

WORLD OUTLOOK

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Featuring an interview with former UN Under-Secretary General Jose Ocampo

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“Today we use the term ‘the world’ with what amounts to brash familiarity. Too often in speaking of such things as the world food problem, the world health problem, world trade, world peace, and world government, we disregard the fact that ‘the world’ is a totality which in the domain of human problems constitutes the ultimate in degree of magnitude and degree of complexity. That is a fact, yes; but another fact is that almost every large problem today is, in truth, a world problem. Those two facts taken together provide thoughtful men with what might realistically be entitled ‘an introduction to humility’ in curing the world’s ills.”

— President Emeritus John Sloan Dickey,
1947 Convocation Address

WORLD OUTLOOK

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EDITORS' NOTE

In the past six months, the world has witnessed an extraordinary level of civic upheaval. As dictators from Laurent Gbagbo of Côte d'Ivoire to Hosni Mubarak of Egypt have fallen, and with others threatened, the rest of the world has been forced to confront the implications of these revolts for both international humanitarian intervention and the international justice system.

After the brutal war in the country's western region of Darfur, Sudan has been back in the news lately. Encouraged by U.S. President Barack Obama's offer to take the country off the list of state sponsors of terrorism, Sudanese president Omar al-Bashir allowed the southern half of his country to secede relatively peacefully in July, following a nearly decade-long struggle. However, while carrots can evidently work as ways to prevent atrocity, less is known about the efficacy of using sticks such as prosecution. Our first paper, written by Paul Strauch '13, examines effect of International Criminal Court indictments on violence and human rights in Darfur. Strauch asks both if the ICC can deter violence and when it should be able to issue indictments, with the implication that such an approach could be used to deter state atrocities during the Arab Spring.

Coming from the same class, our next paper, written by Matthew Lu '13, takes a look at Turkey's improvement of its human rights record in 1980. Lu explains that the international community justifies interventions using reverse-causality arguments, and argues that this subsequently discourages the conditions under which diplomatic pressure may improve human rights policies. Lu then analyzes Turkey's success to find the conditions under which the international community can improve human rights.

The Mexican Drug War has become the most violent contemporary conflict in the western hemisphere, having already lasted nearly five years and claimed nearly 40,000 lives. Ben Schenk '12 writes about the causes of this drug war and potential policies that can hasten its end. Schenk notes that economic policies promoted by rich countries run contrary to the needs of a poor country's population, allowing for cartels to provide for Mexicans in place of the government.

The problems posed by Mexican drug cartels — alongside issues ranging from the role of international nongovernmental organizations, the efficacy of the United Nations, and the economic development of Latin America — are explored in our interview with Jose Ocampo, director of the Economic and Political Development Concentration at the School of International and Public Affairs at Columbia University and former United Nations Under-Secretary General for Economic and Social Affairs.

Recently, much focus has been placed about the impact of Shari'a, or strict Islamic law, on human rights in Middle Eastern countries. However, Shari'a also enforces a strict set of guidelines against the collection of interest, which the modern banking system is based on. In his contribution, John Spradling '11 examines the rise of a new sector of banking to deal with these issues: Islamic banking. Spradling examines the different mechanisms that allow banking to be in compliance with Shari'a law, and asks whether this is a viable option in a dynamic world economy.

While human rights abuses can certainly be more egregious elsewhere, it is often easy to forget that they occur in developed countries as well. Our final submission comes from Sandeep Chhabra, a member of Rutgers University's Class of 2010, and concerns Europe's Roma and their struggle against discrimination. Chhabra examines the growth of the Roma rights revolution, and then uses this as a framework to examine the best ways for international courts to promote human rights.

LEGAL DETERRENCE DURING GENOCIDE: INTERNATIONAL CRIMINAL COURT INDICTMENTS AND THE HOPE TO DETER IN DARFUR

Paul Kulhanjian Strauch

While the deterrent value of international justice and criminal courts is a widely debated topic, the deterrent effect of international prosecution during genocide has drawn much less attention. Indictments by international criminal courts reflect the international community's belief that the threat of prosecution can deter atrocity in the midst of conflict. Deterrence constituted an important justification for the indictments of Serbian leaders by the International Court for the Former Yugoslavia during the Bosnian genocide and the indictments of top Sudanese officials for crimes against humanity and genocide in Darfur. This paper closely examines whether indictments by the ICC have decreased violence and improved human rights practices in Darfur. The empirical analysis presented here offers a new perspective on the effectiveness of international court indictments as no other study has engaged in a similar empirical analysis. The question of whether international courts substantively deter perpetrators of ongoing conflicts has important legal, moral, and practical implications for the international community's decisions regarding if and when the ICC should issue indictments.

INTRODUCTION: DETERRENCE AS JUSTIFICATION FOR INTERNATIONAL CRIMINAL COURTS

When 127 nations gathered in Rome and established the International Criminal Court (ICC) in 1998, they declared that a central goal of international justice would be "to put an end to impunity for perpetrators" and "thus to contribute to the prevention of such crimes." The crimes of concern to the ICC, described in the Statute as "the most serious crimes of concern to the international community,"¹ included genocide and crimes against humanity, offenses first regarded as deserving of prosecution under international law after the Armenian Genocide of 1915.² Legal deterrence has generally referred to the belief that successful prosecution of perpetrators can deter future crimes in different places by different leaders. The hope is that, by demonstrating that they will hold perpetrators accountable, the international community will be dissuade future leaders from committing genocide. The formation of the ICC, building upon the example of the International Criminal Tribunal for the Former Yugoslavia (ICTY), was motivated by the hope that international courts could provide a different form of deterrence- with a more immediate impact. This type of deterrence, described as "specific deterrence" by United Nations lawyer Payam Akhavan, implies that international courts can prevent leaders who already have committed crimes against humanity from committing them in the future.³

1 Rome Statute of the International Criminal Court, U.N. Doc. A/Conf. 183/9 (1998).

2 Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000), 115; Samantha Power, *A Problem for Hell* (New York: HarperCollins, 2002), 17-20.

3 Payam Akhavan, "Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal," *Human Rights Quarterly* 20, no. 4 (1998): 746. <http://muse.jhu.edu/> (accessed February 25, 2011). (Akhavan served as Legal Advisor to the Prosecutor's Office of the International Criminal Tribunal for the former Yugoslavia)

The United Nations formed the ICTY during the War in Bosnia, rather than waiting until the war's end, because UN member states shared the belief that the existence and/or activities of the court could deter crimes.⁴ The Security Council Resolution that established the tribunal indicated that a key objective of the ICTY would be the restoration of peace and security.⁵ At the time, this was a new and innovative justification for international criminal justice. Over ten years later, the referral of the situation in Sudan's Darfur region to the ICC similarly reflected the international human rights community's belief that the ICC could prevent atrocities. One NGO, Citizens for Global Solutions, expressed the international community's expectation and hope quite effectively:

“[the ICC is] in the unique position to serve as a potential deterrent for future incidents of war crimes, crimes against humanity, and genocide in Darfur. Because it is a permanent international criminal court and can investigate ongoing incidents, an indictment or conviction from the ICC can send a clear message to human rights violators that such acts will be met with swift justice.”⁶

Human Rights Watch also encouraged the initiation of criminal proceedings during the conflict because of the potential short-term deterrent effects.⁷ Kenneth Roth, the director of Human Rights Watch, supported the Security Council referral because “the ICC could start tomorrow saving lives.”⁸ An examination of the official comments made by the national representatives on the Security Council also shows quite clearly that the prevention of crimes in Darfur comprised an important justification for the referral.⁹ In defending the International Criminal Court's actions in Darfur, the Chief Prosecutor of the ICC, Louis Moreno-Ocampo, suggested that “the beneficial impact of the ICC” is based upon “the value of the law to prevent recurring violence.”¹⁰ The presumption is that even if prosecutions did not actually take place, indictments and arrest warrants - the threat of prosecution - could deter.

The Darfur referral took place six years ago. Although the war in Darfur saw the end of its most horrific phases by 2005, acts of genocide continue unabated. This paper seeks to determine whether, and to what extent, indictments by international criminal courts fulfill their goal of deterring governments already perpetrating genocide. Both the Yugoslavia and Darfur cases will be examined. However, for two important reasons, the paper focuses on the ICC's indictments of the perpetrators of the Darfur

4 See Theodor Meron, “Answering for War Crimes: Lessons from the Balkans,” *Foreign Affairs* 76, no.1 (Jan/Feb 2007), 3. And see Payam Akhavan, “Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal.”

5 David P. Forsythe. *Human Rights and International Relations* (New York: Cambridge University Press, 2006), 96-103.

6 Citizens for Global Solutions, *Darfur and the ICC: Justice is the Key to Recovery*, Global Solutions Q. 4 (2006), quoted in Kenneth A. Rodman, “Darfur and the Limits of Legal Deterrence,” *Human Rights Quarterly* 30, no.3 (August 2008): 532.

7 Human Rights Watch Policy Paper: *The Meaning of “The Interests of Justice,”* quoted in Kenneth A. Rodman, “Darfur and the Limits of Legal Deterrence,” 533.

8 Kenneth Roth, quoted in Nicholas Kristof, “Why Should We Shield the Killers?,” *The New York Times*, February 2, 2005.

9 United Nations Press Release. “Security Council Refers Situation in Darfur, Sudan, to Prosecutor of International Criminal Court.” <http://www.un.org/News/Press/docs/2005/sc8351.doc.htm> (accessed February 27, 2011).

10 Luis Moreno-Ocampo, Speech at the International Conference “Building a Future on Peace and Justice,” in Nuremberg, June 25-27 2007. <http://www.peace-justice-conference.info/download/speech%20moreno.pdf>.

genocide. First, the representatives in Rome believed that the permanent, standing nature of an International Criminal Court, in contrast to ad hoc tribunals, would facilitate a quick response to conflict because it would already have in place “the human and material infrastructure necessary” for an international trial.¹¹ As such, the expectation was that the court would be able to effectively halt ongoing crimes. Secondly, while many scholars and reporters have provided theoretical arguments and specific examples of how indictments have helped or failed to improve human rights practices in Darfur, no one study has used empirical evidence to demonstrate the connection between the indictments and the crimes committed. Therefore, this paper will emphasize the Darfur case because the findings could potentially have novel and useful policy implications.

While many groups in the international human rights community have convincingly argued that ICC indictments could prevent harm in Darfur through deterrence, others have contended the opposite. Numerous NGOs, experts, and governments have argued that pursuing justice in Darfur would actually incite more violence by spurring a backlash in the form of direct violence or the deterioration of the government’s commitment to peace agreements. These concerns recall the warnings in the 1990’s that actions taken by the ICTY would derail peace negotiations and the Dayton Peace Accords.¹² In the public debate over indictments of Sudanese officials, acclaimed Sudan expert Alex de Waal has forcefully argued that an ICC indictment would lead to more insecurity and make the Comprehensive Peace Agreement (CPA) a “gamble.”¹³ The African Union, Southern Sudan, and many African nations have maintained the same position. In addition, in 2008, the US special envoy to Sudan explicitly warned that the indictments would “drive the country closer to dissolution,”¹⁴ implying that victim groups would be placed at greater risk. The effectiveness of international criminal court indictments in preventing human rights abuses by perpetrators of genocide is a widely debated question, and one that requires an answer.

INDICTMENTS AND DETERRENCE IN YUGOSLAVIA

On May 25, 1993, one year into the War in Bosnia, UN Security Resolution 827 founded the International Court for the Former Yugoslavia with the intent to stop continuing atrocities by Serbian and Croatian leaders.¹⁵ However, before the court even issued indictments, the weakness of potential deterrence was already evident. Two years after the formation of the ICTY, the Bosnian Serb Army murdered 7,000 Muslim men and “ethnically-cleansed” 25,000 residents near the town of Srebrenica. Two weeks later, on July 25 1995, Chief Prosecutor Richard Gladstone jointly indicted Radovan Karadzic, President of the Serbian Republic, and Radko Mladic, a General in the Yugoslavian army, for committing acts of genocide, crimes against humanity, and war

11 For support of this point, see David Wippman “Can an International Criminal Court Prevent and Punish Genocide?,” in *Protection Against Genocide*, ed. Neil Riemer (Westport: Praeger, 2000), 90; Jamie Mayerfeld “Who Shall Be Judge? The United States, the International Criminal Court, and the Global Enforcement of Human Rights,” *Human Rights Quarterly*, 25, no.2, (February 2003).

