of capital accumulation dictates that national economies must expand, and so we should not be surprised when states value development over conservation, especially during a time of crisis.

Also, it is important to remember the type of economic crisis James O'Connor predicted in his second contradiction of capitalism, even if the governments of the world fail to do so. Already, flooding associated with higher sea levels caused by melting in the Arctic has had significant economic costs. The cost of Superstorm Sandy in the United States alone is estimated in the tens of billions of dollars (Rapoza 2012). Due to its significant damage to infrastructure, the storm's impact on the "conditions of production" is still being felt months later. As the Arctic continues to melt, such storms will become

more common, and more economic costs will follow.

## **VII. Conclusions**

In June 2012, *The Economist* ran a sixteen-page special report on the current perils facing the Arctic from both climate change and development-oriented perspectives. In an attempt to speak to its business readers' sensibilities, the magazine stated in its conclusion that The World Bank has estimated the cost of adapting to climate change between 2010 and 2050 to be seventy-five billion to one hundred billion dollars a year ("The Melting North"). This quantitative figure tells us nothing about the impact of climate change on our environment, or the conditions of our lives. It is possible that this figure does not reflect such changes at all.

Furthermore, if policies in the Arctic are any indication, we should be wary of the way capitalism might "adapt" to climate change. Many of its fundamental mechanisms are incompatible with ecological sustainability—from the way it measures value to the profits it defines in terms of such value. Perhaps most importantly, capitalism is based on a process of continual accumulation, and accumulation is, by its nature, unsustainable.

Since these mechanisms are inherent to the capitalist system, it is not surprising that nearly all of the powerful actors operating within that system—from states to private corporations—have failed to craft policies that break with the mechanisms. The rise of green capitalism to the forefront of mainstream climate change debate indicates the degree to which the mechanisms are entrenched. We can expect the positions and policies that have

contributed to climate change in the Arctic and around the world to continue until the capitalist mechanisms themselves are identified as problematic, and targeted specifically.

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## REGIME TYPE AND ECONOMIC PERFORMANCE IN WEST AFRICA, 1972-2010

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*Abstract: This paper examines the puzzle of whether regime type has any effect on the growth performances of West African economies. I utilize a quantitative medium-N study and a qualitative case study examination of contemporary Ghana and Côte d'Ivoire in an attempt to explain which aspects of governance that characterize regime type affect economic performance. This paper argues that specific government policies and broader policy environments matter, but regime type per se cannot account for the differences in economic growth performance in the region.*

### **I. Introduction: The Anatomy of the Growth Puzzle**

The empirical evidence suggesting that democracies develop faster than authoritarian regimes (or vice versa) is inconclusive.<sup>3</sup> While scholars have found that dictatorships may be more effective at harnessing resources, forcing national saving, and suppressing wage increases, they have also found that democratic institutions are absolutely essential for sustained, long-term economic development. Regime type is perhaps even more irrelevant when considering economic growth records in poor states such as those in West Africa because, as Przeworski et al. remind us, "Poverty constrains [...] poor countries are too poor to afford a strong state, and without an effective state, there is little difference any regime can make for economic development" (Przeworski et al. 2000, 162).

Why then have West African states displayed relatively divergent levels of economic growth over time? What accounts for these differences? And if Przeworski et al. are correct, then why does my research reveal a positive, statistically-significant relationship between democracy

and GDP growth among West African states from 1972-2010? Thus, my central research question is concerned with deciphering whether the economies of democratic states in West Africa perform better than those of authoritarian states in the region. I address this puzzle by conducting an empirical examination of various economic indicators and discussing, through the case studies of Ghana and Côte d'Ivoire, which aspects of governance that characterize regime type also affect economic performance in the region.

This paper will argue that specific government policies and broader policy environments matter, but regime type per se cannot account for the differences in economic growth performance. In the case of Ghana, decentralization and community-driven development; ethnic, religious, and ideological unity; and good governance have all contributed to robust GDP growth over the past decade and offer promising prospects for future development. In Côte d'Ivoire, rentier state phenomena and instability by way of coup attempts and civil war have foreclosed the possibility of political and economic stability and GDP growth that served it so well during extended periods of the Houphouët-Boigny administration (r. 1960-1993).

The next section briefly summarizes the seminal academic literature on regime-

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<sup>3</sup> See Appendix, Figure 1

contingent economic performance. Part three explains how and why I chose this medium-N sample, defines my units of analysis, discusses potential limitations of my methodology, and reveals the findings of my research. The fourth section provides evidence to support my central thesis by applying the most-different method of analysis to the study of contemporary Ghana and Côte d'Ivoire. In the last section, I examine potential policy implications of my findings and offer future research questions.

## ***II. Theoretical Considerations***

Scholars posit that specific policies matter, but regime type per se does not determine economic growth performance. The following addresses this debate surrounding the determinants of economic performance.

**Dictatorships Grow Faster.** Scholars refer to practices of “development-oriented” or “benevolent” dictators as “growth-centered governance.” The assertion is that democratic regimes allow for unhealthy levels of consumer spending and insufficient saving, thereby disregarding the importance of state-dictated investment as the key source of economic growth (Khan 2007, 4). State autonomy to suppress wages and force national saving favors growth, and heavy-handed state autonomy is only possible under an authoritarian regime (Przeworski and Limongi 1993, 54-55).

By definition, competitive authoritarian regimes are not plagued with the short-term uncertainty characteristic of democracies that may result from protracted legislative stonewalling, labor strikes, formidable opposition protests, or close elections (Freedom House 2011;

Levitsky and Way 2010, 8-16). Indeed, scholars have found that some of the institutions and practices found in competitive authoritarian regimes, including those in West Africa, create a more stable investment climate than in democracies because those institutions and practices not only bypass the uncertainty inherent in democracies but also alleviate the commitment and monitoring problems that ordinarily pervade and destabilize pure authoritarian political systems (Boix and Svolik 2007; Brownlee 2007; Gandhi 2008; Svolik 2012). Examples of such institutions and practices include contested elections (although neither free nor fair); limited political party participation; semi-autonomous parliaments that are controlled by the ruling party; and extensive, party-controlled patronage networks at the national and regional levels (Bueno de Mesquita et al. 2003; Lust-Okar 2006; Schedler 2002; Smith 2005; Svolik 2009).

Additionally, newly-empowered lower and middle classes may abuse the market system in a democracy to wage class warfare, which does very little to further economic development (Acemoglu and Robinson 2005, 61). Basic models show that if the income or wealth of the median voter is below the mean, the outcome of the political process in a democracy will be a redistribution from rich to poor in the form of transfer payments (Drazen 2000, 325).

Moreover, labor inputs tend to grow faster in dictatorships than in democracies because of higher birthrates. West Africa has some of the highest birthrates in the world. While democracies are thought to benefit more from technical progress and more efficiently utilize labor, dictatorships are thought to better harness physical

capital stock through forced national saving and by the regime's ability both to inhibit redistributive pressures to special interest group coalitions and to bypass the democratic process's time-consuming policymaking process (Huntington 1968, 109-10).

**Democracies Grow Faster.** While authoritarian states may be able to accelerate economic growth in the short-term through forced saving, long-term growth requires at least some marginal development of nominally democratic institutions, such as the rule of law and private property rights. Numerous studies have confirmed that democracies yield more predictable long-run growth rates because there is more certainty in a composite of everyday business decisions (Rigobon and Rodrik 2005, 544). Time consistency literature questions whether dictatorships can credibly commit to implementing policies that improve economic productivity given that there are no institutional constraints on dictators (Drazen 2000, 131-42). Democratic institutions largely foreclose the possibility of predation, corruption, rent seeking, and asset stripping.

Institutions are man-made formal and informal structures or constraints that govern behavior. Examples include constitutions, laws, behavioral norms, or any other practice that emerges from political, social, or economic custom. Institutions establish the "rules of the game" that actors, organizations, entrepreneurs, and citizens must follow (North 1990, 22). Institutions enhance the predictability of governmental decisions within the sphere of economic policy by restraining arbitrary executive action. Democracy allows for predictability in economic policy and forces the regime to

follow the rules of the game that itself sets (North 1991, 101; North 1996, 343). Predictability yields stability; stability yields economic growth; economic growth sustains democracy. Without forums in which to air grievances – parliaments, political parties, independent media, civil society, and so forth – demands may be made in disruptive and violent ways, perhaps in the form of protest demonstrations, strikes, coups, revolts, civil war, or revolution. These methods of resistance will inevitably lead to instability, which is manifestly deleterious to economic growth.

When there is fair, robust rule of law, contract disputes are settled in impartial venues, private property is respected, and civil liberties are protected. These processes aim to guard against arbitrary expropriation of property and profits, to sustain a more productive labor force, and to eliminate rent seeking and corruption in a democratic regime, thereby laying the foundation for long-term economic growth (Alesina et al. 1996, 195-97; North 1990, 48).

Private property rights create safe environments for entrepreneurs to operate within the economy without fearing expropriation. Economists place such heavy emphasis on property rights because, "the expectation of arbitrary confiscation, either by the state or by fellow citizens, shortens the individual actor's time horizon, increases the subjective discount rate, and creates disincentives for investment, specialization, and exchange" (Eggertsson 1996, 8). In other words, it is risky and costly for entrepreneurs to operate within a system with low incentives for lowering transaction costs.

In one study, the main determinant of economic performance in developing

countries was not found to be geography, resource endowments, climate, disease, identity of colonizer, or ethnolinguistic fragmentation; but rather, the country's institutions. The authors posit that colonizers determined which African lands to settle based on potential settler mortality, which in turn determined to what extent they would develop early institutions in the colony. These early institutions persisted long after the colonial regime fell and form the basis of the current institutions, which could explain current economic performance and, to a lesser extent, income (Acemoglu et al. 2001). The study examines institutional effects on the protection against expropriation risk and the upholding of the rule of law along with the past prevalence of monopolies, regulation, and forced labor. The theory holds that good institutions condition superior economic performance.

Additionally, dictators distort the market. Whenever authoritarian governments decide how best to produce, value assets, and allocate resources by fiat rather than by consumers based on demand, they inject short-term waste, inefficiency, and bureaucracy into the market. Regime bureaucrats who intervene in or centrally plan the market, like so many kleptocracies in West Africa, do not have access to the perfect and complete information necessary to determine the nature and quantity of goods and services to be produced and distributed (Evans 1989, 564; Smith 1776). Any burdensome state intervention in a market economy sabotages the natural positive-feedback loop that connects consumers to producers and serves them so well (Easterly 2006, 363). In a democracy, the ruling party will be restrained from abusing a market system for its own benefit because it has to answer

to voters, legislators, courts, journalists, and a free civil society.

### ***III. Methodological Approach & Research Findings***

My study collects the Freedom House scores and World Bank GDP growth rates (as an annual percentage) of fourteen West African countries from 1972 (when Freedom House began ranking countries) through 2010 (the year of the most recent World Bank data). "West Africa," as defined by the United Nations, consists of Benin, Burkina Faso, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.<sup>4</sup> An advantage of considering only this region is that it enables the administration of an exhaustive investigation of a medium-N sample with similar economies, geographies, and shared colonial histories. A possible limitation to confining my research to this single region is the consequent inability to compare and contrast the West African experience with those of other regions in the developing world. Thus, it is not my intent to formulate a comprehensive theory of regime type and economic performance.

If poverty does, in fact, constrain as Przeworski et al. suggest – if, in fact, poor countries are too poor to afford a strong state (and without an effective state, there is little difference any regime can make for economic development) – then why does my research reveal a positive, statistically-significant relationship between democracy and GDP growth among West African states from 1972-2010? I specifically chose the region of West Africa because most empirical accounts show it to have the

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<sup>4</sup> See Appendix, Figure 2

worst economic and human development indicators, and I wanted to see whether Przeworski et al.'s theory applies to one of the world's poorest regions.

Different leaders come and go in sub-Saharan Africa, and some have changed nearly as often as the seasons over the course of thirty-eight years. As such, it is difficult to formulate a regional theory of regime type and economic performance with a temporal range of nearly four decades. We will gain a clearer picture of the relationship between regime type and economic development and how various aspects of governance that characterize regime type affect economic performance in the region if we consider the specific governance of two country case studies during the past decade (2001-2010). For this period, I compare Ghana and Côte d'Ivoire using the most-different method of analysis (Seawright and Gerring 2008, 304-05). This strategy is apt, given their vast differences despite being neighbors: Ghana has experienced robust growth over the past decade, Côte d'Ivoire has experienced poor growth during the same period; Ghana is the most democratic country in West Africa by most measures, Côte d'Ivoire has consistently scored very poorly on Freedom House's scale; Ghana was a British colony, Côte d'Ivoire was a French colony; Ghana suffered no armed conflict during the last

decade, Côte d'Ivoire experienced two civil wars and other unrest.

I define level of democracy, my independent variable, by using Freedom House's classification system. I designate a state as "democratic" if it has an average Freedom House score between 1 and 2.5; "competitive authoritarian" if its average falls between 2.6 and 4.9; and "authoritarian" if its average is between 5 and 7 (Diamond 2002, 26; Freedom House 2011). My dependent variable, average GDP growth (as an annual percentage), is taken from The World Bank's Data Bank. Level of democracy is my independent variable because my research question involves ascertaining whether regime type determines economic performance, not whether economic performance determines regime type. The latter is a topic of study for Modernization theorists and will not be addressed here.

Freedom House (FH) scores are somewhat imperfect given that the assignment of numeric values to categories like civil liberties, free press, and an independent judiciary is subjective. FH rankings do not capture the essence of authoritarianism, but for the purposes of gaining a broad, generalized understanding of trends in the region, these scores are the best barometer available.

WEST AFRICA, 1972-2010

FH Best	FH Worst	GDP growth Best	GDP growth Worst
Gambia	Guinea	Burkina Faso	Liberia
Senegal	Togo	Gambia	Niger
Ghana	Côte d'Ivoire	Mali	Sierra Leone

The data shows that, on average, the more/less “Free” a country, the higher/lower its thirty-eight-year GDP annual growth rate. The slope of the linear best-fit line is -0.5489, indicating a statistically-significant relationship.<sup>5</sup>

Yellow countries are labeled by Freedom House as “Partly Free,” and purple countries are labeled “Not Free.” Because these scores are thirty-eight-year averages, it is not surprising that none are labeled “Free” in green – intermitting periods of poor democratic performance and superior democratic performance tend to average out into a mediocre mean value.