12 Amnesty International. Press Release “International Criminal Court: Possible Arrest Warrants Against Sudanese Officials.” July 11, 2008;

13 Alex de Waal and Gregory H. Stanton, “Should President Omar al-Bashir of Sudan Be Charged and Arrested by the International Criminal Court?,” *Genocide Studies and Prevention* 4 no. 3, (December 2009), 330. <http://muse.jhu.edu/> (accessed March 1, 2011); Julie Flint and Alex de Waal, “Justice Off Course in Darfur,” *Washington Post*, June 28, 2008.

14 Sudan Tribune. “Former US special envoy to Sudan warns against ICC Darfur indictments,” Sudan Tribune, June 27, 2008.

15 Judge Gabrielle Kirk McDonald, as quoted in Paul F. Williams and Michael P. Scharf, *Peace with Justice?* (New York: Rowman and Littlefield Publishers Inc., 2002), 21-22.

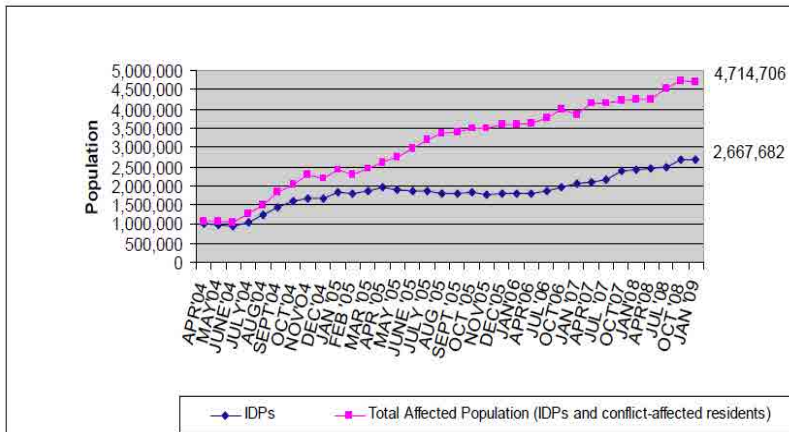
crimes.¹⁶ Unfortunately, it is clear that the ICTY indictments and subsequent arrest warrants failed to deter the Bosnian Serb leadership. On the same day that the Hague issued the indictments, Mladic invaded another UN protected area, Zepa, and subsequently ordered the shelling of Sarajevo resume.¹⁷ These indictments, and numerous warnings of his own impending indictment by the ICTY, did not deter President Slobodan Milosevic from proceeding with ethnic cleansing in Kosovo in 1998-1999, which resulted in the death of 10,000 civilians and the displacement of 800,000 others.¹⁸ While the issuing of indictments during the conflict may have been a “revolutionary” achievement for international justice, the indictments were, in the words of historian Gary Bass, “hopelessly insufficient.”¹⁹

INDICTMENTS AND DETERRENCE IN DARFUR

On March 31, 2005, the UN Security Council referred the situation in Darfur to the Prosecutor of the International Criminal Court.²⁰ In evaluating the effects of ICC indictments in Darfur, two time periods need to be examined. First, on February 27, 2007, Chief Prosecutor Moreno-Ocampo issued indictments for Ahmad Muhammad Harun, at the time the Minister of State for Humanitarian Affairs of Sudan, and Ali Muhammad Ali Abd-Al-Raham, the alleged leader of the janjaweed militias. The ICC judges issued the subsequent arrest warrants for these indictments on April 27, 2007.

The February 2007 indictments and April 2007 arrest warrants failed to fulfill the short-term deterrence expectation. As evident in Graph 1, an increase in violence (as represented by the rate of increase in amount of people displaced by conflict)²¹ occurred

CHART 1. Estimated Number of IDPs and Total Affected Population
(UN estimates since April 2004)



GRAPH 1²²

16 It is important to note that in addition to crimes against humanity and genocide, “the crime of aggression” and “war crimes” fall under ICC jurisdiction, as per the Rome Statute.

17 Rodman, “Darfur and the Limits of Legal Deterrence,” 533.

18 See Helena Cobban, “International Courts,” *Foreign Policy* 153, (Mar. - Apr., 2006), 26.

19 Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*, 229-231.

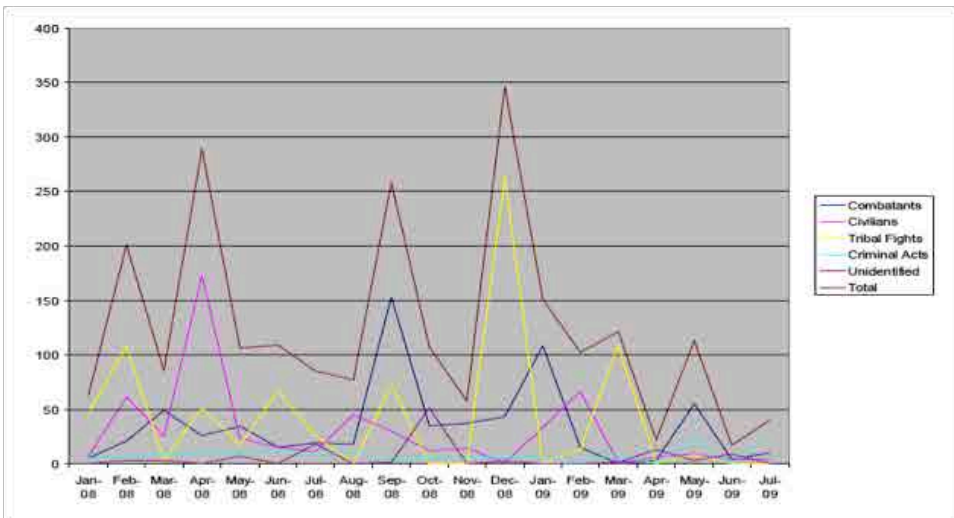
20 Sudan is not a signatory to the Rome Statute. See the Security Council referral document, available at <http://www.un.org/News/Press/docs/2005/sc8351.doc.htm>.

21 According to UN reports, most internal displacement is the result of violence. This graph therefore serves as good indication of levels of violence.

22 The Office of UN Deputy Special Representative of the UN Secretary-General for Sudan UN Resident and Humanitarian Co-ordinator. “Darfur Humanitarian Profile No. 34.” Available at www.unsudanig.org (Accessed March 3, 2011).

in 2008. In fact, violence increased at a more rapid and sustained rate in 2008 than in the entire 2005-2007 period (with the exception of the short increase and subsequent fall in October 2006). This surge in violence, beginning roughly seven months after the arrest warrants were issued, indicates that the Sudanese government was not deterred.

The surge in violence in 2008 is also evident in Graph 2, which shows the number of fatalities due to violence in Darfur over the 2008-2009 period. An examination of Graph 2, demonstrates that the relative increase in fatalities in 2008 may be attributed to the Sudanese government's policies, rather than tribal fighting and random criminal activity. Since the monthly civilian and combatant fatalities (the pink and blue lines) generally mirror the "total" monthly fatalities (the red line) one may infer that government-sponsored violence accounts for the increase in violence. This result suggests that the indictments failed to deter the Sudanese government under Bashir and the National Congress Party from instigating violence. If anything, an increase in violence by government forces is suggested.



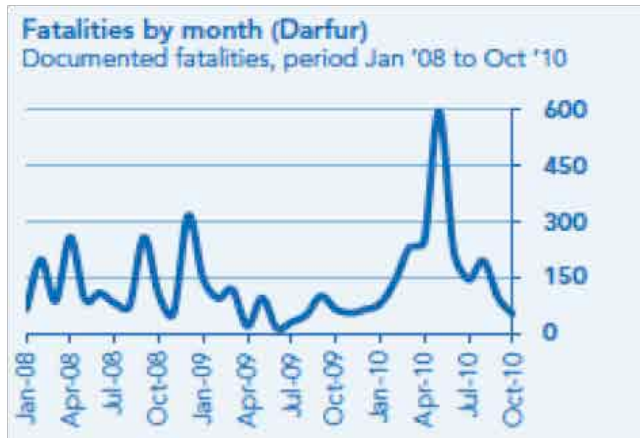
GRAPH 2: Fatalities (Individual Deaths) by Month in Darfur²³

The second important indictment period to consider isoccurring between July 4, 2008, when the ICC indicted Sudanese president Omar al-Bashir, and March 4, 2009, when the ICC issued its first arrest warrant for Bashir on charges of crimes against humanity.²⁴ As is evident in Graph 3, fatalities in Darfur increased in the 6-month period immediately following the July indictment, and violence surged significantly again one year thereafter, in May 2010. Bashir's indictment and arrest evidently did not lead to fewer violent government attacks. According to the African Union/United Nations Hybrid Operation in Darfur (UNAMID) reports, the predominant cause of the May fatalities was fighting between the Government forces and rebels — 440 of the 491 deaths are attributed to these clashes.²⁵

23 African Union Panel on Darfur "Analysis of Data for Violent Fatalities in Darfur." blogs.ssrc.org/sudan/wp.../2009/11/AUPD-Annex-B-fatalities-in-Darfur1.pdf (accessed February 11, 2011).

24 Not until July 12, 2010 did the ICC conclude that there was sufficient evidence to indict Bashir for genocide. A new arrest warrant was then issued.

25 UNAMID Data is not made available to the public. However, Alex de Waal maintains a Blog in which he reports UNAMID findings sporadically. See <http://blogs.ssrc.org/sudan/>.

GRAPH 3²⁶

Although Graphs 2 and 3 do seem to show a decrease in fatalities after March 2009, this should not be viewed as evidence of short-term deterrence. First, it is hard to believe that fear of prosecution or the stigmatization associated with indictments would have affected Bashir for six months, and then ceased to have an impact on him. Second, and more importantly, the most well-known consequence of the ICC indictments in Darfur occurred immediately after the March 2009 indictment. Bashir expelled thirteen major international humanitarian organizations from the Darfur region and shut down various Sudanese-government sponsored humanitarian services and human rights groups. This action suggests that Bashir's intentions could not possibly explain the mid-2009 decrease in fatalities. The UN Office for the Coordination of Humanitarian Affairs assessed that the expulsion meant, "1.5 million beneficiaries will no longer have access to health and nutrition services, [and] water supply, sanitation and hygiene services [to over one million people in Darfur] will soon be interrupted."²⁷ The number of international NGO staff operating deep in the Darfur region plunged from 137 to 45, compared to the usual 5 to 10 person variance each month.²⁸

The increase in violent deaths in May 2010, the expulsion of humanitarian organizations in March 2009, and the heightened violence in 2008 all indicate that indictments and subsequent arrest warrants failed to deter Bashir and the Sudanese government. The 2008 and May 2010 spikes in violence, when evaluated relative to the 2005-2007 period, may even support the early claims that indictments would incite backlash and a decrease in the government's willingness to adhere to the CPA. However, while one can confidently conclude that the indictments did not effectively deter, the argument that they may actually have increased violence has serious limitations because any number of factors could have caused this result.

EXPLANATIONS FOR THE LACK OF DETERRENT EFFECT IN DARFUR

One explanation for the failure of the ICC indictments to prevent crimes against humanity is that the Sudanese government defiantly ignores international signals of condemnation in order to uphold its own sovereign authority. In direct response

26 United Nations. "Sudan Work Plan 2011: United Nations and Partners," 12.

27 UN Office for the Coordination of Humanitarian Affairs. In Eric Reeves, "Darfur and International Justice," *Dissent* 56, no.3 (Summer 2009). <http://muse.jhu.edu/> (accessed February 10, 2011).