The aggregate trends accurately reflect recent Freedom House and World Bank data, as well. Within the past decade, the inverse relationship between FH score and GDP growth endures, but three green “Free” countries now appear in the top three positions in the “FH Best” category – Ghana (1.8 average), Benin (2.1 average), and Mali (2.3 average). This period also showed better country average FH scores

(3.85) and GDP growth rates (4.30 percent) when compared to the period from 1972-2010 (with a 4.81 average FH score and a 3.00 percent average growth rate). Once again, the data shows that, on average, the more “Free” a country, the higher its ten-year GDP annual growth rate. Conversely, the less “Free” a country, the lower its ten-year GDP annual growth rate. The slope of the linear best-fit line is -0.9, indicating a statistically-significant relationship.<sup>6</sup>

#### IV. A Comparative Analysis of Contemporary Ghana and Côte d'Ivoire

**Ghana.** Ghana was ruled by John Kofi Agyekum Kufuor from 2001 to 2009. He defeated retiring incumbent Jerry John Rawlings’s Vice President and handpicked successor in the 2000 presidential election. Kufuor’s ascension to office signaled the first peaceful, democratic transition of executive power since Ghanaian independence in 1957 (Agyeman-Duah 2003, 19). Former President Jerry John

WEST AFRICA, 2001-2010

FH Best	FH Worst	GDP growth Best	GDP growth Worst
Ghana	Côte d'Ivoire	Sierra Leone	Guinea-Bissau
Benin	Guinea	Nigeria	Côte d'Ivoire
Mali	Togo	Ghana	Liberia

<sup>5</sup> 5

Rawlings (r.1981-1993, 1993-2001) had submitted to international institutions, Western aid donors, and local pressures for political reforms and guided Ghanaian democratization during the 1990s. Facing formidable wage demands from Ghana's public-sector employees, Rawlings conceded and allowed an 80 percent rise in wages. He also formed the National Democratic Congress Party in 1991 and authorized Ghana's first elections. Rawlings won the presidential election in 1992, and Ghana's FH score improved from 5.5 in 1989 to 2.5 in 2001 (Freedom House 2011), but this freedom came at a price. Higher wages, deficit spending on infrastructure projects, crop failures, and crippling inflation hindered economic reform programs during the mid-1990s, and low private saving and investment contributed little to economic growth (Aryeetey and Kanbur 2008, 16; World Bank 2011).

In sum, the experience of the latter Rawlings years is a complete repudiation of the results found in Appendix, Figure 3; to wit, democracy does not necessarily yield conditions propitious for economic prosperity. There is no empirical or historical basis to the simple claim that Ghana's democratic regime exclusively produced good economic fortunes during the 2000s. As we will see, specific government policies and certain policy environments such as decentralization and community-driven development; ethnic, religious, and ideological unity; and good governance have all contributed to Ghana's robust GDP growth post-Rawlings and offer promising prospects for future development.

*Decentralization and Community-Driven Development.* As a former Secretary at the district-level, Kufuor was uniquely qualified to expand the economic

decentralization agenda Rawlings initiated in the late 1980s. Passed by the national legislature, a legal framework established 110 District Assemblies – consisting of seven Metropolitan Assemblies, four Municipal Assemblies, and 103 District Assemblies – to involve locals in the economic development policymaking process (Owusu 2004, 168). These relatively autonomous assemblies exercise significant executive, legislative, and deliberative powers for the purposes of giving local feedback to national-level aid/development projects; building community-level capacity; making national government accountable to unique, local needs; and building social capital.

This devolution of power from the national government to semi-autonomous communities and the legal framework that established these assemblies could only have been allowed under a democratic regime. Indeed, Ghana's average FH score under Kufuor was 1.75 (Freedom House 2011). The relative success of community-driven development (CDD) has, in part, produced Ghana's impressive 5.9 percent average GDP growth rate under the Kufuor administration (World Bank 2011).

Economists have found that CDD has also modernized and diversified Ghana's economy and is promising for reducing poverty. One scholar writes,

*[S]trengthening small towns not only enhances farmers' access to markets and services, but also stimulates the demand for higher-order goods and services through higher income, which in turn results in the growth of district capitals. Theoretically, this should have a positive impact on labour and employment and consequently on poverty reduction [...] Other aims include the promotion of agriculture in the hinterlands*



*and the stimulation of employment opportunities other than farming. It envisages that rural-urban linkages between district capital and rural periphery will have positive consequences for both spatial units, and hence for the overall development of the district (Owusu 2004, 190).*

Other results of Ghanaian CDD include increased access to services; strengthened community institutions and local governments; improved ability to respond to external shocks like natural disasters or economic crises; improved access to micro finance; more effective targeting of vulnerable groups, like ethnic or religious minorities; and a more harmonious feedback loop between the principals (the community) and the agents (national government agencies) (Easterly 2006; Mansuri and Rao 2004; Owusu 2004).

Thus, because the central government transferred certain economic policymaking processes to small communities and strengthened the legal framework that established and maintains the assemblies, Ghanaian government decentralization and community-driven development have been advantageous to both democratic institution building and economic development.

*National Unity.* Despite having dozens of ethnic groups spread across 10 administrative regions, speaking dozens of different dialects, there has been little ethnic warfare in Ghana since independence. Scholars have found that “a unified state and a common language and identity tends to facilitate the trust and ease of social interaction discussed in the literature on social capital” (Bockstette et al. 2002, 349). Because surveys of Ghana’s level of “trust” and “civic norms” show that

it is roughly in line with other states in the region, there must be other factors of national unity that help explain the country’s superior democratic and economic performance during this decade (World Values Survey 2011). I submit that these key factors are ethnic, religious, and ideological in nature.

While there were numerous coups during the period 1966-1980, they were primarily military power struggles, not ethnically-based conflicts or genocides. Following Rawlings’s gradual democratization of Ghana, ethnic relations have been strikingly placid (Aryeetey and Kanbur 2008, 19). Such social peace is manifestly auspicious for political and economic stability and increases opportunities to refine physical, social, and human capital. Unlike Côte d’Ivoire, the history of Ghana’s national government has not been that of bloody, religion-based power struggles. As we shall see later in this section, Côte d’Ivoire’s political and thus economic instability were primarily caused by ethnic and religious strain instigated and perpetuated by opportunistic military and civilian dictatorships.

Finally, there has been a sense in Ghana that ever since the Rawlings-led political transition, Ghana would remain a democracy. Both elites and average citizens internalized the fact that despite the rough economic seas of the 1990s, Ghana retained its democratic practices. I consider this phenomenon to be an ideological unity of sorts. The robust, Kufuor-led economic growth sustained the democratic system that initiated the cycle to begin with, and this experience led to a national consensus that all societal players would henceforth adhere to the democratic “rules of the game.”

**Good Governance.** This term is not necessarily synonymous with “democracy.” During various intervals, Côte d’Ivoire, South Korea, Singapore, Chile, China, and other states have all robustly grown their economies under authoritarian regimes, after all. However, the following factors that characterize good governance in Ghana have, by their own devolutionary and neoliberal nature, contributed to both the consolidation of democracy in Ghana and economic growth. These reforms include instituting merit-based bureaucratic/administrative performance tracks; securing private property rights via the just rule of law; dialoguing with all political parties and interest groups on how best to proceed with electoral and economic reform; maintaining a genuinely independent judiciary; protecting the rightful autonomy of local and regional leaders in CDD projects; and increasing the salaries of the national police to cease supplementing state and local budgets with arbitrary fines and provisions on entrepreneurs (Aryeetey and Kanbur 2008, 14-16; Besley 1995). All of these manifestations of good governance have served to limit opportunities for predation, corruption, rent seeking, shortening time horizons, and asset stripping, which are deleterious to sustainable, long-term economic growth (Olson Jr. et al. 2000).

Good governance also extends into the economic realm – starting in the 1980s, Ghana has liberalized its capital market and interest rate arrangements; privatized underperforming state-owned enterprises; set appropriate exchange rate pegs; initiated bank reform so as to make credit more available to businesses in a way that spurred economic activity and lowered the unemployment rate; implemented genuine monetary reform; and reformed

burdensome industrial regulation (Fosu and Aryeetey 2008, 70-78; Owusu 2004). Ghanaian capitalism and democracy are mutually reinforcing because in a democracy, the ruling administration is restrained from abusing the market system for its own benefit because, as previously mentioned, it has to answer to voters, legislators, courts, journalists, and a free civil society.

The result we see in Ghana over the past 20 years has been the apotheosis of good governance in greater West Africa. In this regard, the contemporary history of Ghana is a rejection of the theory that bad policy is good politics for the ruling coalition (Bueno de Mesquita et al. 2003). Democratic institutional constraints have prevented Ghana’s elected officials from becoming entrenched in office over time by providing public and private goods to their supporters, accumulating stockpiles of resources that allow their regimes to withstand economic shocks, and maintaining many loyal, long-time supporters whose affinities are well known and enforced by fear of state retribution. Such a history was replicated in neighboring Côte d’Ivoire, where President Laurent Gbagbo bestowed onto that troubled nation a legacy of poor governance, instigated ethnic strain, and followed bad policy in the hopes of good politics for him and his inner circle.

**Côte d’Ivoire.** At first glance, the reign of strongman President Félix Houphouët-Boigny (r. 1960-1993) seems to demonstrate that authoritarian regimes can implement good governance and robustly grow their economies while maintaining a closed political system. Indeed, the “Ivorian miracle” he initiated achieved an average GDP growth rate of 8.13 percent from 1960-1979; the country was opened up to global

trade and foreign direct investment (FDI); and the agricultural, manufacturing, natural resource, and construction industries were modernized, deregulated, and made more productive. Also, national income and personal incomes skyrocketed (Campbell 1987, 283; World Bank 2011). However, in this case, “good governance” was not synonymous with “development.” Indeed, economists have labeled the “Ivorian miracle” an example of growth without development – the economy remained un-diversified and overly reliant on agricultural exports, natural resource exports, and FDI; certain vital infrastructure building was neglected; human capital and local capacity building were not refined; and no base was formed to ensure sustainable, long-term macroeconomic stability and growth (Campbell 1987; Woods 2003). The last thirteen years of Houphouët-Boigny’s administration produced a dismal -0.27 percent GDP growth on average, and that average value never rose above 5 percent for any presidential tenure thereafter (World Bank 2011). Since the early 1980s, Côte d’Ivoire has been plagued with a struggling, un-diversified economy and since the mid-1990s by great political instability, both of which are damaging to long-term economic growth.

*Rentierism.* As prefaced in Part I, specific government policies mattered, but the regime type itself did not determine Côte d’Ivoire’s economic performance. One of those policies was the maintenance of a rentier state. Rentier state theory contends that states overly dependent upon natural resource rents grow their economies more slowly, have more civil wars, and are inherently less democratic than states not overly dependent upon natural resource rents (Barro 1999; Karl 1997; Klitgaard 1990; Ross 2001). A state is “overly

dependent” when income earned from natural resource commodities comprises a disproportionate percentage of its GDP, and when the state’s fiscal solvency is severely harmed without the export of these commodities. “Natural resource rents” colloquially means oil and natural gas, but the definition also encompasses coal, minerals, and forest rents. Côte d’Ivoire has also been heavily dependent upon agricultural exports like cocoa, oil, coffee, bananas, corn, rice, and sugar (CIA World Factbook 2011).<sup>7</sup>

A diversified economy is not overly dependent on the income generated by natural resource rents because it can generate national wealth from other sectors such as the manufacturing, financial services, and biotechnology industries. As a result, these states are more fiscally and politically secure should they experience depletion of their resource reserves; a precipitous drop in the worldwide price of the aforementioned commodities; or an exogenous event like warfare that would hinder the harvesting, production, refining, and export of those commodities. Indeed, the economic growth rate of Côte d’Ivoire sharply declined following the drop in the worldwide price of cocoa, oil, and coffee in the early 1980s as well as during the coup- and civil war-plagued period from 1999-2011 (World Bank 2011).

Natural resources not only often finance, but also in some cases motivate armed conflicts. Armed conflict is commercialized and sovereignty is territorialized in an attempt to access profitable resources and trading networks. This political process has intensified since the end of the Cold War because of the marked decrease in political foreign aid,

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<sup>7</sup> See Appendix, Figures 7 & 8

causing both states and rebel groups to try to secure their own income, sometimes violently (LeBillon 2001, 564). Questions of control of goods; allocation of profit; and demands for civil, political, and social rights that arise as ethnically heterogeneous societies evolve surround resource wars and environmental geopolitics. War destroys physical capital and prevents the accumulation and refinement of human capital. The political instability that comes along with ethnic war also damages institutions and any inter-network trust is diminished along with the country's social fabric and the individual's civil liberties. Dwayne Woods' take on the recent history of Côte d'Ivoire is incisive:

*The country's property rights regime that encouraged easy access to forest rents - as long as cheap migrant labour and virgin forested land were available - was a recipe for future conflict. As available land declined and labour costs increased, a cycle of sharpening conflicts over these assets contributed to the current situation of ethno-regional division and civil war (2003, 641).*

Côte d'Ivoire is divided up into the predominantly Muslim north (roughly 38 percent of total population) and Christian south (roughly 32 percent of total population). Within an environment of resource scarcity, Presidents Aimé Henri Konan Bédié (r. 1994-1999), Robert Guéï (r. 1999-2000), and Laurent Gbagbo (r. 2000-2011) instigated and exacerbated religious and ethnic tensions for political gain, tribal material benefit, and pride. They also did little to diversify and modernize their state's economy (Campbell 1987, 294). National disunity and political and economic instability that resulted from coups and civil

wars did little to ensure long-term economic growth (Alesina et al. 1996, 200-04; Bellows and Miguel 2006, 396). Indeed, while Bédié achieved a respectable 4.62 percent GDP growth average, Guéï only managed -1.1 percent average, and Gbagbo's regime produced only a 0.69 percent average (World Bank 2011).

*Instability.* Also prefaced in Part I, broader policy environments mattered. The principal impediment to economic diversification, modernization, and growth within Côte d'Ivoire's policy environment has been political instability in the form of ethnic discord, repeated coup attempts, and civil wars.

President Aimé Henri Konan Bédié (r. 1994-1999) ascended to power with a large power vacuum to fill following the death of Houphouët-Boigny. In an attempt to hold the nation together, Bédié resorted to tribal favoritism; siphoned off public goods to his inner circle; and institutionally disenfranchised northern Muslims, migrant workers, regime opponents, and citizens with ethnicities other than his own (Woods 2003, 643). Such disenfranchisement produced the social unrest that manifested itself in the subsequent numerous coup attempts. Political instability by way of ethnic strife does little to create a propitious investment climate, a productive workforce, and a refinement of physical and human capital.

Robert Guéï came to power in 1999 in a military coup and was defeated in military-sponsored elections the following year. He refused to cede power to the disputed winner, Laurent Gbagbo, and after sporadic fighting between the two men's entourages in the capital city, a transition of power eventually took place (CIA World Factbook 2011).

President Gbagbo presided over the civil wars in 2002 of 2011. In the interim, he continued Bédié's policy of systematic disenfranchisement. Very much unlike Houphouët-Boigny's tenure, political instability reigned supreme under Gbagbo. Economist Alberto Alesina and colleagues reiterate that political instability harms economic growth: "This result [instability harming economic growth] is particularly strong for the case of unconstitutional executive changes such as coups, as well for changes that significantly changes the ideological composition of the executive. The effect of instability on growth is less strong for the regular and frequent executive turnovers typical of industrial democracies" (Alesina et al. 1996, 205). There is certainly a circular phenomenon accompanying such instability – anemic economic growth during the first decade of the 2000s caused social unrest and political instability, which in turn harmed the policy environment for economic growth.

Gbagbo kept his inner circle tight in order to cling to power amid such potent social unrest and ethnic strife. As a result, economic actors anticipated that the ruling regime would continue to generate policies detrimental to economic activity (Brownlee 2007, 24). Kleptocracy, which is defined as the outright theft of a nation's income by its leaders, is one of the methods by which such detrimental policies are implemented (Evans 1989). As a result, economic actors have little incentive to work efficiently, and as a result, do not produce higher incomes or make the labor force more productive. In other words, when the winning coalition:selectorate ratio is small, economic actors are not likely to stimulate greater economic growth (Bueno de Mesquita et al. 2003, 131). Indeed, Gbagbo's record of an average GDP growth

rate of 0.69 percent is rather unimpressive given Côte d'Ivoire's enormous potential (World Bank 2011). Gbagbo kept his inner circle small and on a short leash, and his eleven-year-long authoritarian regime engaged in kleptocracy. Bueno de Mesquita et al. explain the relationship between inner circle exclusivity and policy outcomes:

*[...] when W/S is small, leaders are better able to engage in kleptocracy, reserving money against future uncertainty. They also spend less to maintain coalition support, they redistribute money regressively, they produce relatively poor public policy, including especially low economic growth rates, and, on average, they keep their jobs longer than when W/S is large (2003, 132).*

Gbagbo was ultimately unsuccessful in preventing critical defections after refusing to step down after losing the 2010 Presidential election. These defections emboldened marginalized ethnic groups and opposition parties to continue fighting the civil war, and they eventually forced the incumbent dictator from power in the spring of 2011 (Nossiter et al. 2011).

## **V. Conclusion**

Scholarship remains agnostic on which regime type is most auspicious for economic growth:

*The diminishing returns to investment in the neoclassical theory leads us to expect that the capital-poor low income [dictatorships] should grow more rapidly than the well-endowed rich [democracies]. [Conversely,] externalities that increase with stocks of capital or rates of investment or other forces that generate decreasing or constant costs in endogenous growth models lead us*

*to expect that well-endowed rich [democracies] should be among the fastest growing countries (Olson Jr. et al. 2000, 341-42).*

There is no axiom that a particular type of regime determines economic growth. Also, there is no single theory of economic growth; rather, the main contending theories all contribute important ideas to the effort of trying to explain how economies develop. Likewise, capitalism is not the panacea for struggling economies, although it may be the best system on our menu. But all too often, West Saharan African leaders maintain crony-capitalist markets with tinges of state intervention when it suits political aims. This is the problem with bad governance capitalism – power manifestly corrupts. As Ian Bremmer cogently writes, “Forced to choose between the protection of the rights of the individual, economic productivity, and consumer choice, on the one hand, and the achievement of political goals, on the other, state capitalists will choose the latter every time” (Bremmer 2010, 41).

This paper has argued that specific government policies and broader policy environments matter, but regime type per se cannot account for the differences in economic growth performance. In the case of Ghana, decentralization and community-driven development; ethnic, religious, and ideological unity; and good governance have all contributed to that country’s robust GDP growth over the past decade and offer promising prospects for future development. In Côte d’Ivoire, rentier state phenomena and instability by way of coup attempts and civil war have foreclosed the possibility of political and economic stability and GDP growth.

Good governance is the key to sustainable economic development, not simply shallow, temporary economic growth. Good governance allows for predictability in macroeconomic policy and forces the ruling regime to follow the “rules of the game.” This predictability, principally via just rule of law, yields stability; stability yields economic growth; and economic growth sustains the good governance democracy that created this cycle originally. Good governance includes purging and eliminating corrupt business license bureaucracies; enforcing a fair and permanent (predictable) tax code; reforming the judiciary and law enforcement agencies; and maintaining a government-business relationship based on merit and not on favoritism. The common thread that unites all of these factors is institutional power. Institutions and arenas in which negotiations can take place are intrinsic to good governance and these institutions and arenas, in their pure forms, only exist in democracies.

Good governance democracy encourages sustainable economic development. On this point, it is worth quoting Mancur Olson at length:

*[...] though experience shows that relatively poor countries can grow extraordinarily rapidly when they have a strong dictator who happens to have unusually good economic policies, such growth only lasts for the ruling span of one or two dictators. It is no accident that the countries that have reached the highest level of economic development and enjoyed good economic performance across generations are all stable democracies (1993, 572-73).*

Thus, while scholars have found that dictatorships may be better at effectively harnessing resources and growing in the short-term, they have shown good governance and democratic institutions to be essential for sustainable, long-term economic development. This paper provides further evidence for this finding.

Since developing states that receive neoliberal conditionality-based aid from the IMF and bilateral and multilateral donors do not tend to improve their economic performance, a potential policy implication of my findings is the need to transition to a community-driven, indigenous development agenda (Easterly 2006). The United States and other wealthy Western donors may find their investments more wisely spent on NGO-led efforts to build local community capacity and enable the needy themselves to determine what aid they need and how to implement it rather than adhering to some bureaucratic, top-down, unaccountable, feedback-deficient development scheme.

A future academic pursuit could be an examination of the lack of Ivorian civil war spillover effects in neighboring Ghana – a seeming repudiation of the literature on neighborhood effects of conflict (Ades and Chua 1997). Why has the instability brought by Côte d'Ivoire's 2011 civil war not affected Ghana's economic performance? Another research question worthy of further scrutiny is: do states in West Africa that have opened up their economies to global trade integration experience more robust growth than states that are more autarkic (Dollar and Kraay 2004)?<sup>8</sup> Additionally, future research is needed to uncover precisely why relatively weak empirical relationships exist between

regime type and human development indicators in the region.<sup>9</sup>

Another area of further study is the application of colonial legacy studies to the countries studied in this paper; do the experiences of Ghana and Côte d'Ivoire confirm, deny, or render inconclusive the theory that former British colonies (with common law, developed institutions, and semi-autonomous rule) perform better economically than former French colonies (with civil law, undeveloped institutions, and direct rule) (Acemoglu et al. 2001; Firmin-Sellers 2000)?<sup>10</sup> Finally, if the theory that poor economic performance creates a serious threat that a poor democracy will revert to dictatorship, then why did Ghana, a poor democracy, not revert to dictatorship during the turbulent 1990s (Przeworski and Limongi 1993)?

These and other questions must be at least partially answered if scholars wish to develop a more comprehensive understanding of the relationship between regime type and economic growth in West Africa. An expanded awareness of the issue also requires the introduction of new and improved frameworks of analysis.

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<sup>8</sup> See Appendix, Figure 9

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<sup>9</sup> See Appendix, Figures 5, 6, 10, 11

<sup>10</sup> See Appendix, Figure 12

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## Appendix

Figure 1. Compilation of Studies on Regime Type & Economic Growth<sup>11</sup>

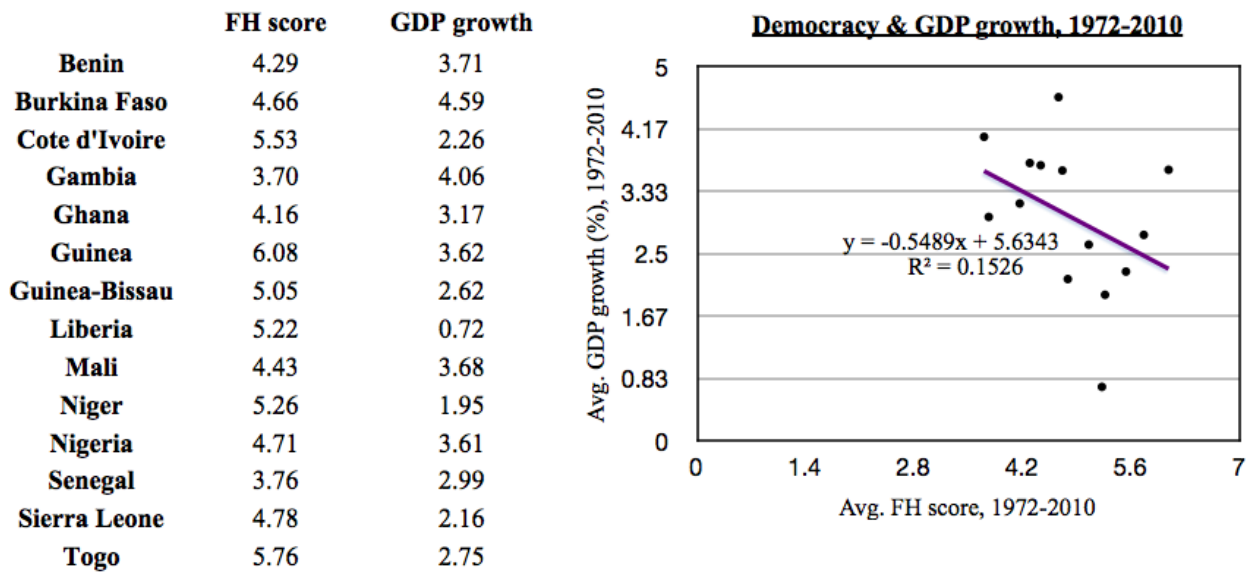
<i>Author</i>	<i>Sample</i>	<i>Time frame</i>	<i>Finding</i>
Przeworski (1966)	57 countries	1949–1963	dictatorships at medium development level grew fastest
Adelman and Morris (1967)	74 underdeveloped countries (including communist bloc)	1950–1964	authoritarianism helped less and medium developed countries
Dick (1974)	59 underdeveloped countries	1959–1968	democracies develop slightly faster
Huntington and Dominguez (1975)	35 poor nations	the 1950s	authoritarian grew faster
Marsh (1979)	98 countries	1955–1970	authoritarian grew faster
Weede (1983)	124 countries	1960–1974	authoritarian grew faster
Kormendi and Meguire (1985)	47 countries	1950–1977	democracies grew faster
Kohli (1986)	10 underdeveloped countries	1960–1982	no difference in 1960s; authoritarian slightly better in 1970s
Landau (1986)	65 countries	1960–1980	authoritarian grew faster
Sloan and Tedin (1987)	20 Latin American countries	1960–1979	bureaucratic-authoritarian regimes do better than democracy; traditional dictatorships do worse
Marsh (1988)	47 countries	1965–1984	no difference between regimes
Pourgerami (1988)	92 countries	1965–1984	democracies grew faster
Scully (1988, 1992)	115 countries	1960–1980	democracies grew faster
Barro (1989)	72 countries	1960–1985	democracies grew faster
Grier and Tullock (1989)	59 countries	1961–1980	democracy better in Africa and Latin America; no regime difference in Asia
Remmer (1990)	11 Latin American countries	1982–1988 1982 and 1988	democracy faster, but result statistically insignificant
Pourgerami (1991)	106 less developed countries	1986	democracies grow faster
Helliwell (1992)	90 countries	1960–1985	democracy has a negative, but statistically insignificant, effect on growth

<sup>11</sup> Przeworski, Adam and Fernando Limongi. 1993. "Political Regimes and Economic Growth." *Journal of Economic Perspectives* 7(3):51-69.