28 United Nations. "Sudan Work Plan 2011: United Nations and Partners," 13.

to his arrest warrant, Bashir challenged the ICC, declaring, "they have to respect the rule of the country [Sudan]. If anyone goes further than the rule of the country, we will kick them out directly."²⁹ The Sudanese government has consistently resisted Western intervention.³⁰ The willingness of the government to lie in an effort to cover-up the situation in Darfur further reflects its disregard of the international community's opinion.³¹ In October 2008, Bashir stated that "even in Darfur, you can say most of it is safe. There are no problems and life is very normal."³² Bashir's advisor also claimed that the Sudanese Government had never "expel[led] ambassadors, international forces, or UN personnel," conveniently ignoring March 2009 expulsion of humanitarian groups. As part of this "window-dressing" campaign, the Sudanese Government created its own Special Criminal Courts on the Events in Darfur, but, not surprisingly, these courts have yet to press charges for any major atrocity.³³ Indeed, Bashir's promotion of Harun despite Harun's indictment by the ICC, reflects a blatant disregard for international opinion.³⁴

The lack of an enforcement mechanism for the ICC arrest warrants may also explain the indictments' inability to deter. Since the International Criminal Court has no real enforcement body, it relies upon the nation of the indicted criminals itself to hand them over.³⁵ Bashir's government certainly will not hand over those indicted by the ICC, and UN peacekeepers in Sudan are not empowered to carry out ICC arrest warrants.³⁶ There is a clear lack of international political will to take harsher measures to ensure compliance.³⁷ Since the realistic prospects for arrests are so low, the Sudanese government may not feel the pressure necessary to compel improvement in its policies. The only hope for actual apprehension is that signatory nations to which the Sudanese leaders may travel will arrest them upon arrival.³⁸ However, Bashir has simply adjusted his travel plans to avoid these states.³⁹ The lack of political will on behalf of the international community to enforce international criminal court indictments was perhaps most disturbing in Yugoslavia, where NATO knew the exact whereabouts of Karadzic and

29 Sudan Watch. "In Darfur, Bashir Issues Message Warning all Diplomats, NGO's and peacekeepers. Sudan Watch, March 8, 2009, <http://sudanwatch.blogspot.com/2009/03/in-darfur-bashir-issues-message-warning.html>.

30 M. W. Daly, *Darfur's Sorrow: The Forgotten History of a Humanitarian Disaster* (New York: Cambridge University Press, 2010), 308.

31 BBC Monitoring Middle East, "Sudanese Presidential Advisor Interviewed on ICC Charges against Al-Bashir," BBC Monitoring-Middle East, August 11, 2008. <http://www.lexisnexis.com/> (Accessed February 26, 2011)

32 Quoted in Human Rights First/Save Darfur/Human Rights Watch. "Rhetoric vs. Reality: The Situation in Darfur." For a complete description of how the government militias instigated violent attacks on civilians and humanitarian organizations in 2008 and early 2009 in Darfur, see this report.

33 Victor Peskin. "Caution and Confrontation in the International Criminal Court's Pursuit of Accountability in Uganda and Sudan," *Human Rights Quarterly* 31, no. 3 (August 2009): 663. pp. 655-691 (Article)

34 Sara Darehshori. "Doing the Right Thing for Darfur: An ICC indictment of Sudan's President Serves Peace and Justice," *The Los Angeles Times*, July 15, 2008.

35 See Jack Goldsmith. "The Self-Defeating International Criminal Court," *The University of Chicago Law Review* 70, no. 1 (Winter, 2003): 89-104.

36 For a description of the relatively weak UN force in Sudan and the resulting inability to apply pressure on Khartoum, see Rodman, "Darfur and the Limits of Legal Deterrence, 548-549.

37 Rodman, "Darfur and the Limits of Legal Deterrence," 530.

38 Xan Rice. "Chad refuses to arrest Omar al-Bashir on genocide charges," *The Guardian*, July 22, 2010.

39 BBC Monitoring Middle East, "Sudanese Presidential Advisor Interviewed on ICC Charges against Al-Bashir."

Mladic but refused to arrest them.⁴⁰

Another potential explanation for the indictment's failure to deter is that the international community's often hypocritical and uncommitted position towards perpetrators severely undermines the credibility of prosecution threats. After the ICC issued the first two warrants against suspects in Darfur, Khartoum blatantly refused to carry out the warrants. However, the Security Council did not speak out against the lack of compliance.⁴¹ The fact that two Permanent Members of the Security Council, China and Russia, both supply military equipment to the Sudanese government and maintain oil interests in Sudan certainly diminishes the strength of the international community's condemnation of Khartoum. The foreign ministry spokesman for China officially stated that China "expresses its regret and worry over the arrest warrant for the Sudan president."⁴² The U.S. is not a signatory to the Rome Statute, and U.S. rhetoric similarly may counteract the pressure that indictments intend to exert. For instance, President Obama's special envoy to the Sudan stated that he "loved Sudan" and "came with my hands open" during a 2009 visit. As Akhavan explains, the refusal to ensure that arrests warrants are carried out indicates to the Sudanese leadership that "the Security Council's referral of the Darfur situation to the ICC in 2005... is a pretence of decisive action rather than a genuine effort to end the ongoing violence."⁴³ Likewise, Chief Prosecutor Gladstone indicated that the inability of the ICTY to enforce its orders resulted from the lack of political will. David Forsythe, Pierre Hazan, and Michael Sharf all argue that by forming the ICTY, the international community actually intended to deflect attention from itself so that it could avoid taking a stronger stance on the issue.⁴⁴ Gladstone forcefully wrote that, had Western nations "shown a will to act," "the crimes in Kosovo could have been prevented" and "it should have chilled the spine of Milosevic."⁴⁵

LIMITATIONS OF RESULTS AND CERTAINTY OF FINDINGS

The primary weaknesses with this paper's conclusion that indictments fail to prevent acts of genocide concern the data and the method of its interpretation. To the author's knowledge, the evidence presented constitutes the most complete data available on levels of violence and fatalities in Darfur since 2005. The very recent nature of the conflict and the fact that the UNAMID's raw data is not published make an empirical analysis difficult. However, the consistency of the data presented and the reliability of the sources lend credibility to the paper's conclusions. Even if one believes that the data is insufficient, the relevance of the issue demands that any attempt to provide a result should be seriously considered.

While the findings reflect a correlation between indictments and violence, one could reasonably argue that the evidence of causation is weak. Indeed, any number of variable factors could have affected the amount of violence in such a way that a more clear positive or negative result of indictments remained hidden within the data. For in-

40 Sara Darehshori, "Doing the Right Thing for Darfur."

42 Henry Owuor, "After Bashir warrant, Sudan united in protest," *The Nation*, March 5, 2009.

43 Akhavan, "Are International Criminal Tribunals a Disincentive to Peace: Are International Criminal Courts a Disincentive to Peace?," 647.

44 See David Forsythe, "International Criminal Courts: A Political View and "Politics and the Criminal Court for the Former Yugoslavia," *Criminal Law Forum* 5, no. 2-3 (1994): 401-422; Pierre Hazan, *Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the Former Yugoslavia*; Paul F. Williams and Michael P. Scharf, *Peace with Justice?*, 91-108.

45 Paul F. Williams and Michael P. Scharf, *Peace with Justice?* (New York: Rowman and Littlefield Publishers Inc., 2002), 127.

stance, tribal violence, conflict among different rebel groups, and banditry all compose a significant portion, and sometimes a majority, of the violent deaths and displacement in Darfur.⁴⁶ Furthermore, any number of other unknown political calculuses or physiological changes could have occurred in Bashir's government, leading to policy changes that offset the effect of indictments. In particular, the broad domestic mobilization in support of Bashir after his indictment by the ICC may have counteracted the stigmatization and fear that the indictments were intended to produce. Minutes after Ocampo issued the indictment, Khartoum erupted in protests in support of Bashir.⁴⁷

The second possible serious objection to the conclusions presented in Part II is that it is impossible to know specifically how long after the ICC's issuing of an indictment or arrest warrant one should expect the government to implement policy changes in response. Indeed, one could interpret the fall in violence-related fatalities (Graph 3) immediately following the March 2009 indictment as an indication that the government directly, or indirectly, initiated fewer attacks. However, the fact that the 2007 and 2008 indictments coincide with a surge in violence in late 2008 and the heavy violence-related surge in fatalities in mid- 2010 suggest that even if improvements occurred in the very short term, overall policy actions did not improve. Nevertheless, if possible, a comparison of policy measures taken by Khartoum during different time periods after the indictment could help to substantiate the results.

In addition to problems with the data, the conclusion that indictments have failed to deter in Darfur may be weakened by evidence of some positive effects. Bashir's government has taken a stronger interest in cooperation after the indictments, as evidenced by the government's claim that, once reconciliation was achieved, it would investigate the crimes in Darfur. There is evidence that the indictments have weakened the Sudanese government's status and diplomatic success abroad.⁴⁸ Numerous nations refuse to meet with Bashir and threaten to arrest him if he sets foot within their borders. Over the last two years, Bashir has been forced to avoid many conferences in Africa, Europe, and the United States.⁴⁹ His government probably does care to some extent about its international reputation, as evidenced by the Sudan's Foreign Minister assertion: "If we come up with the clear roadmap for Darfur, then I think we can have the moral authority to begin to ask . . . whether they could defer the decision by the ICC."⁵⁰ In addition, international reports suggest that the indictments have caused political pressure on Bashir's party, the NCP. While the stigmatization effects and the political pressure caused by the indictments leaves some reason to be optimistic, it is clear that, at this point, indictments have failed to prevent crimes against humanity in Darfur in any measureable or substantive way.⁵¹

CONCLUSION

The indictments and subsequent arrest warrants for Serbian and Croatian lead-

46 See Human Rights Watch/SaveDarfur/ Human Rights Watch, "Rhetoric vs. Reality: The Situation in Darfur."

47 Marlise Simons and Neil Macfarqohar, "Court Issues Arrest Warrant for Sudan's Leader," The New York Times, March 4, 2009.

48 Akhavan, "Are International Criminal Tribunals a Disincentive to Peace?: Reconciling Judicial Romanticism with Political Realism," 650-51.

49 Marlise Simons, "International Court Adds Genocide to Charges Against Sudan Leader," The New York Times, July 12, 2010.

50 Human Rights Watch, "Voices from Sudan," quoted in Akhavan, "Are International Criminal Tribunals a Disincentive to Peace?: Reconciling Judicial Romanticism with Political Realism," 650.

51 International Crisis Group, "Sudan; Justice, Peace and the ICC," Africa News, July 17, 2009.

ers issued by the ICTY and for Omar al-Bashir and other top Sudanese officials issued by the ICC failed to deter the perpetrators of genocide from continuing to commit crimes. Despite strong and optimistic expectations, indictments do not appear to have a short term, “specific,” deterrent effect. If anything, the Darfur case suggests that indictments may possibly lead to more violence. Thus, neither the warnings that the ICC’s actions in Darfur would increase insecurity for victims or the proclamations that the ICC would save lives can be convincingly proven. While international criminal court indictments lack a positive deterrent effect, this result ought to be weighted against the ability of the courts to provide solace to victims, promote accountability, and deter crimes in the long-run.⁵²

The question of whether courts substantively deter perpetrators of ongoing conflicts has important legal, moral, and practical implications for the international community’s decisions regarding if and when the ICC should issue indictments. This paper’s conclusions demonstrate that the international community should not expect indictments and arrest warrants alone to prevent crimes against humanity. However, the Part IV analysis suggests that strengthening enforcement mechanisms and maintaining a more coherent position towards perpetrators of genocide could potentially enhance short-term deterrence. Immediate deterrence is a worthwhile goal, and the demand for an end to crimes against humanity in Darfur is immediate. As former ICC attorney Christine Chung articulates, “on a day-to-day basis, the challenge remains to use the warrant—and the truth contained in it—to push forward the twin objectives of peace and justice.”⁵³

52 Rodman, “Darfur and the Limits of Legal Deterrence,” 560.

53 Christine Chung, “Justice for Bashir: What’s Different Today?,” Blog of the European Journal for International Law, Mar 5, 2009, available at <http://www.ejiltalk.org/> (accessed March 4, 2011). (Christine Chung was the first senior trial attorney appointed by the Office of the Prosecutor of the International Criminal Court.)