Figure 2. Current Freedom House Snapshot of West Africa<sup>12</sup>



Figure 3. Freedom House Score & GDP growth (annual %), 1972-2010<sup>13</sup>



<sup>12</sup> Freedom House. 2011. Freedom in the World. <http://freedomhouse.org/template.cfm?page=15>

<sup>13</sup> World Bank Group. 2011. World Development Indicators. <http://databank.worldbank.org>

Figure 4. Freedom House Score & GDP growth (annual %), 2001-2010

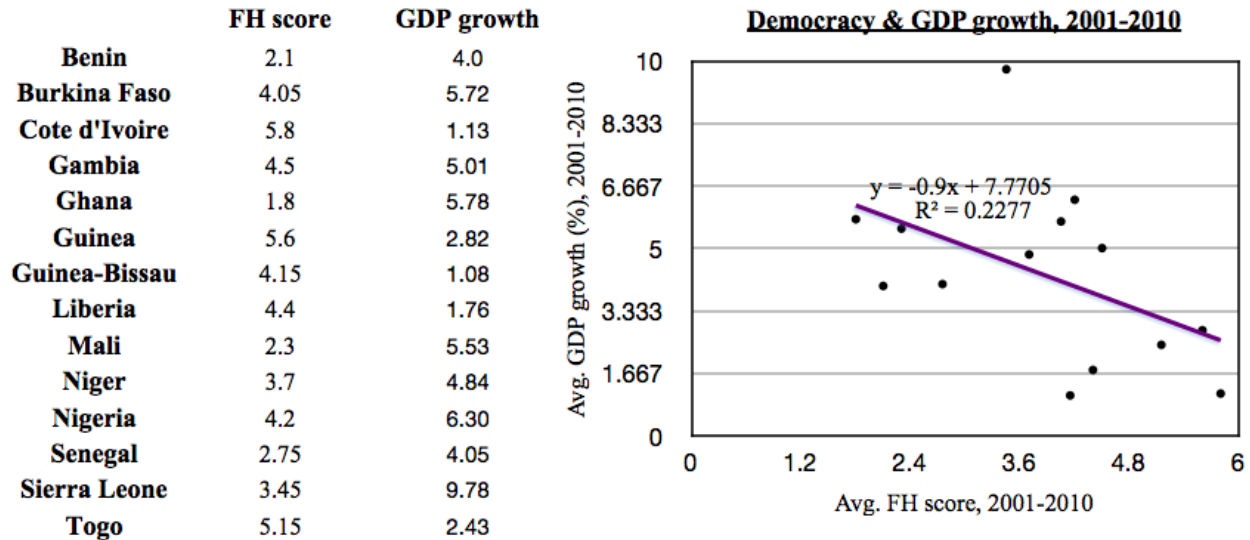


Figure 5

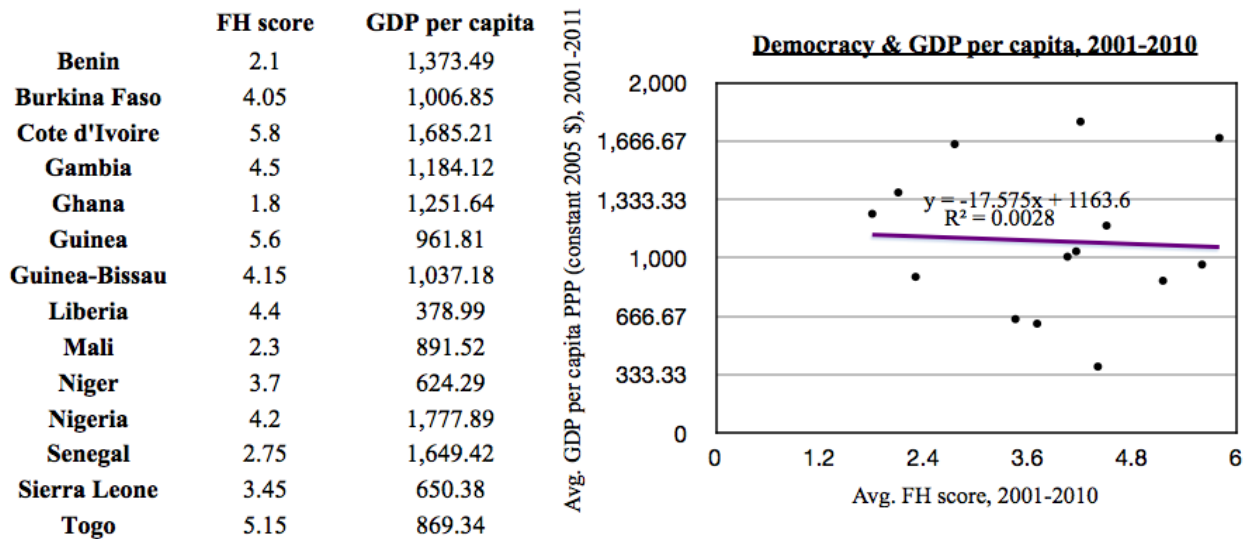


Figure 6

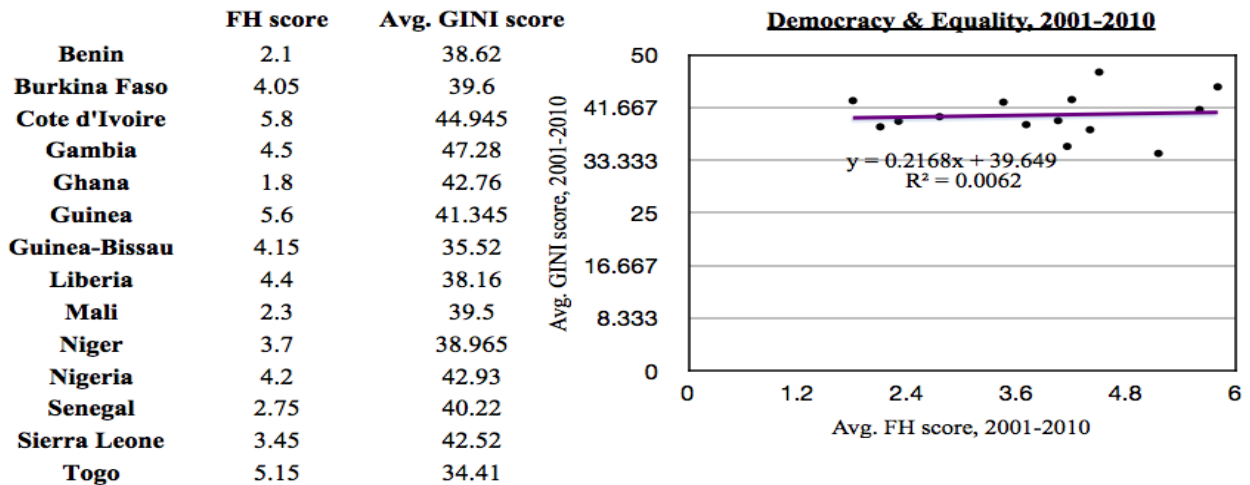


Figure 7

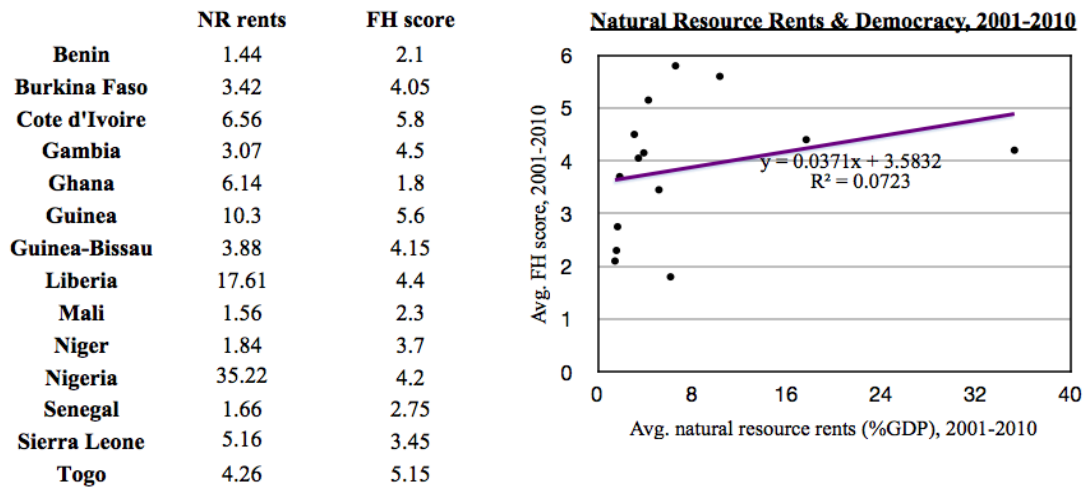


Figure 8

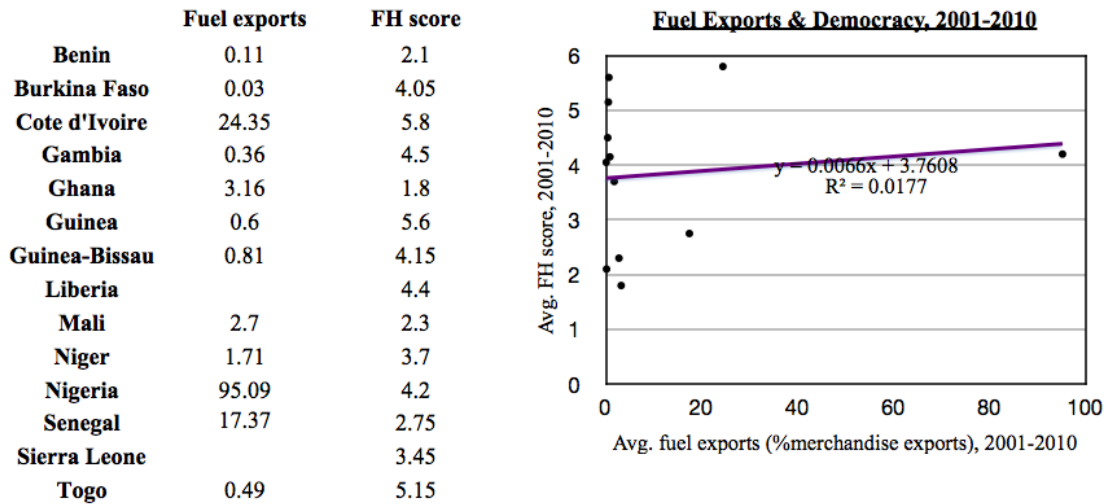


Figure 9

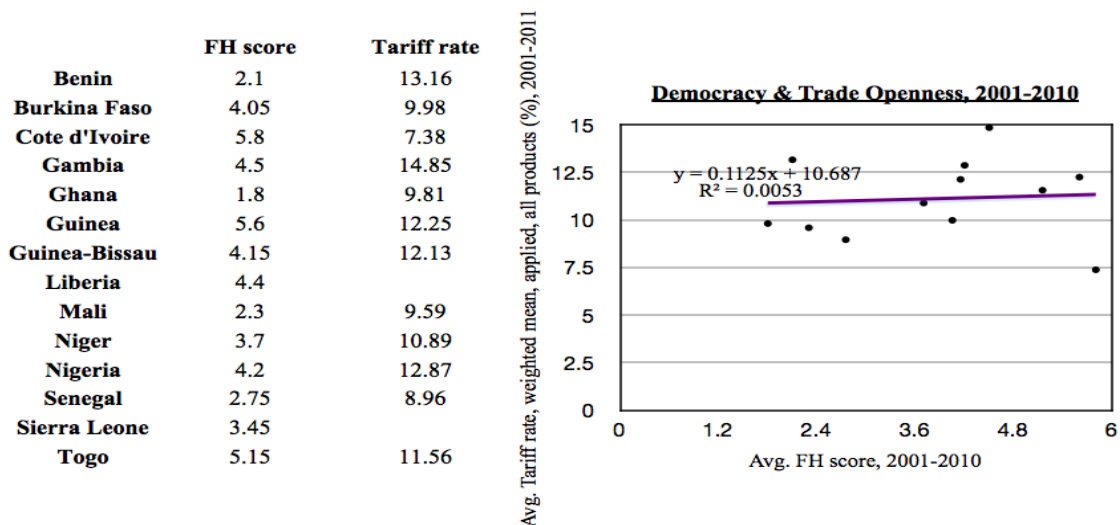


Figure 10

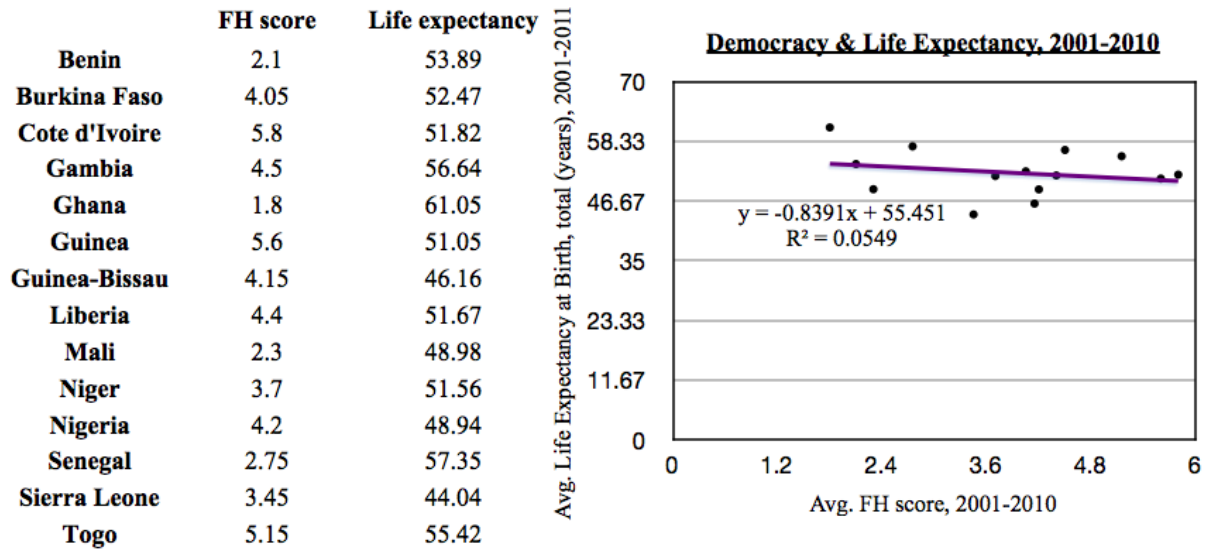


Figure 11

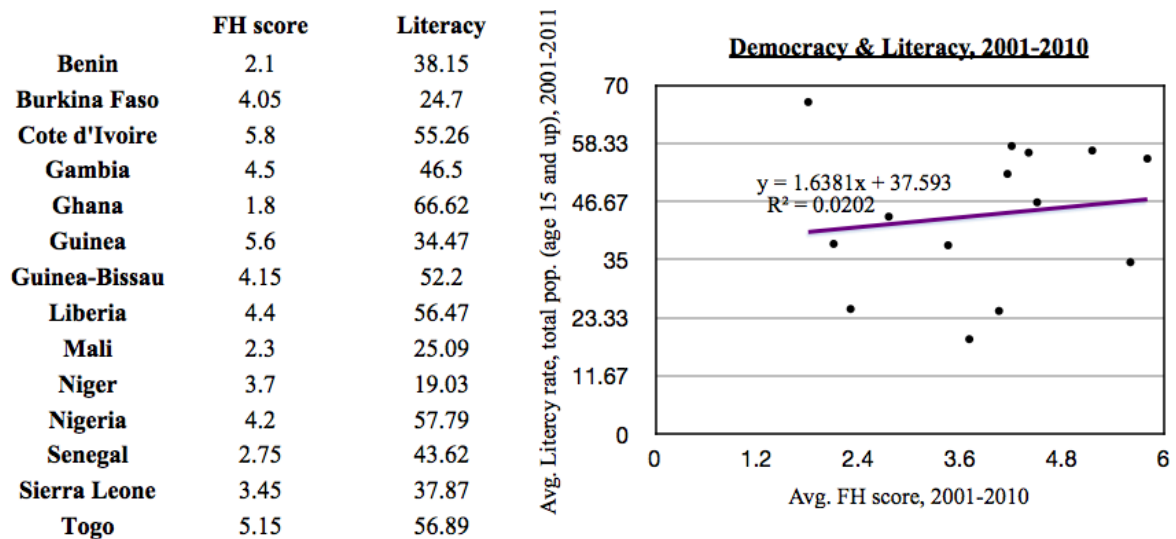


Figure 12

Avg. GDP growth (%), 2001-2011
9 French colonies: 4.09%
3 British colonies: 6.86%
1 Portuguese colony: 1.08%
1 Independent state: 1.76%



## **HOLDING LEADERS ACCOUNTABLE FOR HUMAN RIGHTS ABUSES IN CHILE, ARGENTINA, AND THE UNITED STATES**

**Joshua Pringle**

### ***I. Introduction***

In 1970, U.S. President Richard Nixon, in collusion with National Security Advisor Henry Kissinger and the CIA, began the planning stages of a covert operation to remove Chile's democratically elected president, Salvador Allende. In September 1973, the operation came to fruition through a CIA-supported coup that included aerial bombardment of the *Palacio de La Moneda*, the seat of the President of Chile, and placed General Augusto Pinochet and his military in power. By the end of Pinochet's seventeen-year dictatorship, the Chilean regime was responsible for the murder, torture, and disappearance of more than three thousand people. Twenty-five years after he came to power, Pinochet was arrested in London, setting in motion a tortuous and unprecedented legal process in Chile that led to his immunity being stripped. Although Pinochet died without ever facing trial, many of his lieutenants faced trials and imprisonment, and the military saw both its shield of invincibility and its code of silence effectively dismantled. In the United States, by contrast, neither Nixon nor Kissinger faced indictments for their role in the coup in Chile. Nor were they held accountable for human rights abuses elsewhere, such as the indiscriminate bombing of Cambodians during the Vietnam War.

During Argentina's so-called Dirty War, the junta of 1976-1983 was responsible for as many as thirty thousand people killed or disappeared. Since the country's democratic transition in 1983,

heads of state have been held accountable for their crimes on a scale that has set a new precedent for the hemisphere. Top leaders of the military regime, including General Jorge Videla and General Luciano Menéndez, have been tried, convicted, and sentenced to life in prison. The trials, which remain ongoing, have benefited from a concerted effort to document the regime's brutality, from the truth commission of 1984 to the even more groundbreaking truth trials of the 1990s. The judicial process in Argentina has been a complicated and contentious one, as tortuous as that in Chile, with the military rebelling against the trials on several occasions and with human rights advocates pressuring the courts repeatedly. However, Argentina's successes and innovations in this process have been championed by human rights protagonists throughout the world.

Human rights abuses committed by leaders in Chile and Argentina have resulted in legal consequences, whereas human rights abuses committed by U.S. heads of state have not been met with accountability either internationally or at home. This paper will examine the question, why do we observe higher levels of accountability in Chile and Argentina than we do in the United States? Considering that accountability has proven more evasive in the country where a dictatorship did not take place – in the country where democracy and a judicial system have long been established and consolidated – this presents a puzzle.

## **II. Argument and Research Design**

This will be a qualitative analysis of three case studies: Argentina during the military regime of 1976-1983, Chile during the Pinochet dictatorship, and the United States during the administration of President Richard Nixon. In each case, we observe heads of state who were directly responsible for human rights abuses. However, each case presents its own set of circumstances. The aim of this analysis, therefore, is to identify the variables that account for the disparity in accountability that we observe between these cases. We must consider whether the crimes were committed on domestic or foreign soil and whether or not the human rights abuser's country was undergoing regime change.

The fact that Argentina and Chile were transitioning out of an era of dictatorship is important. In transitioning from dictatorship to democracy, these countries were not only reconstructing their institutions; they were attempting to heal. The human rights abuses were committed on their own soil, and the torment of those years of dictatorship still lives in their collective memory. In Argentina, this need to heal manifested itself in a formidable human rights movement, made up of a well-educated and highly motivated network of people, and that movement had its effect on the courts in deciding the fate of aggressors. In the United States, by contrast, the most violent human rights abuses committed by leaders like Nixon and Kissinger were carried out on foreign soil, often under the cloak of secrecy, and so the imprint on the collective memory at home was negligible in comparison to the imprint abroad.

The conditions of the transition are also important to consider. Argentina's

military saw its power largely dissolved at the point of transition and so could not negotiate the terms of its exit, which left the military more vulnerable to prosecution. In Chile, when Pinochet's reign came to an end, the dictatorship's top brass retained considerable influence as well as outright immunity. It took the intervention of foreign governments in arresting Pinochet to galvanize Chile's judiciary and civil society and create the conditions that made accountability possible. These conditions, in both Argentina and Chile, contrast starkly to those in the United States, where power has long been consolidated. With power so consolidated, U.S. presidents transfer impunity from one administration to the next. With the immense global power that the United States has amassed, justice is unlikely to come from outside its borders, as it did in the case of Pinochet. U.S. economic and military dominance, as well as its control over international financial institutions, set it apart in terms of who can file charges against whom.

The approach I take in pursuing this research question most resembles the "contrast of contexts" approach (Skocpol and Somers 1980), which seeks to illuminate the unique features that define each case, creating a historical framework that identifies emerging patterns, benchmarks, and various points of differentiation between cases. In this respect, I do not intend to test a succinct hypothesis that can be universally applied. Instead, I intend to demonstrate how justice is administered on an *ad hoc* basis and how a host of factors contribute to the outcome when justice hangs in the air.

### **III. Literature**

Scholars have delved into these cases from a number of angles and have laid the groundwork for answering the question at hand. Sikkink (2008) provides a comprehensive account of the process that transformed Argentina from a "pariah state" to a "global protagonist" for human rights. A broad activist faction within Argentine civil society played a major role in this transformation, with a movement that ranged from involvement in the Inter-American Commission on Human Rights to the creation of the Mothers of the Plaza de Mayo, an advocacy group of Argentine mothers whose children had been disappeared during the dictatorial tenure of the military regime. Argentine civil society, it is important to note, is not a single definable entity, but rather an amorphous amalgamation of different groups, whose combined action amounted to a movement of endurance and consequence. Sikkink also points out that there were many lawyers in Argentine society, which has made a qualitative and quantitative difference in pressuring the courts as legal cases dragged through the 1990s and have continued all the way to present day.

As court battles played out in Chile in the 1990s, civil society was not as formidable as that of Argentina, and progress was slower. The military's relative grip on power during these times is an important factor as well, which has been analyzed by several scholars, Roehrig (1998) being one of them. As Roht-Arriaza (2005) points out, it was not until the Pinochet arrest drew international attention that members of the foreign press swarmed Chile and energized a civil movement. In their work on human rights trials in Latin America, Sikkink and Booth Walling (2007)

add that there is often interaction between domestic and international courts, wherein domestic amnesties may lead to foreign trials, which in turn can lead to a resuscitation of domestic judicial proceedings. This was certainly the case in Chile. Once that civil movement was stoked by international pressure, it was able to gain momentum, leading the push that eventually led to judicial change and the prosecution of high-ranking members of the Pinochet regime.

Collins (2010) has compared the accountability achievements in Chile to the lack of such achievements in El Salvador, and identifies pressure from domestic actors as a key determinant in explaining this difference. Both Chile and El Salvador preserved immunity for their respective outgoing regimes through amnesty laws after undergoing transitions in the early 1990s. Although El Salvador was targeted by foreign litigation just as Chile was, El Salvador's past aggressors retained their immunity. Domestic civil society groups have been active on a number of issues in El Salvador since the transition, but they did not take on an accountability agenda. Human rights abusers have rarely been held accountable for their actions in Latin America, and Collins' comparison helps explain why Chile was able to break this pattern in the region and El Salvador was not. In doing so, she makes a strong argument for the essential role that domestic civil activism plays in attaining accountability.

Twenty-six years after the coup in Chile, tranches of U.S. documents were declassified that revealed the extent of U.S. involvement in the coup, as well as U.S. efforts to destabilize the Allende government leading up to the coup. Kornbluh (2003) has recounted this

involvement in detail, referencing these declassified documents throughout his account. He has also outlined the level of resistance mounted by the CIA and the executive branch to keep these documents off the record for so many years, including efforts to thwart the Church Committee in its Senate investigations in 1975. The level of secrecy and impunity maintained in the United States, even after heads of state leave office – coupled with the global power that shields the United States from any outside enforcement of international law – helps explain the disparity in accountability pathways we observe between the United States and the post-regime environments of Chile and Argentina.

#### **IV. Chile**

In December 1977, the U.N. General Assembly condemned the Pinochet regime for human rights violations by a measure of ninety-six to fourteen – the widest margin in history (Munoz 2008). But accountability for the regime would not gain any significant traction in Chile, or internationally, until 1998 – the year Pinochet was arrested in London. Unlike the military junta in Argentina, which left power with its influence in the country greatly diminished, the outgoing Chilean dictatorship retained a substantial level of influence – especially over the courts – after the 1990 transition to democracy. Judges who were appointed during the dictatorship and who had proven to be reliable regime collaborators, stayed in their positions. Pinochet himself would stay on as commander-in-chief of the army until 1998, after which he would become a senator for life with full immunity. The prospect that any high-ranking members of the

dictatorship would be subject to criminal investigations was slim, as portended by Pinochet's pronouncement two months before the democratic elections of 1989, "The day they touch any of my men, the rule of law is over." Incoming President Patricio Aylwin realized the hard truth of this residual power when his campaign promise to repeal the 1978 self-amnesty law – which shielded military officials from prosecution – went unfulfilled, as cooperation from the military would be required for Aylwin to successfully repeal the law. Likewise, fraud investigations involving one of Pinochet's sons "produced military unrest amounting to outright threats of authoritarian reversal" (Collins 2010, 72).

Although Aylwin's hands were essentially tied in the justice arena, his administration in 1991 set up the Chilean National Commission for Truth and Reconciliation, otherwise known as the Rettig Commission, to investigate violence and disappearances that took place during the dictatorship years. Six months after establishment, the Commission documented 2,279 cases of execution or disappearance and found that members of the regime were responsible in a majority of them (ibid.). The number of cases would later rise above three thousand, but the Commission was not permitted to name perpetrators. Even though the Supreme Court could not bring suspects to trial, Aylwin submitted a copy of the Commission's report to the Court, arguing that amnesty could not be applied until the Court knew what had happened. This tactic did not fly, as "A majority of the Supreme Court would have no part ... arguing that amnesty meant that no crime ever existed, and so there was nothing to investigate" (Roht-Arriaza 2005, 72). Nevertheless, the

Commission managed to begin constructing a record of the regime's crimes, which Spanish Judge Baltasar Garzón later used to build his case against Pinochet. Also, by making recommendations for reparations to victims' families, it laid the groundwork for what Hite calls a "human rights culture" in Chile (2006, 196). Meanwhile, human rights lawyers worked tirelessly to keep alive cases brought against the regime, pushing to have them closed temporarily, instead of permanently, in the hopes that they might be reopened later. As one such lawyer, Héctor Salazar, said, "We practically earned ourselves doctorates in keeping alive cases that should have died a death. ... We invented new procedures, requested paperwork. ... If a case was going to be closed, we'd open a new one for the same crime in a different court. ... We told ourselves, 'As long as this thing is open, we might get some information that we can use'" (Collins 2010, 77). For much of the 1990s, the battle for accountability was a fruitless one, but with the arrest of Pinochet in 1998, that began to change.

Until January 1998, neither Pinochet nor any high-ranking military official had ever been named as a defendant in Chilean courts. Efforts at accountability had reached only the occasional low-ranking individuals who could be disowned by the military, which sought to distance any recognized misconduct from official policy. The arrest of Pinochet signaled what Roht-Arriaza called "the breaching of a dam" (2005, 68). Feitlowitz described the effort to bring Pinochet to justice as a "pivotal moment in international human rights law. Longstanding assumptions about sovereignty, impunity, and popular will have been rearranged in a new calculus that should make the world less hospitable to abusive heads of state" (2009, 33). The

incident not only redefined the concept of universal jurisdiction; it also infused justice seekers in Chile with new energy. With Pinochet detained in London, the courts received a cascade of new complaints against him. By the time he returned to Chile in March 2000, more than sixty new complaints implicated Pinochet and high-ranking members of his regime in cases of murder, torture, and disappearance. Two months later, there were more than one hundred. "Every day saw a new parade of lawyers march down the halls of the Santiago court to register a complaint, accompanied by somber family members of the victims" (Roht-Arriaza 2005, 69). The Spanish prosecution brought new visibility to the matter, both internationally and domestically. Chile managed to wrest control of the trials from Spain, but the increased visibility was coupled with waves of judicial reform that began to chip away at the fortress of immunity within which the Chilean military had been protected.

One step toward accountability occurred in September 1998, when the new Supreme Court Criminal Chamber upheld an application of the Geneva Conventions that invalidated amnesty in disappearance cases, resulting in the reopening of seventy-four previously suspended cases (Collins 2010). The applicability of international law would be expanded over the next several years in the Chilean justice system, gradually dissolving the application of the 1978 self-amnesty law in the process. These changes were facilitated in part by the replacement of old judges who had supported the military for decades. The post-regime civilian governments had not been able to dismiss the old judges, but in 1998 the government invited turnover by implementing reforms that included a mandatory retirement age of seventy-five

and enticing retirement packages. One challenge to replacing judges and reforming a judicial system on a broad scale, however, is that new judges had to learn new procedures amid a pile of new case files. Judge Juan Guzmán stood at the head of this enterprise, taking on what became an enormous investigation that involved a wide array of charges and hundreds of alleged victims. At the center of the maelstrom was the drawn-out process of determining the fate of Pinochet, which in itself was quite the "rollercoaster ride, with each set of charges needing to be separately defended on the grounds of his putative immunity (as a former president) and supposed unfitness to stand trial" (ibid., 80).