WORKS CITED

- African Union Panel on Darfur. "Analysis of Data for Violent Fatalities in Darfur." blogs.ssrc.org/sudan/wp.../2009/11/AUPD-Annex-B-fatalities-in-Darfur1.pdf (accessed February 24, 2011).
- Akhavan, Payam. "Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal." *Human Rights Quarterly* 20, no. 4 (1998): 737-816. <http://muse.jhu.edu/> (accessed February 25, 2011).
- Akhavan, Payam. "Are International Criminal Tribunals a Disincentive to Peace: Are International Criminal Courts a Disincentive to Peace?." *Human Rights Quarterly* 31.3 (August 2009) : 624-654. <http://muse.jhu.edu/> (accessed February 15, 2011).
- Amnesty International. Press Release: "International Criminal Court: Possibly Arrest Warrants Against Sudanese Officials." July 11, 2008. <http://www.amnesty.org/en/for-media/press-releases/international-criminal-court-possible-arrest-warrants-against-sudanese-o> (accessed February 12, 2011).
- Bass, Gary Jonathan. *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton: Princeton University Press, 2000.
- BBC Monitoring Middle East. "Sudanese Presidential Advisor Interviewed on ICC Charges against Al-Bashir," BBC Monitoring-Middle East, August 11 2008. <http://www.lexisnexis.com/> (accessed February 26, 2011).
- Cobban, Helena "Think Again: International Courts." *Foreign Policy* 153, (Mar. - Apr., 2006): 22-28.
- Chung, Christine. "Justice for Bashir: What's Different Today?." Blog of the European Journal for International Law, March 5, 2009. Available at <http://www.ejiltalk.org/> (accessed March 4, 2011).
- Citizens for Global Solutions, *Darfur and the ICC: Justice is the Key to Recovery*, Global Solutions (2006), http://archive2.globalsolutions.org/publications/publications_darfur_and_icc (accessed March 11, 2011).
- Daly, M. W. *Darfur's Sorrow: The Forgotten History of a Humanitarian Disaster*. New York: Cambridge University Press, 2010.
- Darehshori, Sara. "Doing the Right Thing for Darfur: An ICC indictment of Sudan's President Serves Peace and Justice." *The Los Angeles Times*, July 15, 2008.
- De Waal, Alex and Gregory H. Stanton, "Should President Omar al-Bashir of Sudan Be Charged and Arrested by the International Criminal Court?." *Genocide Studies and Prevention* 4, no. 3, (December 2009): 329-353. <http://muse.jhu.edu/> (accessed March 1, 2011).
- De Waal, Alex and Julie Flint. "Justice Off Course in Darfur." *Washington Post*, June 28, 2008.
- Forsythe, David. *Human Rights and International Relations*. New York: Cambridge University Press, 2006.

- Forsythe, David. "International Criminal Courts: A Political View and "Politics and the Criminal Court for the Former Yugoslavia." *Criminal Law Forum* 5, no. 2-3 (2004): 401-422.
- Hazan, Pierre. *Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the Former Yugoslavia*, translated by James Thomas Snyder. College Station: Texas A&M University Press, 2004.
- Human Rights First/Save Darfur/Human Rights Watch. "Rhetoric vs. Reality: The Situation in Darfur." <http://www.refugee-rights.org/Publications/Papers/2008/PDFs/RhetoricVsReality%20Paper.120208.pdf> (accessed February 27, 2011).
- Human Rights Watch. "Policy Paper: The Meaning of "The Interests of Justice" in Article 53 of the Rome Statute." June 2005. Available at www.hrw.org/campaigns/icc/docs/ij070505.pdf. (accessed March 5, 2011)
- International Crisis Group. "Sudan; Justice, Peace and the ICC." *Africa News*, July 17, 2009, <http://www.lexisnexis.com/> (Accessed February 26, 2011).
- Kristof, Nicholas, "Why Should We Shield the Killers?." *The New York Times*, February 2, 2005.
- Mayerfeld, Jamie. "Who Shall Be Judge?: The United States, the International Criminal Court, and the Global Enforcement of Human Rights." *Human Rights Quarterly* 25, no.1 (February 2003): 22-28.
- Meron, Theodor. "Answering for War Crimes: Lessons from the Balkans." *Foreign Affairs* 76, no. 1 (Jan/Feb 2007). <http://muse.jhu.edu/> (accessed February 25, 2011).
- Moreno-Ocampo Luis, Speech at "Building a Future on Peace and Justice Conference," Nuremberg, June 25-27, 2007. http://www.peace-justice-conference.info/download/speech_moreno.pdf (accessed February 28, 2011).
- Office of UN Deputy Special Representative of the UN Secretary-General for Sudan UN Resident and Humanitarian Co-ordinator. "Darfur Humanitarian Profile No. 34," www.unsudanig.org (accessed February 19, 2011).
- Owuor, Henry. "After Bashir warrant, Sudan United in Protest." *The Nation*, March 5, 2009.
- Perry, Alex. "Defections in Darfur." *TIME Magazine*, March 27, 2007.
- Peskin, Victor. "Caution and Confrontation in the International Criminal Court's Pursuit of Accountability in Uganda and Sudan," *Human Rights Quarterly* 31, no. 3 (August 2009): 655-691. <http://muse.jhu.edu/> (accessed February 25, 2011).
- Power, Samantha. *A Problem for Hell*. New York: HarperCollins, 2002.
- Rodman, Kenneth A "Darfur and the Limits of Legal Deterrence," *Human Rights Quarterly* 30, no. 3 (August 2008), <http://muse.jhu.edu/> (accessed February 10, 2011).
- Reeves, Eric. "Darfur and International Justice." *Dissent* 56, no. 3 (Summer 2009): 13-18, <http://muse.jhu.edu/> (accessed February 25, 2011).

- Rice, Xan. "Chad refuses to arrest Omar al-Bashir on genocide charges," *The Guardian*, July 22, 2010, <http://www.guardian.co.uk/world/2010/jul/22/chad-refuses-arrest-omar-al-bashir>.
- Rome Statute of the International Criminal Court, U.N. Doc. A/Conf. 183/9 (1998).
- Rodman, Kenneth A. "Darfur and the Limits of Legal Deterrence." *Human Rights Quarterly* 30, no.3 (August 2008): 529-560, <http://muse.jhu.edu/> (accessed February 25, 2011).
- Simons, Marlise and Neil Macfarqohar. "Court Issues Arrest Warrant for Sudan's Leader." *The New York Times*, March 4, 2009.
- Simons, Marlise. "International Court Adds Genocide to Charges Against Sudan Leader," *The New York Times*, July 12, 2010.
- Sudan Tribune. "Former US special envoy to Sudan Warns Against ICC Darfur indictments." *Sudan Tribune*, June 27, 2008.
- Sudan Watch. "In Darfur, Bashir Issues Message Warning all Diplomats, NGO's and Peacekeepers," *Sudan Watch*, March 8, 2009, <http://sudanwatch.blogspot.com/2009/03/in-darfur-bashir-issues-message-warning.html> (accessed March 11, 2009).
- Social Science Research Center Blog: Making Sense of Sudan. <http://blogs.ssrc.org/sudan/>
- United Nations Security Council. Press Release: Security Council Refers Situation in Darfur, Sudan, to the Prosecutor of International Criminal Court. <http://www.un.org/News/Press/docs/2005/sc8351.doc.htm> (accessed March 2009).
- United Nations. "Sudan Work Plan 2011: United Nations and Partners." [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VDUX-8CBV6W-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VDUX-8CBV6W-full_report.pdf/$File/full_report.pdf) (accessed March 2, 2011).
- Williams, Paul F. and Michael P. Scharf, *Peace with Justice?* New York: Rowman and Littlefield Publishers Inc., 2002.
- Wippman, David. "Can an International Criminal Court Prevent and Punish Genocide?" In *Protection Against Genocide*, ed. Neil Riemer. Westport, Connecticut: Praeger, 2000.

A DIAMOND IN THE ROUGH: THE COUNCIL OF EUROPE'S SUCCESSFUL SHAMING OF TURKEY IN 1980-83

Matthew Lu

This paper uses qualitative methodology to construct an ideational explanation for the international community's successful efforts to improve Turkey's human rights policies in 1980. I argue that European diplomats created an existential threat to the Turkish state by leveraging the norms that constitute a European identity to induce Turkey to conform to those norms. I recourse to an analysis of the Turkish state's deeply ingrained need to maintain a European identity and remain enmeshed in European political structures to explain Turkey's relatively positive response to international diplomacy. Most large-n quantitative studies conclude that diplomatic pressure does little to improve another states' human rights record; I dismiss the utility of such conclusions and examine Turkey as a single, successful case to uncover the narrow boundary conditions in which diplomatic pressure may work.

International Relations scholars have recently become very interested in the effect of shaming by NGOs and states (or both acting in concert) on wayward states. The tentative conclusions are not promising. James Franklin finds that when abuser-states are criticized by patron states that extend aid to them, they have a minor chance of slightly reducing repression; at best, shaming merely encourages short-term changes and is associated with higher levels of repression in the long run.¹ Emily Hafner-Burton's research corroborates Franklin's conclusions; she concludes that shaming does nothing at best and most of the time leads to increased repression.²

In the United States, these large-n, quantitative studies are the direction towards which the academy is moving. I worry that these studies, in diligently following neo-positivist methodology, have missed the point entirely. In this paper I choose a different research methodology: I code on the dependent variable (success of shaming) to conduct a single-case, qualitative study of what may be a unique case that defies both Franklin and Hafner-Burton's conclusions. I defy the methodological procedures laid out in King, Keohane, and Verba (henceforth KKV)'s seminal *Designing Social Inquiry* in the hopes that doing so will prove fruitful for future research directions.³ For KKV, an ideal research program arrives at correlations drawn from large-n aggregated data sets that include many different, relevant data-points. These correlations then allow us to make probabilistic inferences. The focus on inference from aggregated correlations diverts us away from explaining outliers to making probabilistic statements that are generally applicable. I defy KKV's procedures in the hope that, in the case of human rights, the outliers can teach us much more valuable policy lessons than can general statements.

To justify my anti-KKV methodology, I refer to precedent. In 1980, Walter Al-

1 James C. Franklin, "Shame on You: The Impact of Human Rights Criticism on Political Repression in Latin America," *International Studies Quarterly* 52, no. 1 (March 2008).

2 Emily Hafner-Burton, "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem," *International Organization* 62, no. 4 (October 2008).