Before Pinochet returned from London, Guzmán proceeded against members of the Caravan of Death, the Pinochet-appointed death squad that brutalized and killed political prisoners following the 1973 coup. Surprisingly, the Criminal Chamber of the Chilean Supreme Court unanimously upheld Guzmán's motion that the defendants were not subject to amnesty. The decision was based on a strange matter of technicality – because certain facts about the case had not been entered into evidence, the crimes were considered to be of a continuing nature and therefore fell outside the bounds of amnesty – but the ruling gave Guzmán, and his lawyers, momentum. In March 2000, they went after Pinochet, just as he was returning to Chile, for ordering the crimes carried out by the Caravan. In April, the Santiago Court of Appeals heard arguments to strip Pinochet of parliamentary immunity, which in itself broke precedent. A month later, the Appeals Court voted thirteen to nine to strip Pinochet of immunity, and in August

the Chilean Supreme Court upheld the judgment, allowing Pinochet to stand trial. In December 2000, Guzmán issued an indictment against Pinochet, charging him with homicide and kidnapping in the Caravan cases, and ordered him confined to house arrest (Roht-Arriaza 2005).

The events that followed over the next few years took on a certain ebb and flow, whereby Pinochet was stripped of his immunity multiple times and the question of whether he was fit to stand trial on mental health grounds was revisited repeatedly. In the end, the Chilean courts determined that Pinochet's dementia made him unfit for trial, and the long legal process against him was closed. An interview in 2004 stood among a number of events that put Pinochet's dementia into serious question, but he remained a free man. However, as Kornbluh points out, "Although Pinochet managed to escape judicial reckoning, many of his once untouchable lieutenants faced indictments, trials, and imprisonment" (Kornbluh 2003, 490). The Chilean courts continued to dismiss amnesty protections, citing international human rights law, including the Inter-American Convention on Forced Disappearances and the Inter-American Court of Human Rights. As of 2009, more than five hundred regime agents were under investigation for human rights abuses, and an additional 276, including high-level operatives of the DINA and CNI intelligence agencies, had already been sentenced, some of them to life terms (Collins 2010). "By the time the Pinochet affair closed," Roht-Arriaza writes, "a different political and legal landscape existed in Chile. A kind of rough and partial justice, perhaps the only kind of justice available after such terrible crimes, seems to have prevailed" (2005, 95).

## V. Argentina

In Argentina, the military regime of 1976-1983 committed human rights abuses that included murder, torture, kidnapping, and imprisonment without trial. The number of deaths and disappearances varies depending on the source, but human rights organizations estimate that the number is around thirty thousand. In 1980, before the transition, a report by the Inter-American Commission on Human Rights recommended that the members of the military who committed the abuses be prosecuted. When democratically elected President Raúl Alfonsín took office in 1983, he set out to do just that. During the dictatorship, Alfonsín had been a member of the human rights organization Permanent Assembly for Human Rights, and he intended to establish transitional justice upon taking office. The power of the military collapsed after its defeat in the Falklands War fought with the United Kingdom. Because the military had not been in a position to negotiate the terms of the transition, the door was open for Alfonsín to take action. He began by calling for the repeal of the regime's self-amnesty and for trials of the members of the first three juntas. He also established a truth commission, called the National Commission on Disappearances that published a voluminous report in 1984 detailing crimes committed by the regime. As Sikkink accounts, "The trial of nine commanders-in-chief who had been members of the three military juntas," otherwise known as the trial of the juntas, "lasted almost an entire year in 1985, was attended by large numbers of the public and the press, and produced a vast historical record" (Sikkink 2008, 7). Of the nine tried, five were convicted, including

General Jorge Videla and Admiral Emilio Massera, both of whom were sentenced to life in prison.

This initial push towards transitional justice was met with resistance and sparked a series of military rebellions between 1986 and 1990. In part, these were protests over military budget cuts and signified an attempt to reestablish military influence, but they stemmed mainly from the continued and expanded effort to prosecute regime operatives (Roehrig 1998). Although Argentines widely condemned the rebellions, Alfonsín began to backpedal on the prosecutions. In 1986 and 1987, he passed two laws that essentially amounted to amnesty laws – *Punto Final* (Full Stop) put a deadline on case filings for families of victims, while *Obediencia Debida* (Due Obedience) protected officers who could claim they were following orders.

This reversal of transitional justice accelerated when President Carlos Menem took office in 1989. Menem struck a deal with the military whereby he would pardon those who had been convicted in exchange for an end to military rebellion. Menem's pardons included Videla, Massera, and some fifty-odd officers still under indictment (Roht-Arriaza 2005). Argentina's Supreme Court upheld Alfonsín's amnesty laws and refused to overturn Menem's pardons. But then the tides of transitional justice began to turn back in the other direction.

When accountability seemed blocked in Argentina, human rights groups made an important move by turning to international institutions. In 1992, the Inter-American Court on Human Rights found that Full Stop, Due Obedience, and Menem's pardons were all incompatible with the 1978 Convention on Human Rights.

A group of delegates to the 1994 constitutional convention pushed through a clause (Article 75) stating that Argentina's international human rights obligations trumped any contrary domestic laws. The human rights treaties cited by Article 75 include the Universal and American Declarations of Human Rights and the American Convention on Human Rights. Given this new precedent, "Seminars, books, and academic forums began training judges, prosecutors, and lawyers in the content and implications of the international human rights treaties" (ibid., 99). Human rights groups and judges also continued to pursue cases that were not covered by Due Obedience, particularly ones involving children who were abducted from people who were "disappeared" by the regime. In 1998, federal judges ordered preventive detention for Videla and Massera for crimes of kidnapping babies and falsifying public documents. Hite writes, "By 2004, four of the formerly pardoned junta leaders and dozens of lower-ranking officers had been charged and imprisoned for child kidnapping and illegal adoption" (Hite 2006, 203).

As the human rights movement continued to gain steam in Argentina, many of these procedures were being invented as the process unfolded. A lack of precedent in a country still defining its transition left doors open for the widely diverse assortment of human rights groups and lawyers – from the Mothers of the Plaza de Mayo to the Center for Legal and Social Studies – to mold a new judiciary out of wet clay. In 1998, this diverse set of actors felt its collective sense of what was possible in this battle wholly re-imagined when Pinochet was arrested in London. Universal jurisdiction had been exercised by European countries in prosecuting low-level

perpetrators in the Balkans and Rwanda, but never had universal jurisdiction targeted a head of state. Mirta Mántaras, a complainant lawyer in Argentina, said:

*When the truth trials began, we had no possibility of demanding trial and punishment of the guilty, because Pinochet was not then detained, the House of Lords had not yet ruled, Baltasar Garzón had not yet asked for the extradition of the Argentine military officers. All of this created a universal judicial consciousness, an understanding that crimes against humanity can be prosecuted anywhere in the world (Roht-Arriaza 2005, 107).*

The mounting evidence against the Argentine regime compiled by the truth trials, coupled with this international awakening, pressured judges to take the next logical steps. In 2000, notorious torturers Juan Antonio del Cerro and Julio Héctor Simón, along with seven other military officers, were arrested for the kidnapping of Claudia Poblete and the disappearance of her parents. In determining that it was nonsensical to investigate the kidnapped child and yet not investigate the deaths of the parents, which happened under the same set of events, the court was forced to once again confront the amnesty laws—only this time within a new judicial atmosphere. In March 2001, Judge Gabriel Cavallo, in a decision exceeding one hundred fifty pages that drew from both Argentine law and a host of international laws and treaties, declared the Full Stop and Due Obedience laws null and void (ibid.). Appeals courts upheld the ruling, citing the unconstitutionality of the amnesty laws. In 2003, President Néstor Kirchner took office vowing to support the advancement of justice, replaced corrupt judges with new



judges who had human rights backgrounds, and supported Congress in passing a law that annulled the amnesty laws. In 2005, the annulment was fully solidified when the Supreme Court ruled in a seven-to-one vote that the amnesty laws were unconstitutional, thus reopening hundreds of human rights cases that had been closed for fifteen years. Ever since, officials from the military junta have been tried and sentenced to heavy prison terms for human rights abuses committed during the Dirty War. At the time of this writing, Argentina is in the process of launching its largest trial ever, which is expected to last two years, with sixty-eight defendants facing close to eight hundred charges of murder, torture, and other human rights abuses. Accountability has come home for Argentines.

## **VI. The United States**

To Nixon and Kissinger, Allende's leftist government was a threat not only to U.S. interests in Chile, but also to the political leanings of the region at large. In order to create more favorable conditions in Chile, the pair orchestrated a covert campaign to destabilize the Chilean economy. As Kornbluh notes in his thorough accounting of the U.S. role in the Pinochet coup and dictatorship, "U.S. efforts to isolate Chile and quietly curtail bilateral and multilateral economic support constituted an 'invisible blockade' against a country whose economy was deeply dependent on financial, industrial, and commercial relations with the United States" (2003, 83). In their attempt to "make the economy scream," U.S. officials used leverage within international financial institutions to block critical monies, as they did at the World Bank to disqualify Chile for

a pending \$21 million livestock-improvement credit as well as future loans. In addition, the United States spent millions of dollars supporting opposition parties within Chile in an effort to create the climate for a coup. As evidenced by the more than one hundred fifty thousand pages of U.S. documents declassified in 1999 and 2000, CIA operatives played an instrumental role in the 1973 coup, training operatives and supervising strategic and logistic preparations. "To be sure," Kornbluh says, "the Chilean military applied the electrodes, pulled the triggers, and dug the secret graves during the dictatorship; but in the eyes of many victims, and many observers around the world, the United States served as an active-to-tactic accomplice in the denouement of Chilean democracy and consolidation of Pinochet's dictatorship" (*ibid.*, 494).

One of the early victims of the U.S. effort to undermine Allende's presidency was Chilean General René Schneider, who was murdered in a botched kidnapping attempt in 1970. Three decades later, on September 10, 2001, two of Schneider's sons filed a wrongful death lawsuit against Kissinger and former CIA Director Richard Helms, alleging that they aided and abetted the right-wing Chileans who murdered Schneider. The complaint drew extensively from the declassified U.S. documents that outlined U.S. involvement. The United States did not help Chilean authorities find Schneider's killers, even though the documents show that Kissinger and Helms knew who they were (Roht-Arriaza 2005). Kissinger's lawyers contested the suit on the grounds that Kissinger was acting in an official capacity, and that any actions taken within that capacity were protected by the immunity afforded to him as a U.S. policymaker (*ibid.*). In March 2004, the

District Court for the District of Columbia dismissed the lawsuit on grounds essentially aligned with the argument made by Kissinger's lawyers, and in June 2005, the Court of Appeals affirmed the ruling.

This is not the only time Kissinger has been targeted from abroad for actions related to the coup in Chile. In November 2002, eleven victims of the coup and their families filed a civil suit against Kissinger and the U.S. government. It too was unsuccessful. In May 2001, while Kissinger was in Paris, a French attorney served him a summons to testify on the disappearance of Chileans after the coup, after which Kissinger quickly fled the country. In 2002, Kissinger was pressured in Argentina and Brazil to answer questions about his knowledge of Operation Condor, the state-sponsored network of terror and repression coordinated by dictatorships in the Southern Cone of South America. International actors were emboldened by the arrest of Pinochet in 1998, and wanted to believe that universal jurisdiction could extend so far as to snag Kissinger in its net. However, this did not prove to be the case; Kissinger remained impervious to efforts at international prosecution.

CIA involvement in the Pinochet coup represented only one bullet point on the resume of human rights abuses overseen by Kissinger. The indiscriminate bombings conducted by Nixon and Kissinger in Cambodia during the Vietnam War – which were carried out under the cloak of secrecy, without the knowledge of Congress, without even the pilots themselves fully informed – amounted to war crimes under the U.N. Charter by any objective measure. Yet no serious punishment has come for Kissinger. He may be limited as to where he can travel overseas these days, but in the United

States he is still treated with celebrity status. Although Nixon suffered a more shameful fall from grace, his leaving office was precipitated by a domestic scandal, not by his violent, covert acts of foreign policy. Declassified documents may have set the record straight on the U.S. role in Chile, but as Kornbluh points out, accounting and accountability are not the same thing (Kornbluh 2003).

It should be noted, however, that bringing those documents into the light did not come without a struggle. With each of the four tranches that were declassified, the CIA resisted, withholding documents that were to be released and redacting sections of those that were released. In 1999, one CIA official stated that the Agency was not "legally obligated" to divulge files on clandestine operations in Chile because those operations "had never been officially acknowledged." (ibid., 481). As Loch K. Johnson argues, intelligence accountability in the United States has been an "uneasy" battle that dates back to 1974, when *The New York Times* published a series of articles that accused the CIA of spying on U.S. citizens as well as taking out the democratically elected president in Chile (2004).

While the capacity to hold U.S. heads of state accountable for human rights abuses is limited on a domestic front, foreign actors are even more impotent in this capacity. Regardless of any advancements in the precedent of universal jurisdiction achieved by the Pinochet case, U.S. economic, military, and geopolitical power sets the country apart in terms of who can effectively bring charges against whom. The case that Nicaragua brought against the United States in 1984 in the International Court of Justice at the Hague is a telling example. Nicaragua charged that

U.S. intervention in the ongoing Nicaraguan civil war – which involved supporting the counterrevolutionary Contras, attempting to overthrow the government, mining harbors, and launching attacks on Nicaraguan territory – violated international law under the U.N. Charter as well as the Charter of the Organization of American States (Chayes 1985). In anticipation of these charges, the United States attempted to suspend its acceptance of the Court's jurisdiction over Central America. The Court ruled that it retained jurisdiction and that it would consider the merits of the case. In 1985, the United States disputed jurisdiction again and announced that it would not participate in the case. The Court proceeded to hear the case without U.S. participation, and in 1986 it handed down its decision and awarded damages, which the United States ignored. The United States has played an instrumental role in establishing international legal institutions, including the International Criminal Court, but it has not shown the same enthusiasm when applying that international order to its own actions.

Regarding U.S. disengagement at the Hague in the Nicaragua case, Harold G. Maier writes, "The ultimate authority of the International Court of Justice flows from the same source as the ultimate authority of all other judicial bodies. Every court's decisions are an authoritative source of law in a realistic sense only because they are accepted as such by the community whose controversies the court is charged to resolve" (Maier 1987, 77). In other words, the efficacy of the international legal system depends on voluntary compliance. It is not what you can prove; it is what you can enforce. Granted, this maxim does not apply only to superpowers. After the U.N.-sponsored truth commission in El Salvador

condemned human rights violators, urging that they be held accountable, El Salvador passed a sweeping amnesty law (Hite 2006). In Guatemala, the government's endorsement of the Peace Accords in 1996 did little to slow human rights abuses. Clearly, though, U.S. leverage is unmatched in the arena of enforcement, wielding its immense power on both ends of the stick: able to sanction other states with effectiveness while also able to deflect states' efforts to administer punishment for U.S. actions. This power emanates from a range of sources, from its ubiquitous military presence to its control over international financial institutions.

In reaction to the case brought against Pinochet, the Chilean armed forces threatened to alter its military contracts with the United Kingdom and Spain, a threat that was inconsequential. Compare this to how successful the United States has been in deflecting efforts by Chilean, Salvadoran, and Guatemalan citizens to press U.S. courts to hold U.S. officials accountable for human rights abuses over the decades. Those citizens filed complaints related to U.S. military interventions in their countries – interventions similar to the numerous others carried out by the United States all over the world throughout the Cold War – but saw no results, largely because their governments lack the leverage to effectively sanction, coerce, or otherwise restrain the United States.

Latin American governments have worked to enmesh the United States in treaties and international law, but those agreements have yet to mitigate U.S. leverage. For example, the United States signed but never ratified the American Convention on Human Rights, which renders the instrument effectively toothless in effecting accountability for the region's

hegemon. U.S. exceptionalism in this regard extends beyond the Americas of course. Despite calls by people like Archbishop Desmond Tutu to drag former U.S. President George W. Bush before the International Criminal Court for violating international law with the Iraq War, such a thing will never happen, partly because the United States has resisted becoming a party to the ICC, but mostly because it would be an affront to U.S. global power that would be quickly quelled by whatever means necessary.

## **VII. Conclusion**

Holding leaders accountable – whether transnationally or within borders – requires leverage that is matched by sufficient will. While the state can certainly play a role in advancing accountability, in post-regime Chile the impetus for advancement came from private actors. Collins writes, "Although improved judicial disposition has been key, it has operated as a necessary but insufficient condition for successful prosecution of any particular case. ... The cases that advance most satisfactorily are still those triggered and then actively pursued by capable private lawyers representing engaged and motivated relatives or survivors" (2010, 83). The situation was similar in Argentina, where a civil society made up of a large number of determined lawyers led the charge in pressuring the courts to hold heads of state accountable for human rights abuses on an unprecedented scale. Consequently, justice was not distributed evenly in Chile or Argentina, since convictions and leniency depended on which lawyer was arguing a case and which judge was hearing it. Nevertheless, civil society had a momentous impact on a

shifting justice paradigm. That impact was bolstered by an international outcry when the crimes in those countries claimed the attention of the foreign press, but the will to fight for accountability grew out of the bloodstained soil at home.

While the United States may seem like a disparate case when comparing its accountability mechanisms to those of Chile and Argentina, it appears that way only because the U.S. record has been so different from the other two. In fact, in the United States, the process for prosecuting its leaders should have been easier, as the United States was the only country of the three where amnesty for its highest offenders was not written into law. But as these contrasting contexts demonstrate, having all the necessary ingredients to administer justice does not in itself make a cake, and the path toward accountability is lined with challenges. The judicial reforms that led to accountability victories in Chile and Argentina took decades to fight for and implement, with plenty of losses dotting the way. The human rights groups, lawyers, and judges who fought those long battles had the perseverance to see the process through because the process was a meaningful one for the country. A country rebuilding itself in the wake of dictatorial rule has a much different context than one where human rights abuses have not directly impacted the citizenry. Granted, there are a number of examples in Latin America where crimes committed on home soil have gone unpunished, even after the aggressors have left power, but that fact only reinforces the notion that each context is different, and that there is no universal recipe for accountability. The post-regime cases of Chile and Argentina demonstrate international and domestic movements that were able to penetrate long-standing

fortresses of immunity. The case of the United States – ever the exceptionalist – demonstrates an undisturbed status quo.

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## CHINA'S DEMOCRATIC FUTURE

Ryan Rappa

In the next few decades, China is likely to begin democratizing. Two trends clearly evince this conclusion. Broadly speaking, they are (1) economic, and (2) cultural. I will elaborate on the recent development and likely trajectory of each of these trends, explaining how they are eroding the current system and leading China toward democracy. Also, I will note potential black swans (shock events) that may derail the democratization process.

### *I. Economics*

China's blockbuster economic growth has already begun to slow, and is projected to decline steadily (albeit slowly) for years to come. This is bad news for the current ruling regime because its legitimacy is significantly based on its ability to deliver a certain level of prosperity to a certain cohort of citizens. These citizens are unlikely to lower their expectations about what levels and forms of prosperity the government should deliver (if anything, their expectations will rise), although the state's ability to deliver these public goods will be increasingly strained as economic growth stagnates.

In theory, there are a few things the government could do to meet increased relative demand for public goods without democratizing, but in practice, none are likely or are a catch-22. First, the government could print money. But this has its limits; only so much money can be printed without harmful inflation. Worse, there is evidence that inflation is already approaching undesirable levels in China.

Second, the government could cut unnecessary non-transfer spending, such as its spending on perquisites – e.g. banquets, cars, travel, overpriced government contracts, office buildings that put Versailles to shame (Fauna 2012), etc. – for government officials. However, this too has its limits; the government cannot cut enough to outpace China's economic slowdown forever (Liu and Chen 2012, 42-44). Plus, what is the point of being an autocrat if you cannot enjoy your fancy cars and blood diamond-encrusted iPhones?

Third, the government could raise taxes. However, only a progressive tax system that redistributes wealth from the rich to the rest – which has a snowball's chance in hell of being implemented under the current regime – would solve the government's legitimacy problem with the people (and would bring a different legitimacy problem with elites). Again, there is no point in being an autocrat if you and your cronies cannot enjoy the spoils.

Fourth, the government could take steps to increase workers' wages such as allowing labor unions or establishing regulations. However, this move would likely drive manufacturing jobs out of China and into other parts of Asia and Africa where people will toil for less. Moreover, wages in China are rising relative to those in other countries for reasons the government cannot control, and a long-term manufacturing job exodus has already begun (Roberts 2010), so the government is loath to do anything that might raise wages and thereby exacerbate unemployment.

Another pro-democratization trend affecting manufacturing jobs is that

economic growth will become increasingly dependent on higher-skilled work, technological innovation, and entrepreneurship, which will flourish only if China allows freedom of expression and establishes robust intellectual property rights. Here one might argue that China could manage without these tokens of democratization and foster innovation from the top down via state-owned enterprises. However, very few of history's noteworthy innovations have come from top-down processes – the vast majority result from bottom-up tinkering by enterprising/lucky individuals. China's reluctance to grant rights that allow innovation to thrive and to contribute to society is the main reason that the Chinese have not invented anything of significance since gunpowder.

One other economic trend that is tilting China toward democracy is income inequality. Although China's exact Gini coefficient is unknown because accurate data about China's ultra-wealthy is unavailable, it is estimated to be at least among the top forty in the world at about 0.48 (Liu and Chen 2012, 44-45). Add to this the widespread and increasing belief among Chinese citizens that income inequality in their country is the result of an unjust and corrupt political system that also iniquitously inhibits social mobility (Ruili 2006), and it is clear that prevailing trends can only further erode government legitimacy and lead toward democratization.

## ***II. Culture***

Studies show that Chinese citizens born after 1980 have significantly lower levels of trust in the government than those born before 1980 (Wang 2010), and that this younger cohort is more likely to favor

western-style democracy over the configuration of the current regime (Liu and Chen 2012, 48). Studies also show that Chinese civil society has grown exponentially in recent years (Bingzhong 2008), and that the government is spending more money than ever on domestic security and "maintaining stability" (Bloomberg News 2011). These trends, assuming they continue, will augment and be augmented by the aforementioned economic trends. More and more young people will have less and less trust in the government, as well as an increasing affinity for democracy.

Also consider the effects of the Internet: despite the government's best efforts, nearly five hundred million Chinese citizens are using this resource not only to find out information that makes the government look bad, but also as a launch pad for organizing political collective action (Liu and Chen 2012), hence the government's impetus to censor the internet, which it fears has the potential to do in China what it did in Tunisia, Egypt, Libya, and Yemen. However, if the kind of popular discontent that led to the Arab Spring is present or even incipient in China, Internet censorship can probably only delay mass protests and democratization, not stop these processes altogether.

## ***III. Conclusion and Black Swans***

All of the above does not bode well for the current regime's legitimacy, and if these trends continue on their current trajectories, we should see the beginnings of democratization within the next few decades.

However, there are a few black swans that could upend this forecast. China's economic growth could speed up again; although this is unlikely, it cannot be



ruled out. Renewed growth could meet the demand for public goods that would otherwise gradually undermine the current regime's legitimacy. Alternatively, China could embark on some kind of highly redistributive taxation scheme (although this is dilemmatic and probably self-defeating for the reasons stated above) or undertake increasingly brutal, Tiananmen Square-style oppression of pro-democracy movements even as the economy crumbles.

Finally, I would qualify this forecast as follows: although democratization is almost certainly in the pipeline, the form democracy will take in China is far from certain. China may go the way of Russia, and institute procedural but not substantive democracy; it may go all out and institute substantive democracy; or it may occupy some middle ground. Although it is exceedingly hard to foresee at this point whether the transition from autocracy to democracy will be an Arab Spring-esque, people-driven revolution, or whether it will occur by means of a more controlled, elite-driven phenomenon, it is clear that the form of democracy adopted in China will have far-ranging ramifications.

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## **FINANCIAL DEGLOBALIZATION: Resurgence of Nation States During and After the Great Recession**

**Nils Röper**

### ***I. Introduction***

Since the 1980s the world economy in general—and financial markets in particular—has become increasingly more integrated. This notion of globalization has led many to believe that nation states will be marginalized.<sup>14</sup> The integration of financial markets with the “magnifying presence of borderless finance” (Greider 1997, 23) and the grave repercussions of the recent global financial crisis intuitively call for a view of the global economy as a totality. The Great Recession, however, reaffirmed the political capacity and analytical utility of nation states.

With immense rescue loans and guarantees for the rescue of their banks and stimulus programs for their economies, states countered the global financial crisis with broad action. Many observers have reckoned a shift of the zeitgeist away from liberal market doctrines back to nation states.<sup>15</sup> Cross-border capital flows continue to be 60 percent below their pre-crisis peak (McKinsey 2013), which points towards a trend of financial deglobalization or renationalization. Both aspects – stronger nation states and financial deglobalization – are closely interrelated and provide indications for the future trajectory of globalization, as well as international and transnational cooperation.

In order to examine the role of the state within the globalized financial system, I juxtapose the central arguments of the scholarly debate about globalization during the 1990s. Next, I apply these arguments to assess states’ efforts to mitigate the Great Recession, with an emphasis on state action in the United States. Subsequently, I examine the impact of the crisis on cross-capital flows and the future international financial regulation. Finally, I summarize my findings and provide an outlook of the future trajectory of global finance.

A feasible examination of such a broad topic requires circumscriptions and generalizations. I treat “financial regulation” as a universal term despite the numerous sub-categories and differences between, for example, the trade of derivatives and equity. There will be no detailed examination of the nature of different policy responses, because not all of them were directly targeting financial issues. Furthermore, I measure the power and relevance of the nation state by its breadth of action in terms of policies, regulations, and public spending. The common question of the autonomy of the state versus the influence of interest groups will therewith be excluded.

### ***II. Debate: The Role of the Nation State in Globalized Financial Markets***

“Globalization” is a dictum that reflects the zeitgeist of the 1990s in the social sciences. In view of the end of the Cold War, leaps in communication

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<sup>14</sup> See Strange 1996; Tabb 2001; Horsman and Marshall 1994; Greider 1997; Tanzi 1998.

<sup>15</sup> See Steinmo 2010; Cioffi 2010; Wilensky 2012; Martin and Swank 2012; Helleiner 2012.

technology, increasing trade flows across borders, and increasing importance of transnational organizations, many scholars predicted the marginalization of the nation state. The statement “the era of nation-state is over” (Horsman and Marshall 1994, 175) became a widespread slogan. The rising flow of capital across the globe, or “financial internationalization” (Haggard and Maxfield 1993, 251), was often considered to be a “central aspect [...] of globalization” (Tabb 2001, 56), with the financial industry as the sector that has been affected the most by globalization (Busch 2009, 228). Finance capital – as opposed to industrial capital – was commonly at the core of this discussion because of its more transnational character (Mann 1997, 481).

Proponents of the hypothesis that the nation state was on the retreat during the 1990s argued that nation states are powerless in the face of borderless globalized economic activity. Financial markets in particular are decoupled from nation states and consequently, the divergence between these markets and the political arena of nation states grows (Tanzi 1998, 8). The rising power of these global financial market forces is mostly equated with their volume of trade (Greider 1997, 24). With finance as the “most 'globalized' component of the international economy” (Frieden 2006, 460), national regulation does not match this financial internationality and becomes ineffective (*ibid.*, 463).

The idea of global governance – realized through institutions like the International Monetary Fund, the World Bank, and the World Trade Organization – promotes the borderless character of finance and further undermines the capacity of the nation state (Tabb 2001, 57).

Post-Marxist scholars deepened this notion towards a world economic order with nation states as mere tools of a transnational collective (Potevi 2006, 420). Even Wade, who skeptically views the hypothesis that globalization disempowers nation states, suggests that borderless products like derivatives lessen “the ability of governments to manage finance” (1996, 64). Convergence in economic, political, and cultural dimensions has been suggested to be a byproduct of the process of globalization, which further erodes the state. Strange took this idea further, predicting that “Globalisation means the partial erasure of the distinctions separating national currency areas and national systems of financial regulation” (1995, 294).

The opponents of this hypothesis argue that the other side ignores historical developments and the deliberate nature of the decision by states to foster financial liberalization and with that, financial globalization.<sup>16</sup> Due to the profound changes in the financial system since the 1980s, nation states face new challenges and must adjust to them without losing the general capacity to act (Sassen 1998). Although there exists a high volume of mobile capital, sheer numbers do not allow conclusions to be drawn about the “power relations” between states and financial markets (Mann 1997, 482). Alberti and Bertucci (2003) argue against the misperception of globalization as an uncontrollable and inevitable behemoth, an argument sustained by McNally (2010) and others. The integration of world markets requires complex international coordination on multiple levels. This necessity of cooperation has led many to misunderstand

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<sup>16</sup> See Boyer 1996; Wade 1996; Alberti and Bertucci 2003; Weiss 1997.

this process as a marginalization of the nation state, which misses the fact that nation states deliberately fostered economic liberalization in the first place and that cooperation between states “represents an exercise of state sovereignty” (Alberti and Betucci 2003, 2-3; 9).