3 Gary King, Robert Keohane, and Sidney Verba, *Designing Social Inquiry* (Princeton: Princeton University Press, 1994).

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varez and his father found an abnormally large layer of iridium -- an element rarely found on Earth but common asteroids -- at the K-T (Cretaceous-Tertiary) boundary that marked the extinction of the dinosaurs. By coding on the dependent variable (extra-terrestrial impact induced extinction) and by exclusively examining one case (the end-Cretaceous extinction event), Alvarez was able to work backwards from his evidence to hypothesize that the iridium layer and the extinction event was caused by a massive asteroid impact. He then eliminated other explanations for the iridium layer to definitively conclude that the only satisfactory explanation for the iridium layer and the extinction event was a massive asteroid impact.⁴ Alvarez's explanation, which he arrived at by taking everything KKV suggested and doing the opposite, is widely accepted as the explanation for the extinction of the dinosaurs.⁵

Pace KKV, Alvarez did not begin with a hypothesis (the dinosaurs went extinct from an asteroid impact), did not move on to examine cases of asteroid impact associated with extinctions and asteroid impacts not associated with extinctions; instead, he worked backwards from his evidence; had he avoided coding on the dependent variable, Alvarez would not be a house-hold name, since the K-T extinction event is the only extinction event associated with an asteroid impact.⁶

Similarly, cases of successful shaming that is unaccompanied by material incentives are rare. The case I have chosen to study may very well be only one of a mere handful. By looking only for cases of shaming unaccompanied by material incentives (in other words, by coding against the dependent variable), I stumbled across the unique case of Turkey in 1980 (my iridium layer at the K-T boundary). On September 1980, the Turkish military overthrew the Turkish civilian government to remedy the many ills plaguing the country. In the following three years, NGOs around the world began protesting Turkey's use of torture against extreme right-wing terrorists. In response, the Council of Europe cut off aid to Turkey and threatened to expel her from the Council. Despite the United States' aid more than doubling to make up for the evaporation of European aid, Turkish leaders responded by bringing many torturers to court and rapidly restoring democracy. I have worked backwards from the evidence to arrive at my hypothesis that European leaders' successful manipulation of Turkey was in large part due to Turkey's ideational need to be Western. I build on Darren Hawkins' ideas as laid out in his 2004 ISQ paper to hypothesize that by leveraging the ideas that constitute a "Western identity," Europe convinced Turkey to alter behavior.⁷ I have chosen to follow Alvarez's strategy of examining only this one case, and engaging with and ultimately dismissing rival explanations to show that my identity-based explanation is the only viable explanation. Pace materialist explanations, I recourse to an analysis of Turkey's identity to draw out the ideational, rather than material, interests and needs of the Turkish state to explain Turkey's relatively positive response to international diplomacy.

In this first section, I will spin a narrative of events leading up to Europe's successful use of shaming. Between 1970 and 1980, Turkey faced a host of distressing problems: paralysis in government, economic distress, and rising domestic terrorism. All three can be traced back to a severe weakness in government. In 1961, a military

4 David Waldner, "Transforming Inferences into Explanations: Lessons from the Study of Mass Extinctions," in Lebow and Lichbach, *Theory and Evidence in Comparative Politics and International* (New York: Palgrave Macmillan, 2007).

5 Peter Schulte, et al., "The Chicxulub Asteroid Impact and Mass Extinction at the Cretaceous-Paleogene Boundary," *Science* 5970 no. 327 (March 2010).

6 Richard Ned Lebow, "What Can We Know? How Do We Know," in Richard Ned Lebow and Mark Irving Lichbach, *Theory and Evidence in Comparative Politics and International Relations* (New York: Palgrave Macmillan, 2007).

7 Darren Hawkins, "Explaining Costly International Institutions: Persuasion and Enforceable Human Rights Norms," *International Studies Quarterly* 48, no. 4. (Dec., 2004).

coup overthrew an increasingly authoritarian government and rewrote the constitution to make it more parliamentary and less based on large majorities. The dark side of pluralism was a government paralyzed by in-fighting and held hostage by minority parties that held swing votes:

“the Turkish constitution writers of 1961...sought to prevent the re-emergence of an authoritarian partisan regime based on massive majorities... Turkish politics in the 1970s was thus characterized by fragmentation and polarization and by a lack of decisive authority on the part of the government”⁸

By May 24, 1980, the parliament still had not elected a head-of-state: “After 77 ballots, held over a period of two months, Turkey’s parliamentarians have still not elected a head of state.”⁹ The legislature was “left in a position where it [could] no longer fulfill its legislative and supervisory function for months.”¹⁰ When the armed forces, led by Chief of Staff General Evren, overthrew the civilian government in September 1980, Turkey had gone six full months without a President.¹¹ Economically, Turkey was hardly better: inflation stood at over 130% in 1980, and GNP growth had fallen from -4% in 1979 to -1.1% in 1980.¹² The balkanization of Parliament mirrored the extreme factionalism in society: as radical parties grew more vocal in the legislature, extreme left and right wing terrorists grew bolder on the streets. In the seven-month period between November 1979 and June 1980, terrorists killed 1,500 Turks.¹³ The chaos is even more apparent when this number is disaggregated. In 1976, terrorists killed 82 people; in 1977, they claimed 231 lives; in 1978, the death toll had increased 360% to 832; in 1979, 1,200 Turks lost their lives.¹⁴ Then, the death toll spiked: the first six months of 1980 alone witnessed terrorists kill 1,400 Turks -- 200 more Turks than in all of 1979, and roughly 20-30 deaths per day.¹⁵ To put this in perspective, terrorist related deaths in Turkey during the four years leading up to 1980 were roughly the same as deaths sustained by American forces in the first four years in Iraq from 2003-2007.¹⁶

On September 12, 1980, the military ousted the civilian government in a bloodless coup.¹⁷ Under military rule, law and order returned to the street. In the first twelve days of military rule, only six people were killed by terrorists.¹⁸ By the end of the month, the military had virtually eliminated terrorism throughout all of Turkey.¹⁹ Over the next three years, the military arrested over 60,000 people on charges of terrorism or illegal political activity.²⁰

Shortly after the coup, General Evren pledged to restore democracy and promptly began the process of re-writing the constitution.²¹ In the meantime, the gen-

8 Frank Tachau and Martin Heper, “The State, Politics, and the Military in Turkey.” *Comparative Politics*, 16, no. 1, (1983, October), 22-24.

9 *The Economist*, “Starting from Scratch.” May 24, 1980, 2.

10 Tachau and Heper “The State, Politics, and the Military in Turkey,” 27.

11 *Ibid*.

12 *The Economist*, “Turkish banks: In a sweat,” April 18, 1981.

13 *The Economist*, “Fancy a new government?” June 21, 1980.

14 *The Economist*, “Can the Turks unite against terror?” June 26, 1980.

15 *The Economist*, “Handle with care,” December 13, 1980.

16 *icasualties.org* (2009), 1.

17 *The Economist*, “The clean up,” September 27, 1980.

18 *Ibid*.

19 *The Economist*, “General progress,” October 18, 1980.

20 Dagi, Ihsan D., “Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy,” *Middle Eastern Studies* 32, no. 2 (April 1996).

21 *The Economist*, “No politicians, please,” January 24, 1981.

erals banned politicians that had served in government in the last few years from participating in government: "We will allow nobody from the political parties into this constituent assembly...We shall not hand back the country to those who brought it to this pass."²² Former politicians were also banned from making any public statements that were remotely related to politics.²³ By February 1981, the generals put retired military officers at the head of every civil bureaucracy.²⁴

In February, 1981 — six months after the coup — Western NGOs became increasingly concerned with human rights abuses by the military in its restoration of internal order. Amnesty International reported eight cases of alleged abuse in prison; in one case, soldiers clubbed a left-wing publisher to death.²⁵ Domestically, "the loudest complaints are now coming from extreme right-wingers, who claim that some of their people are being given a rough time in prison."²⁶ In the autumn of 1981, Amnesty International claimed that 57 people had died in suspicious circumstances.²⁷ Human rights were evidently not a concern for the military junta at this early stage of military government.

In large part due to public apathy, the Generals were unwilling to give a definitive roadmap for the restoration of democracy. Although General Evren pledged to restore democracy, Turks did not look forward to speedy democratization. When Evren toured the country-side and pledged to return Turkey to democracy, every crowd he visited would go into shocked silence and bellow "No! No!"²⁸ In December 1981, *The Economist* estimated that if you asked 100 Turks, 'Are you satisfied with the generals' rule?' About 90 would probably say yes. Most Turks want an early restoration of democracy, but asked if they want a speedy return of the civilian politicians they had 15 months ago the majority would say no.²⁹

During most of the military's rule, *The Economist's* correspondents would, time and time again, describe "popular enthusiasm for democracy" as "[remaining] limited", ascribing this lukewarm desire for democracy to fearing the chaos of the late 1970s.³⁰ Independent of *The Economist*, scholars have concluded that "throughout this period there was almost no popular political opposition to quicken the pace of democratization."³¹

Similarly, the Turkish public responded apathetically to the military's widespread use of torture. When asked about torture, a left-wing member of parliament shrugged, saying, "It's all perfectly normal isn't it? And in the circumstances what the army is doing is absolutely necessary"³² As with democracy, the general public "appears not to be greatly exercised" about torture and appeared much more concerned with the occasional flaring up of terrorist activity.³³

The Council of Europe and the European Economic Community, on the other hand, were both outraged with Turkey's use of torture, suspension of democracy, and banning of opposition political activity. In February 1981, the Council of Europe publicly condemned Turkey's human rights abuses, its undemocratic government, and the

22 Ibid.

23 *The Economist*, "A jump too soon," November 8, 1980.

24 *The Economist*, "Generals don't wear velvet gloves," February 14, 1981.

25 *The Economist*, "Handle with care," December 13, 1980.

26 Ibid.

27 *The Economist*, "First catch your subversives," March 20, 1982.

28 *The Economist*, "No politicians, please," January 24, 1981.

29 *The Economist*, "The ones who never get asked," December 12, 1981, 1.

30 *The Economist*, "New democracy is what they want," October 24, 1981.

31 Dagi, "Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy," 139.

32 *The Economist*, "Generals don't wear velvet gloves," February 14, 1981 1.

33 Ibid.

Generals' ambiguous roadmap for restoring democracy by beginning debate on expelling Turkey from the Council of Europe.³⁴ During its private deliberations, leaders in the Council described the Turkish ideational need to be European as "an opportunity" that the Council could leverage.³⁵ On May 23, 1981, the Council of Europe ejected Turkey from the Council's Parliamentary Assembly but allowed Turkey to send diplomats to inter-governmental meetings; the Council again threatened to suspend Turkey entirely if it did not democratize and address its human rights abuses.³⁶

In early 1981, the European Economic Community (the forerunner to the European Union) suspended its annual USD\$140m aid package to Turkey, promising to restart it only after Turkey democratized and tackled its human rights problems. The United States went above and beyond to make EEC's suspension of aid completely and thoroughly inconsequential. In 1980, the US pressured the International Monetary Fund (IMF) to extend \$92m in loans and postpone calling in Turkey's \$350m debt until the end of 1981. More significantly, the US extended \$435m to Turkey in 1981, nearly doubled it to \$702m in 1982 following the EEC's suspension of aid, and gave \$688m in 1983 — a whopping total of \$1.8 billion in aid while Turkey was ruled by the military; if the EEC's annual aid had not been suspended, it would only have amounted to \$420m.

Between December 1980 (when the Council of Europe first became concerned) and February 1981, the junta ordered Turkey's courts to begin handling human rights abuse claims. Five of nine soldiers faced serious charges of torture and abuse.³⁷ On December 13, 1980, Prime Minister Admiral Bulent Ulusu pledged that "everything would be done to prevent the ill-treatment or torture of detainees."³⁸ In that same period, Turkey began incarcerating prisoners charged with terrorism or illegal political activity in prisons described as "undoubtedly better than in the civilian prisons" in spite of the budgetary problems the government faced.³⁹ By 1982, Turkey jailed a total of nine soldiers on charges of torture and human rights abuse.⁴⁰ In 1983, the military handed over power to an elected civilian government despite Evren's private concerns that "the job was not finished yet."⁴¹ Although scholars have hesitated to definitively conclude that Turkey democratized faster under European pressure than it would have without, scholars have concluded that European "criticism noticeably obliged the military regime to make its aims [to democratize] crystal clear";⁴² that "in the absence of any significant popular demand for a speedy return to civilian rule at the home front, a very important factor was the international-European environment and the pressures from it;"⁴³ and that "the present danger of losing the gains and the accumulations of two hundred years'...political, ideological, and institutional engagement in the Western world constituted the long term thinking that was behind the Generals' decision to return to democracy."⁴⁴

I now engage with materialist explanations nested in the rational-choice research tradition to seek an explanation for Turkey's alteration of its behavior as a result of European pressure. The rational-choice research tradition attempts to explain and

34 The Economist, "Generals don't wear velvet gloves," February 14, 1981.

35 Dagi, "Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy," 131, 134.

36 The Economist, "Give the Turks time," May 23, 1981.

37 The Economist, "Generals don't wear velvet gloves," February 14, 1981.

38 The Economist, "Handle with care," December 13, 1980.

39 The Economist, "The perils of non-political politics," November 3, 1984.

40 The Economist, "First catch your subversives," March 20, 1982.

41 Dagi, "Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy," 139.

42 C.H. Dodd, C.H., *The Crisis of Turkish Democracy* (Cambridge: The Eothen Press, 1983).

43 Dagi, "Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy," 139.

44 Dagi, "Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy," 139.

predict actions with reference to material cost-benefit analysis. Any explanation must satisfactorily explain Turkey speeding up democratization and its choice to address its human rights abuses. I choose Kenneth Waltz's Theory of International Politics, Robert Keohane's *After Hegemony* as third image exemplars of this material, rational-choice and Robert Putnam's exploration of 'Two Level Games' as a second image exemplar of this paradigm. To prevent *ex post facto* justifications of these models, I make explicit all of the assumptions and predictions that follow from them before comparing the model's narrative to the events that actually unfolded.⁴⁵

According to Waltz, states (without exception) are security seeking at minimum and expansionist at maximum, even at the expense of economic gain; security takes precedence over monetary gain, and monetary gain (which can be used to increase security) takes precedence over intangibles like human rights.⁴⁶ Proceeding from these assumptions, Waltz's model expects states facing a threat to its security to take any steps necessary to resolve its security crisis, even if at the expense of monetary gain and certainly if at the expense of intangibles like international opinion. The breakdown of social order within Turkey from 1975-1980 impaired Turkey's ability to meet its external security obligations against the Soviet Union in the East, Kurdish separatists in the North, and Greeks to the South; to boot, the government faced the threat of losing the ability to enforce its dictums within its own borders. Arrests and curfew, used in combination with torture, drastically reduced social disorder as well as garnered domestic support for the junta. Waltz's model would predict that Turkey maintain its torture tactics and take its time democratizing because both have proven track-records at improving the state's ability to increase its security. Instead, Turkey punished torturers and, by all accounts, accelerated its democratization.

In Keohane's model, Keohane assumes that states seek both economic gain and security. In peace-time, security is less important than economic gain; when facing an existential security threat, an actor is more likely to privilege security.⁴⁷ The addition of economic gains as part of an actor's choices allows Keohane to predict, among other things (I do not list the ones irrelevant to the case at hand) that economic incentives and participation in international organizations can alter actor behavior through 'issue linkage'. Keohane's model would predict that a state facing a security threat to modify its behavior slightly if pressured with economic incentives or if cooperation in this area is linked to a different issue that involves economic incentives. Between 1975-80, Turkey undoubtedly faced a security threat; yet Turkey did not face economic pressures of the sort Keohane identifies as his independent variables — recall that America doubled its aid so that Turkey would not feel the effects of the EEC's suspension of aid, and recall that membership in the Council of Europe confers no economic gain. As a paradigm that ignores the ideational, Keohane's model would predict that actor agnosticism *viz.* who gave aid: who the aid comes from is meaningless — what matters is the amount of aid. Keohane's model would thus predict that Turkey respond positively to the United States' economic incentive (the massive increases in aid to offset EEC reductions) by continuing its torture regime and taking its time to democratize. Like Waltz, Keohane's model's prediction is wildly at odds with Turkey's actual behavior.

Moving away from the neo-neo consensus' third image analysis to a model grounded in second image analysis is not helpful either. Robert Putnam recognizes that

45 Steven Bernstein et al., "Social Science as Case-Based Diagnostics," in Lebow and Lichbach, *Theory and Evidence in Comparative Politics and International Relations*; and Richard Ned Lebow, *Forbidden Fruit: Counterfactuals and International Relations* (Princeton: Princeton University Press, 2010).

46 Kenneth Waltz, *Theory of International Politics* (New York: McGraw Hill, 1979).

47 Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 2005).

states often navigate conflicting international and domestic incentives and have to craft policies that somehow satisfy both.⁴⁸ Putnam constructs a two-level framework to “link these two sets of incentives and constraints.”⁴⁹ Yet Turkey faced no materially significant pressures to change from the international system (America increased aid to render Europe’s suspension of aid irrelevant) or from domestic actors (the majority of Turks supported the junta’s use of torture and its hesitant steps towards democratization). Putnam’s model, designed to explain policy choices in terms of tension between the second and third levels of analysis, fails to explain Turkey’s behavior because Turkey falls firmly outside the boundary conditions of his theory.

Instead, I construct an identity-based explanation that builds on Darren Hawkins’ thoughts to explain Turkey’s behavior. To do so, I begin by describing the birth of Turkey’s identity at the time of the Republic’s founding.

Following the Ottoman Empire’s defeat in the First World War, the Allied powers (England, France, Italy, and Greece), sought to reduce Turkey to a client state and occupy the profitable provinces. The Treaty of Sevres forced Turkey to relinquish all her Arab colonies; surrender Thrace, Smyrna, and eight Turkish islands in the Aegean to the Greeks; surrender the Dodecanese islands to Italy; give Armenia and Kurdistan independence; and give Anatolia to France and Italy.⁵⁰ Deeply indignant, General Kemal Ataturk launched and won a decisive three year war against the Allies and forced the Allies to respect the sovereignty of Turkey over its modern day territory.⁵¹

Ataturk associated ‘modernity’ with Europe, and thus sought to make Turkey as European as possible through a massive reform program. Ataturk charged the military with guarding Turkey’s European identity: “Mustafa Kemal Ataturk [desired] to create a strong state, based on Western ideas and ideals...it was [the military] to whom Ataturk entrusted the realization of his goals.”⁵² From that point onwards, generations of military officers were instilled with idea that they were responsible not only for protecting Turkey’s external security but also the security of her identity: “the military’s self perception as ‘the guardians of the state’ ... leads to intervention in political life to safeguard the principles of the republic.”⁵³ Since the founding of the republic the military has, directly and indirectly, nudged the civilian leadership towards closer and closer relations with Europe.

I believe that shaming, in the case of Turkey, was effective because it targeted a key ideational pillar of the Turkish state. The Council of Europe’s recognition that the Turkish ideational need to be European was “an opportunity” that the Council could leverage was absolutely critical to shaming Turkey. Rather than shame Turkey as uncivilized, appeal to her leaders’ sense of honor, or any other shaming tactic, the Council targeted its shaming at Turkey’s ideational need to be European. Because Turkish membership in the Council of Europe sustained Turkey’s identity as being “European”, the Council’s threat to expel Turkey from the Council was an ideationally existential threat as ominous as a physically existential threat. When we appreciate that an actor’s ideational survival is as important as an actor’s physical survival, we can add a third dimension to the models proposed by Waltz and Keohane: physical survival, economic gain, and ideational survival.⁵⁴

48 Robert Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” *International Organization*, 42, no. 3 (Summer 1988).

49 David Bosold and Kai Oppermann, “Governments as Gatekeepers: Mediating Domestic and International Discourses in Two-level Games,” as presented at the 4th CEEISA Convention in Tartu. (June 25-27, 2006), 3.

50 The Triple Entente, Treaty of Sevres (1920).

51 Kinross, Lord. *Ataturk: the Rebirth of a Nation* (London: Weidenfeld and Nicolson, 1992).

52 Gerassimos Karabelias, “The Evolution of Civil-Military Relations in Post-War Turkey, 1980-85,” *Middle Eastern Studies* 35, no. 4 (October 1999).

53 Dagi, “Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy,” 124.

54 Richard Ned Lebow, *Cultural Theory of International Relations* (Cambridge: Cambridge

Framed this way, facing expulsion from the Council is no less a security threat to Turkey than the security threat posed by terrorists within Turkish borders. Evren expressed as much to his personal aides and in his memoirs when he described how his personal stress and fear levels would greatly affect his ability to work whenever the Council of Europe met to debate expelling Turkey.⁵⁵ Hawkins suggested that all states assume a type-identity of being ‘civilized’; their behavior in the international arena will tend to conform, however loosely, to behavior consistent with the norms of ‘civilized’ behavior. Similarly, Turkey “knew that to be in Europe and accepted as European there was one precondition, that of re-establishing a democratic parliamentary system.”⁵⁶ By leveraging the norms that constitute a European identity — democracy and a respect for human rights — the Council of Europe was able to influence Turkey to rapidly democratize and address its human rights problems. This explanation best accounts for all the evidence.

There are, however, three possible problems with my identity-based explanations; all three involve the possibility that Turkey’s actions were epiphenomenal. My ideational explanation describes the junta as deeply committed to defending Turkey’s European identity: the first problem with my explanation is that the junta may have always intended to restore democracy and shaming was completely epiphenomenal. This first alternative explanation fails to address Evren’s democratization efforts in spite of his belief that “the job was not finished yet,” and many scholars’ belief that Turkey sped up its democratization process in response to European pressure. The second epiphenomenal possibility address only human rights: the restoration of internal order meant that torture and the human rights abuses associated with interrogation were no longer necessary so, once again, shaming coincided with but did not have a causal relationship with Turkey’s actions. This second alternative explanation is the most deadly as I must concede that this is an entirely possible alternative explanation for why Turkey addressed its human rights problems. The third problem follows directly from the first two: since the junta had restored order and since the junta desired democracy anyway, the carrot of EEC aid played a greater role than shaming by the Council of Europe; shaming may have coincided with the change in behavior, but the economic incentives, not the shaming, was most responsible for the change in Turkey’s behavior. This purely material explanation fails to address Evren and the junta’s debilitating apprehension at every Council of Europe expulsion debate.

In the end, the rational-choice research tradition relies on assumptions built on one ideal-type world and my identity-based explanation is rooted in another. The real answer, as Max Weber recognized, lies somewhere in between; any purely ideational explanation is incomplete without recognizing that material factors like aid are part of the narrative; the same is true of material explanations viz. ideational factors. My claim is a modest one: an identity-based explanation must be included as part of the picture because material, rational-choice models fail to fully explain the success of shaming in the case of Turkey 1980.

Most of political science begins with the hypothetico-deductive model to test a hunch before using the deductive-nomological model to write a generalized law that answers the question of Why the phenomenon happened.⁵⁷ In the hypothetico-deductive model (H-D method), scientists propose a set of hypothesis, state initial conditions, gather evidence, and assess the validity of the hypotheses. In the deductive-nomological model (D-N method), scientists take the hypothesis, supported by evidence, and create a gener-

University Press, 2009).

55 Dagi, “Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy,” 138.

56 Ibid., 139.

57 Waldner, David, “Transforming Inferences into Explanations: Lessons from the Study of Mass Extinctions,” in Lebow and Lichbach, *Theory and Evidence in Comparative Politics and International* (New York: Palgrave Macmillan, 2007).

ally applicable covering law.⁵⁸ Walter Alvarez defied the H-D method: rather than test a hunch first, he stumbled on his evidence first. Struggling to even think up a hunch to test, Alvarez opted to look for a causal mechanism that would explain his unique evidence. He similarly avoided the D-N model of covering laws: Alvarez simply proposed that given the specific boundary conditions of high levels of iridium coupled with the presence of shocked quartz and nano-diamonds that coincide with an extinction event, only an asteroid impact could sufficiently unify the evidence in a parsimonious explanation. Like Alvarez, I too am uninterested in D-N derived covering laws which may not hold across different times and spaces, a problem that renders covering laws highly contingent in the social world.⁵⁹ Frederick Kratochwil and David Waldner both argue that science is a communal activity where the measure of a 'good explanation' is not, *pace* KKV, 'good methodology' but rather a causal mechanism that answers not only the *Why* but also the *How*.⁶⁰ I have taken Kratochwil and Waldner to heart as I look to Alvarez as my model for examining a unique, possibly one-off phenomenon. I answer the *Why* demanded by the D-N model by arguing that the Council of Europe's shaming directly affected a deep ideational need within the Turkish national identity. Rather than stop at a covering law that 'All states with an ideational need to belong to another group are susceptible to shaming by said group', I answer the *How* demanded by Waldner by arguing that the Council of Europe created an ideational existential threat to the Turkish state by leveraging the norms that constitute a European identity to induce Turkey to conform to those norms.