The liberalization of capital flows and the deregulation of financial intermediaries among governments of developed countries that began in the 1980s add credence to argue that nation states consciously set the course for financial internationalization. Hence, political will among individual nation states provided for this new regulatory framework and the resulting integration of financial markets. Under the Bretton Woods system, developed countries initially turned towards a more rigorous control of capital (Ferguson 2008, 307). The subsequent abolition of the Gold Standard and the following economic turmoil of the 1970s resulted in a “reorganization of capitalist finance” (McNally 2010, 41) that is an element of what is commonly referred to as the neoliberal shift. From a historical perspective, the global economic integration of the late twentieth century is not unprecedented when compared to the beginning of the century (Hirst and Thompson 1996). This recurrence of a high degree of economic integration suggests a political cyclicity, which indicates that increasing integration is reversible. During financial crises, public opinion and political will tend to shift towards tighter regulation (Wade 1996, 88). Even Tabb, who generally argues that the internationalization of finance disempowers nation states, admits this pattern of stricter regulation after economic downturns (Tabb 2001, 29).

The perceived wisdom among scholars and the public debate during the 1990s suggested an intuitive argument for the retreat of nation states. States would prove to be powerless when facing globalized finance, which would lead to the transnationalization of economic governance. This transnationalization would then almost automatically lead to the convergence of policies and, eventually, political economies at large.

### ***III. Broad Global State Action During the Great Recession***

After the Second World War, financial crises occurred less frequently compared to the previous hundred years (Reinhart and Rogoff 2010, 16). After the neoliberal shift of the 1980s, however, the trend reversed: “the three decades since the 1980s have been the most tumultuous in monetary history in terms of the number, scope, and severity of financial crises” (Kindleberger 2011, 278). As deregulation represents a sovereign state action, this positive correlation between the frequency of financial crises and financial deregulation during the 1980s and 1990s supports the hypothesis that increased power of financial markets derives from deliberate political decisions.

States responded more actively through swifter and more determinant monetary and fiscal policies to combat the effects of the Great Recession as compared to the Great Depression. Whereas the initial international ramifications of the recent crisis were graver, state action was better able to reduce the magnitude of the subsequent recession (Almunia et al. 2009, 2-3). Central banks implemented unprecedented and unconventional monetary policies by exploiting their room

to maneuver in unorthodox ways, through means such as quantitative easing, credit easing, and ring-fencing. State action was therefore able to “avert a global meltdown by determined firefighting efforts” (IMF 2009, 3). In the absence of coordinated international efforts, domestic policies also caused “international spillovers” that were effective in helping to calm investors’ concerns (Ait-Sahalia et al. 2012, 176). This comparative success suggests improved capacities of nation states to counter global challenges.

The heterogeneous impact of the global financial crisis on different regions and countries demonstrates that some states could protect their national financial systems better than could others. Asian countries reversed their financial policies towards tighter regulation based on their experiences with financial crises during the 1990s. As such, Asian financial systems in general were “carefully regulated, transparent, and sufficiently well capitalized and liquid to withstand large shocks” (Bernanke 2009), which made them less vulnerable to the financial effects of the crisis and confirms the cyclicity of financial regulation. The more severe financial ramifications of the crisis in Europe compared to Asia, exemplify that states were not helpless in the face of the crisis and had the chance to build regulatory firewalls. In other words, they had the capacities to prevent domestic financial institutions from investing in, for instance, U.S. subprime mortgages. The financial crisis originated in the United States because of major shortcomings in financial regulation and supervision as well as mistakes in monetary policy, such as keeping the interest rate too low for too long and allowing shadow banks to leverage up their balance sheets. Thus, the series of

regulatory and monetary mistakes by the state can be prevented in the future and deregulation is reversible.

The U.S. policy response to the financial crisis exemplifies the government’s broad capacities and serves to augment the cyclicity hypothesis of financial regulation. With quantitative easing, credit easing, and other measures, the Federal Reserve undertook experimental monetary policies by lowering the federal interest rate to the zero bound.<sup>17</sup> The government acted, in conjunction with other initiatives, through the Troubled Assets Relief Program and purchased problematic assets and equity from struggling financial institutions, totaling \$410 billion. Considering that the United States provided 26 percent of its GDP to rescue troubled banks (Hüfner 2010, 5), it is clear that the country took broad state action to mediate the effects of the crisis.

In 2010, after this aggressive crisis-management, U.S. Congress enacted the Dodd-Frank Act, which was considered the country’s “most ambitious and far-reaching overhaul of financial regulation since the 1930s” (Acharya et al. 2010, 1;29). Combined with further regulatory reforms by the SEC, the Fed, and other U.S. regulators, the implementation of these initiatives demonstrates the political will to reverse the liberalization of the finance sector.

As part of the cyclicity of financial regulation, laxer policies informed by short-term perspectives and shifting lobbying powers during economic bonanzas have historical precedent. Like other U.S. policymakers, Ben Bernanke suffered from what has been called the “this time is

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<sup>17</sup> For a detailed overview of the policy response by the Federal Reserve see Acharya et al. 2009, 37-39.

different' syndrome" (Reinhart and Rogoff 2010, 29). In 2002, he argued that more sophisticated monetary capabilities have led to a "great moderation" that would make volatilities in the U.S. economy a thing of the past (Bernanke 2004, but by 2010, he expounded a markedly different message: "We should not imagine [...] that it is possible to prevent all crises" (Bernanke 2010). Hence, the crisis is also the result of intellectual failures among policy makers and scholars that have similarly emerged throughout history.

One of the main causes of the financial crisis in the United States that later became the Great Recession was the burst of a housing bubble (Acharya et al 2009, 12). The scope of the subprime sector was relatively small compared to, for example, the portfolio losses during the dotcom bubble of 1997 to 2000. The significantly larger repercussions of the decline of the U.S. housing market compared to the dotcom crisis were due to the highly leveraged bank balance sheets that held these securitized subprime mortgages (ibid., 14-15). The bust of the relatively small housing market unfolded to "a cascading vicious circle of falling asset prices, margin calls, fire sales, deleveraging, and further asset price deflation" (ibid., 2), causing an intermediation crisis and thus, a liquidity crunch across the financial system. This dynamic illustrates that the sheer volume of transactions does not indicate the respective powers of the financial sector and the state.

The disastrous ramifications of the decline of a relatively small sector of the economy demonstrate that the role of individual financial institutions is crucial. American banks were at the core of the Great Recession and transmitted the financial crisis as a feedback to the real

economy (IMF 2009). Against this background, the counterintuitive contradiction of globalized financial markets can be understood: the more integrated global financial markets become, the more individual institutions like Lehman Brothers can pose cross-border systemic risk. Hence, as long as these institutions are subject to national supervision and regulation, the importance of nation states correlates positively with the degree of global financial integration. Moreover, most cross-border capital flows are intermediated by global banks (Committee on International Economic Policy Reform 2012, V) and are therefore detectable to the range of regulators. This poses questions about international financial regulations of financial institutions and cross-border capital flows.

#### ***IV. Globalization Revisited: International Regulation and Capital Flows***

Financial globalization is not a modern phenomenon. The first wave of intercontinental financial integration occurred during the beginning of the nineteenth century (Sylla et al. 2006). Shortly after the American Financial Revolution, which occurred as early as 1803, almost half of America's federal debt was held by foreign investors (Sylla 1999, 4). As such, cross-border capital flows, a core element of financial integration, are hardly new. Wilensky soberly placed the common misperception of increased global capital flows in historical perspective: "compared to the mid twentieth century, capital has become somewhat more mobile; compared to previous 50 year periods, capital has become less mobile" (2012, 89-90). Against this background, it is not surprising that financial crises have

always been contagious across borders – be it the famous and closely connected South Sea and the Mississippi bubbles in the eighteenth century in Paris and London, or the U.S. financial crisis in 1907 that originated in Italy. It is inherent in the international financial system that an economic upturn in one country will attract capital inflows from abroad or cause for variations in exchange rates, which can result in asset-price, currency, or credit bubbles (Kindleberger 2011). Thus, cross-capital flows are the channel for global common exposure and are the transmission mechanism for global contagion. For this examination they moreover represent a valid object of study, as they mirror the degree of integration in the global financial system (McKinsey 2013).

The introduction of the Euro as the common currency of seventeen European countries may be viewed as evidence for Strange's prediction of the "erasure of the distinctions separating national currency areas" (1995, 294). Yet, on a global scale, a reduction of national currencies has not led to regional agreements. The negative examples of Argentina, England, and Mexico have led countries to abandon the approach of currency pegging, which is a form of equalizing currency areas. Currently, with the exception of China, only small economies operate within exchange rate regimes, while "all large rich economies float" (Rose 2011, 14).

During the 1980s, nation states consciously set the course for financial internationalization. Among developed countries, the liberalization of capital flows and the regulation of financial intermediaries became increasingly common. The IMF was an outspoken supporter of this development and beginning in this decade required that

developing countries in need of IMF assistance institute "financial sector deregulation, the removal of controls over foreign exchange [...] enhanced freedom of trade, [...] the progressive elimination of capital controls, the removal of controls over interest rates, and the lifting of traditional barriers to entry into banking and other financial services" (Cable 1995, 3). The institution of this new regulatory framework required political will on the part of the individual nation states and resulted in an increase of cross-border capital flows. Due to the cyclicity of financial regulation, the regulation of cross-capital flows has become a part of lawmakers' agendas in the wake of the Great Recession.<sup>18</sup>

Since 2007, the development of financial globalization reversed into financial nationalization. Eichengreen prognosticates that "the golden age of financial globalization has already passed" (2011). A recent study by the McKinsey Global Institute underscores a deglobalization of capital flows. Cross-border capital flows increased from \$0.5 trillion in 1980 to \$11.8 trillion in 2007. As mentioned previously, by 2012, after the global financial crisis hit, cross-border capital flows continued to be 60 percent below their pre-crisis peak.<sup>19</sup> The study mentions stricter regulations on capital and

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<sup>18</sup> It is important to note that the Great Recession originated in the U.S. because of domestic policies and oversight failures. The connection to globalized financial markets thus had no direct impact on the beginning of this Great Recession. Eichengreen argued that capital flows into the U.S. had an insignificant impact (2010, 2).

<sup>19</sup> These figures include foreign direct investment (FDI) in addition to portfolio investment ("hot money"). It is interesting to note that FDI has recovered faster than portfolio investment, and thus its share of cross-capital flows has increased.



liquidity as well as a different mindset among shareholders and regulators who compel banks to reduce their risk exposure. As a result, banks have narrowed their geographic reach (McKinsey 2013). While it is normal that cross-border capital flows plunge during a global financial crisis, this medium-term continuity is strong evidence for a deglobalizing trend and thus, the reversibility of financial integration.

However, this shift will not precipitate more coordinated international financial regulation. Whereas the IMF has been arguably the most important voice against the control of capital flows, its position changed remarkably in the wake of the recent crisis. In an extensive study, the IMF found that countries that used capital controls were less affected by the crisis than those that relied on this mechanism to a more abbreviated extent. This marks an intellectual “U-turn” (Financial Times 2012), as the fund now sees capital controls as “a legitimate part of the toolkit to manage capital inflows” (Ostry et al. 2010). However, this change in position is unlikely to result in a shift in international financial regulation, and will likely be translated into merely “another code of conduct” (Eichengreen 2011, 7).

One may assume that the lessons learned from the Great Recession would ignite willingness towards more international coordination in regulatory matters, considering how policymakers congratulated each other for cooperatively responding to the crisis (Helleiner 2012, 65). However, Helleiner states that the crisis exacerbated future efforts to regulate finance internationally, with the expectation of a “more decentralized regulatory order, [and] more autonomy to national and regional authorities” (ibid., 84). Since nation states assumed a stronger

role in the course of the crisis, their different economic philosophies and views on financial regulation became more pronounced. Iversen and Soskice as well as Eichengreen agree with this outlook and argue that divergence between nations and between regions will remain and thus result in a deglobalization (Iversen and Soskice 2012; Eichengreen 2010). In view of this decentralizing impact of the Great Recession vis-à-vis financial regulation, capital flows and exchange rates will also continue to be regulated and managed at the national level (Eichengreen 2011, 2).

Aside from political will, the absence of transnationalized financial regulation are due to coordinative difficulties based on regulatory differences among national jurisdictions (Acharya et al. 2009, 365) and the high transaction costs inherent in changes of institutions and regulatory approaches (Busch 2009, 227). Also, there is no consensus about best practices, which has led some to characterize the situation as one without a model (ibid., 240). Supervisory structures of banking sectors have also remained diverse and nationally peculiar. These findings counter the 1990s hypothesis of an automatic convergence mechanism that is inherent in globalization. Transnational organizations have not taken over the control of financial policy and nation states remain the source and enforcer of financial regulation and supervision.

## ***V. Conclusions and Outlook***

Robert Gilpin suggested that “interdependence is a phenomenon to be studied, not a ready-made set of conclusions” (2001, 18). This proves to be a wise observation, since the predictions surrounding globalization in the 1990s have

not materialized. Nation states made deliberate choices to deregulate their financial systems and increase their common exposure. In the wake of a global financial crisis, they reversed this path.

In the absence of transnational coordination, nation states mitigated the crisis with unprecedented effectiveness and boldness. As nation states assumed a stronger role in the course of the crisis, their different economic philosophies and views on financial regulation became more pronounced as well. This will lead to more nationally oriented financial regulation and a deglobalization of finance. Such a changed self-understanding of states is likely to have an effect on other policy realms as well, which will exacerbate transnational and international coordination efforts. This shift has already led to stricter capital requirements and control of global financial institutions by states, as well as more regulated cross-capital flows. The dispute between the Federal Reserve and the EU Commission about U.S. plans to apply more stringent capital requirements on subsidiaries of large foreign banks is one of the first signs of this development (Financial Times 2013).

After the Great Depression, it took the “this time is different syndrome” about five decades to resurface. It remains to be seen how long the lessons of the Great Recession will last. The notion that nation states become helpless in the face of uncontrollable globalized financial forces will certainly remain a myth.

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