The paucity of successful shaming cases precludes the possibility of a broader research effort. This ought not trouble us. Early on, Hans Morgenthau recognized that covering laws work only when we aggregate a large number of cases and that political science often deals with unique cases where such large studies are impossible.⁶¹ In light of this, Morgenthau "struck out in a completely different direction, seeking a path illuminated not by science but by wisdom" where leaders could hermeneutically reconcile science's conclusions with their hard-won instincts to make decisions.⁶² I have opted to study a singular case where shaming worked to advance the classical realists' cause of wisdom, not science. Shaming may, in most cases, make things worse; but I show that given very specific conditions, shaming can become an ideational weapon that poses an existential threat that allows us to influence behavior. I leave it to policy-makers to decide, in the moment, whether the country they are thinking of shaming is susceptible to the same ideational existential threats the Council of Europe brought to bear on Turkey in 1980. I hope that, by highlighting one set of boundary conditions in which shaming was highly effective and by positing a causal mechanism by which one type of successful shaming can work, I have offered a more balanced perspective on the use of shaming than has recently dominated the IR literature and that I have opened the door for more qualitative studies of this sort.

58 Waldner, David, "Transforming Inferences into Explanations: Lessons from the Study of Mass Extinctions," in Lebow and Lichbach, *Theory and Evidence in Comparative Politics and International* (New York: Palgrave Macmillan, 2007) 147, 151.

59 Gabriel Almond, "Clouds, Clocks, and the Study of World Politics," *World Politics* 29 (1977) and Lebow, *Forbidden Fruit: Counterfactuals and International Relations*.

60 Frederick V. Kratochwil, "Evidence, Inference, and Truth as Problems of Theory Building in the Social Sciences," in Lebow and Lichbach, *Theory and Evidence in Comparative Politics and International Relations* (New York: Palgrave Macmillan, 2007) and Waldner, "Transforming Inferences into Explanations: Lessons from the Study of Mass Extinctions."

61 Reed Davis, "Scientific Man versus Power Politics: Classical Realism and the Case Against A Darwinian Theory of International Relations," for presentation at the 2011 ISA Annual Conference (March 16-19, 2011).

62 Davis, "Scientific Man versus Power Politics: Classical Realism and the Case Against A Darwinian Theory of International Relations," 2011, 17.

WORKS CITED

- Almond, Gabriel. "Clouds, Clocks, and the Study of World Politics." *World Politics* 29 (1977).
- Bernstein et al. "Social Science as Case-Based Diagnostics," in Lebow and Lichbach, *Theory and Evidence in Comparative Politics and International Relations*. New York: Palgrave Macmillan, 2007.
- Bosold, David and Oppermann, Kai. "Governments as Gatekeepers: Mediating Domestic and International Discourses in Two-level Games," as presented at the 4th CEEISA Convention in Tartu. (June 25-27, 2006).
- Dagi, Ihsan D. "Democratic Transition in Turkey, 1980-83: The Impact of European Diplomacy." *Middle Eastern Studies* 32, no. 2 (April 1996).
- Davis, Reed. "Scientific Man versus Power Politics: Classical Realism and the Case Against A Darwinian Theory of International Relations," for presentation at the 2011 ISA Annual Conference. (March 16-19, 2011).
- Dodd, C.H. *The Crisis of Turkish Democracy*. Cambridge: The Eothen Press, 1983.
- Franklin, James C. "Shame On You: The Impact of Human Rights Criticism on Political Repression in Latin America." *International Studies Quarterly*, 52, no. 1 (March 2008).
- Hafner-Burton, Emily. "Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem." *International Organization*, 62, no. 4 (October 2008).
- Hawkins, Darren. "Explaining Costly International Institutions: Persuasion and Enforceable Human Rights Norms." *International Studies Quarterly* 48, no. 4. (Dec., 2004).
- icasualties.org (2009)
- Karabelias, Gerassimos. "The Evolution of Civil-Military Relations in Post-War Turkey, 1980-85." *Middle Eastern Studies* 35, no. 4 (October 1999).
- Keohane, Robert O. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton: Princeton University Press, 2005.
- Kinross, Lord. *Ataturk: the Rebirth of a Nation*. London: Weidenfeld and Nicolson, 1992.
- King, Gary, Keohane, Robert, and Verba, Sidney. *Designing Social Inquiry*. Princeton: Princeton University Press, 1994.
- Kratochwil, Fredrich V. "Evidence, Inference, and Truth as Problems of Theory Building in the Social Sciences," in Lebow and Lichbach, *Theory and Evidence in Comparative Politics and International Relations*. New York: Palgrave Macmillan, 2007.
- Lebow, Richard Ned. *Forbidden Fruit: Counterfactuals and International Relations*. Princeton: Princeton University Press, 2010.
- , "What Can We Know? How Do We Know," in Richard Ned Lebow and Mark Irving Lichbach, *Theory and Evidence in Comparative Politics and International Relations*. New York: Palgrave Macmillan, 2007.

Putnam, Robert. "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization*, 42, no. 3 (Summer 1988)

Schulte, Peter et al. "The Chicxulub Asteroid Impact and Mass Extinction at the Cretaceous-Paleogene Boundary" *Science*, 5970 no. 327 (March 2010)

Tachau, Frank, and Heper, Metin. "The State, Politics, and the Military in Turkey." *Comparative Politics*, 16, no. 1, (1983, October).

The Economist. "A jump too soon" November 8, 1980.

—. "A parliament but no politicians." July 4, 1981.

—. "Business smiles." August 16, 1980.

—. "Can the Turks unite against terror?" July 26, 1980.

—. "Democracy needs a helping hand." October 3, 1981.

—. "Democracy with strings attached." July 24, 1982.

—. "Fancy a new government?" June 21, 1980.

—. "First catch your subversives." March 20, 1982.

—. "Fumbling in Turkey." July 9, 1983.

—. "Generals don't wear velvet gloves." February 14, 1981.

—. "General progress." October 18, 1980.

—. "Give the Turks time" May 23, 1981.

—. "Handle with care." December 13, 1980.

—. "Inshallah: It's fundamental -- They've got reform, now they want growth." November 3, 1984.

—. "Last chance for Demirel." December 1, 1979.

—. "Let's vote again." August 23, 1980.

—. "New democracy is what they want." October 24, 1981.

—. "No politicians, please." January 24, 1981.

—. "Out of the freezer." February 12, 1983.

—. "Seeing Turkey plain." December 12, 1981.

—. "Starting from Scratch." May 24, 1980.

—. "The clean up." September 27, 1980.

—. "The economy behind the politics." November 3, 1979.

-
- . “The general who took no chances.” November 13, 1982.
 - . “The guarding hand.” October 23, 1982.
 - . “The ones who never get asked.” December 12, 1981.
 - . “The perils of non-political politics.” November 3, 1984.
 - . “Thou shalt teach only Kemalism.” February 26, 1983.
 - . “Turkey comes in from the cold.” April 16, 1983.
 - . “Turkish banks: In a sweat.” April 18, 1981.

The Triple Entente. Treaty of Sevres.1920.

Waldner, David. “Transforming Inferences into Explanations: Lessons from the Study of Mass Extinctions,” in Lebow and Lichbach, *Theory and Evidence in Comparative Politics and International*. New York: Palgrave Macmillan, 2007.

Waltz, Kenneth. *Theory of International Politics*. New York: McGraw Hill, 1979.

Wendt, Alexander. *Social Theory of International Politics*. Cambridge: Cambridge University Press, 1999.

BEYOND THE BLAME GAME: AN ASSESSMENT OF THE MOTIVATIONS, POLICIES, AND OBSTACLES BEHIND MEXICO'S CARTEL VIOLENCE

Ben Schenk

As Mexico's cartel violence pushes against the United States' border, academics have debated its status as a "captured," or "failed" state. This paper explores the connection between the violence in Mexico and the United States' drug, arms, and economic policies. It concludes that many of the neoliberal economic policies have put Mexican workers in a dependent position to the United States consumer. Given the steady demand for illegal narcotics in Mexico's border state, poor Mexican workers are turning to regionally based cartels for employment and protection. By passing laws that favor a corporatist structure, and ignoring the re-distributive desires for much of Mexico's poor population, the Mexican regime has created a niche within which cartels continue to operate. United States policy-makers can no longer place blame solely on the Mexican government. Both the United States and Mexican governments contribute to the conflagration that is Mexico's cartel violence.

*"Ok, right now, all over this great nation of ours, 'hundred thousand white people from the suburbs are cruisin' around downtown asking every black person they see 'You got any drugs? You know where I can score some drugs?'" *Think* about the effect that that has on the psyche of a black person, on their possibilities. I... God I guarantee you bring a hundred thousand black people into your neighborhood, into fuckin' Indian Hills, and they're asking every white person they see "You got any drugs? You know where I can score some drugs?", within a *day* everyone would be selling. Your friends. Their kids. Here's why: it's an unbeatable market force man. It's a three-hundred percent markup value. You can go out on the street and make five-hundred dollars in two hours, come back and do whatever you want to do with the rest of your day and, I'm sorry, you're telling me that... you're telling me that white people would still be going to law school?"¹*

Whether or not policymakers can publicly admit it, the United States is a nation of addicts. Americans are addicted to nearly everything and anything; from the coffee they drink in the morning to the name brand jeans they purchase in the afternoon, and, in other cases, the substances they consume to enhance, cope with, or medicate themselves. And no matter how hard those who prohibit it may try, North American drug trends are simply not tilting toward the imaginary puritanical haven, which exists only in the realm of the 1950s made-for-television families.²

President Nixon first coined the term "War on Drugs" in 1971, rhetorically enhancing the Harrison Narcotics Tax Act of 1914, which prohibited the distribution and consumption of drugs in the United States. The term struck a cord with and carried through the presidency of Ronald Reagan. However, his administration could not

1 Traffic, dir. Steven Soderbergh, writ. Simon Moore and Stephen Gaghan, perf. Michael Douglas and Benicio Del Toro, iTunes, Bedford Falls Productions, 2000.

2 World Drug Report 2010. United Nations Publication, 2010. Print. pp. 124.

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resist covertly embezzling Columbian cocaine as a form of “currency” by which it armed right-wing guerilla rebels against Nicaragua’s reigning Sandinista government.³ American politicians have constantly espoused “puritanical values regarding drugs” while their constituents “consumed them in enormous amounts.”⁴ Despite this, every presidential administration succeeding Nixon, with the exception of the current Obama administration, has looked toward Mexico as the ‘friend they knew with a drug problem.’ Howard Campbell, Sociologist at the University of Texas at El Paso, posited that the battle against drug proliferation’s greatest irony stems from Mexico’s status as “a poor drug-producing, drug-smuggling, and drug-consuming country that needs drug profits in order to survive economically, even though drug-related violence, corruption, and public insecurity devastate the economy.”⁵ Other scholars see the conflict as post-political, noting, “Neither [Mexico’s] political left nor right has managed to muster the slightest resistance.”⁶ This is combined with an increasingly disproportionate distribution of Mexican wealth, a media that romanticizes and aids gangsters in their ability to propagate, and a Mexican government held hostage by the debilitating effects of a black market economy based, essentially, on the proximity to the world’s largest economic superpower and, subsequently, the largest consuming market for illegal drugs. As cartels continue competing for lucrative smuggling and distribution routes, Mexico’s out-of-control violence could very well compromise the United States’ national security.

Before analyzing the United States’ failed drug policies, this paper will outline the current violence, which Campbell defines as the “Drug War Zone,” or “any place or situation in which drug traffickers, drug users, and antidrug narcs confront, avoid, or attempt to subvert one another.”⁷ The first section will explore Mexico’s political status: discussing some of the graphic methods Mexico’s drug cartels have employed to capture strategically important drug-producing regions, the degree to which the Mexican federal government has maintained order amongst its populace, and a new series of murders, known as feminicidio, or femicide, which have primarily been carried out in the most dangerous city in the world, Ciudad Juarez. The second section will address the myriad ways by which American and Mexican media—whether it be American gangster films, Youtube, conventional journalism, or the proliferation of a “folk Catholicism,” which has been used as justification for murder—has enabled the violence in Mexico to conflagrate. The paper will analyze the “quasi-monopolistic, oligopolistic” structure of the cartels, and compare them to a multinational corporation (MNC) operating with a one-track goal in mind: profit.⁸ Lastly, the paper will highlight three policy areas—firearms, narcotics, and regional free trade—in which the United States government has enacted or maintained legislation designed to counterproductively defeat its own “War on Drugs.” The final section will also address budgetary and bureaucratic realities, which make it difficult for the public sector to enforce a prohibitory policy against, and cooperate with, a multinational corporation feeding a rampant demand from inside and beyond its own borders.

“Well who has my job in Mexico?”

“Your position doesn’t exist over there yet.”⁹

3 Gary Webb, *Dark Alliance* (New York: Seven Stories Press, 1998)

4 Campbell, Howard. *Drug War Zone: Frontline Dispatches From the Streets of El Paso and Juárez*. Austin: University of Texas, 2009. Print. pp. 10.

5 Campbell, pp. 11.

6 Vulliamy, Ed. *Amexica: War Along the Borderline*. New York: Farrar, Straus and Giroux, 2010. Print. pp. 13.

7 Campbell, pp. 6.

8 Campbell, pp. 18.

9 Traffic

The words of Robert Wakefield, a fictional conservative judge and newly appointed Drug Czar charged with overseeing “the strategy to win the War on Drugs,” exemplify the stark disconnect between Mexico’s and the United States’ drug bureaucracies. It should then come as no surprise why a December 3rd Wikileak from the United States Embassy described Mexico’s army as “slow and risk averse” in acting on intelligence obtained by various United States intelligence agencies.¹⁰ One of the main obstacles impeding a unified strategy stems from Mexico’s clear desire to maintain its sovereignty and in doing so, it restricts United States officials from arresting Mexican nationals. Though Mexico’s Supreme Court has made easier the extradition of various cartel leaders to United States prisons, the Brownsville Agreement has made law enforcement even more cumbersome. Signed on July 2, 1998 between the Clinton and Zedillo administrations, it “obliged U.S. law enforcement agencies—principally customs, the DEA, and the FBI—to notify, through the United States Embassy in Mexico City, the Mexican attorney general’s office of their undercover investigations and informants.” The agreement increased an already inherent danger in Mexican undercover operations, thereby making it “harder to deal with Washington than to fight the criminals.”¹¹ A clear mandate, common approach, and mutual trust would almost certainly increase both governments’ efficiency as they fight multiple criminal gangs infringing on the safety of their respective states. Both governments will need the other’s help if they plan on reducing the violence inside Mexico and preventing its spread into the United States.

Make no mistake; the cartels are by no means a bunch of rough-and-tough Mexican cowboys. The independent organizations and their respective leaders, or *Jefes*, more closely resemble a private corporation, complete with armed private mercenaries at the behest of a Chief Executive. Unlike MNCs, though, the cartels strictly abide by a pseudo-Catholic religion with Santa Muerte—the hooded skeleton, which “holds the orb of the world in one hand and her scythe in the other,” and is usually adorned with a crown and white cloak—as its figurehead.¹² In addition, the consciences of murderers, killing in the name of personal financial profit, are eased by Santo Jesus Malverde, “a bandit with a Robin Hood legacy to whose shrine in Sinaloa devout traffickers pay homage with devotional pledges, mandas, in return for the holy outlaw’s blessing.”¹³ The cartels have not only corrupted political and legal officials, but they have done so based on a self-fulfilling religious doctrine. And every willing participant in Mexico’s criminal network follows these beliefs—from the low-level hit men all the way up to the cartel capos.

Joaquín Guzmán Loera is infamously known as “El Chapo” for his distribution of methamphetamines, marijuana, and heroin to the world’s drug users, in addition to his now legendary escape from a high-security Mexican prison. In addition to receiving preferential prison treatment, which provided him with the ability to coordinate his organization behind bars, he allegedly paid a total sum of \$2.5 million to over 75 people who aided in his escape.¹⁴ A few years after his escape, Guzman attended a restaurant in Nuevo Laredo, during which time his Sinaloa cartel and the Gulf cartel, Nuevo Laredo’s incumbent cartel power, were battling for control of the city. In a stunning display of hubris, Guzman’s bodyguards asked the restaurant’s patrons “not to use cell phones while Guzman and his entourage enjoyed their meal and drinks, after which El Chapo pulled out thousands of dollars in cash and paid for everyone in the room.”¹⁵ Guzman’s case is not an isolated example of Mexico’s political corruptibility and cartel leader’s insistence on us-

10 “Wikileaks Cables: US Mexico Drugs War Fears Revealed.” BBC News. Associated Press, 3 Dec. 2010. Web. 8 Dec. 2010.

11 Vullaimy, pp. 109-10.

12 Vullaimy, pp. 57.

13 Vullaimy, pp. 56.

14 Vullaimy, pp. 227.

15 Tracy Wilkinson, “‘El Chapo’ Has Left the Building,” Los Angeles Times, December 3, 2008.

ing the public theatre as a means of wielding influence. Over “eighty *municipios* (similar to counties) are controlled by drug traffickers...and 8 percent of Mexican territory is controlled by *narcos*,” according to Mexican government officials.¹⁶ In fact, some Mexican citizens distrust police officials so much that “ninety-six percent of kidnappings are never reported” to officials.¹⁷ Though kidnapping mediation can often involve uniformed police officers, average citizens often find them more useful as middlemen delivering ransom money than as agents of justice.

The La Familia cartel serves as an exemplar of state capture in the state of Michoacan. When La Familia began taking over the Tierra Caliente region in September of 2006, it turned heads around the country—literally. Soon after the organization beheaded five bodies and rolled the severed heads onto a discothèque’s dance floor, it posed a simple question to their newfound constituents: “Who are we?” La Familia’s short and class-based response revealed the organization as:

“Workers from the Tierra Caliente region in the state of Michoacan, organized by the need to end the oppression, the humiliation to which we have constantly been subjected by people who have always had power.”

A sign left outside the discothèque read: “La Familia doesn’t kill for money, it doesn’t kill women, it doesn’t kill innocent people—only those who deserve to die. Everyone should know: this is divine justice.”¹⁸ Having set in place its new constitution, La Familia embarked on a mission designed to curry favor with local residents by providing governmental-like services in exchange for the freedom to produce crystal methamphetamine and cocaine. One citizen noted La Familia’s efficiency in resolving debt disputes, though “they’ll charge you a fee.”¹⁹ A Michoacan regional official highlighted the popular public fiestas La Familia threw its constituents, though “they’ve stopped giving them now...because of [Calderón’s] campaign.”

La Familia has “provided employment, insured public security, helped the poor,” and “if they find you drunk in public, they’ll take you off, pull down your pants, and beat you with a long stick with holes in it.”²⁰ As self-anointed adjudicators of morality, “they tell boys to keep their hair short and walk like a man, not a clown.” According to the official, “one boy would not listen, so they killed him.”²¹ The organization has even been suspected of engendering organized anarchy demonstrations to the point where “the [Mexican] Army and the federal police sent in by Calderón are seen as hated occupiers.”²² La Familia’s strategy does not require subverting the federal government’s condemnation of illicit narcotics activities, nor does it aim to directly challenge and replace Mexico’s existing government. It merely relies on “harnessing regional and communal identities, so that people almost root for [the cartels] the way they would root for their soccer teams.”²³ Whether or not the support is sincere or contrived through fear tactics, it has established sub-political communities within Mexico, complete with a subjective constitution aimed at incubating one of the many micro, drug-producing regions inside Mexico.^{24*} Some

16 Ravelo, Ricardo. 2008. *El narco es ya una estructura nacional*. Proceso 1664 (September 21, 2008): 6-11.

17 Finnegan, William. “Letter from Mexico: Silver or Lead.” *The New Yorker* 31 May 2010: 39-51. Web. 20 Nov. 2010. pp. 48.

18 Vullaimy, pp. 36.

19 Finnegan, pp. 39.

20 Finnegan, pp. 41.

21 Finnegan, pp. 42.

22 Finnegan, pp. 40.

23 Vullaimy, pp. 304.

24 * The Mexican Ambassador to the United States, Arturo Sarukhan, believes La Familia’s popularity derives from a psychological syndrome similar to “Stockholm Syndrome.”

inevitably perceive La Familia's approach as a private, governmental alternative, similar to Mancur Olson's "stationary bandits." Instead, La Familia, among others, has forfeited any and all obligations to serving a broader political community by murdering those who step in their way. Cartels more closely resemble what Olson describes as "roving bandits," exploiting the anarchical system they maintain as a conduit for the pilfering of society's resources.²⁵

*"In Mexico, law enforcement is nothing more than an entrepreneurial activity."*²⁶

If an academic wished to gain insight into anarchy beyond a theoretical understanding of the concept, he or she need not look further than Ciudad Juárez. Awarded the title of the world's most dangerous city, the Citizens Council for Public Security (CCPS) "calculated Juarez as killing 191 citizens per 100,000, way ahead of second-place San Pedro Sula in Honduras with 119, New Orleans with 69, Medellin with 62, and Cape Town with 60."²⁷ The violence in Juárez does not occur in a vacuum. "It is difficult for someone to invest in [Juárez] if they know that they will become victims of extortion, robbery, and kidnapping," according to Cesar Fuentes' account in *El Diario* newspaper.²⁸ The city, in particular, has experienced an unprecedented upsurge in violence since 2006, when the newly elected President, Felipe Calderón, declared "war" on the cartels operating inside Mexico's borders. Since that time—and especially in Ciudad Juárez—murders have devolved into brutal mutilations; torture often serves as the purgatorial standard before bodies pass on and are treated with the like respect of an inferior species' carcass. One such torture technique, known as "bone tickling," is a notorious trademark of the Arellano Brother's Tijuana Cartel in which a torturer:

"Scrapes the [victim's] bone with an ice pick sunk through the flesh. The cartel's torture methods are of "calculated atrocity;" another victim of the Tijuana Cartel "was left tied to a chair and his hands chopped off, so that he bled slowly to death, alone."²⁹

Dr. Hiram Munoz studies the brutality associated with the conflict and understands the various ways by which bodies are mutilated as a form of narcomanta, or public display of communication:

"Each different mutilation leaves a clear message. They have become a kind of folk tradition. If the tongue is cut out, it means they talked too much...A man who squealed on the clan has his finger cut off and maybe put in his mouth...Sometimes fingers are stuck up the rectum...If you are castrated you may have slept with or looked at the woman of another man in the business. Severed arms could mean that you stole from your consignment, severed legs that you tried to walk away from the cartel. Decapitation is another thing altogether: it is simply a statement of power, a warning to all, like public executions of old."³⁰

Equally as chilling, though separate in its own class of murderous communication, is a

25 Olson, Mancur. *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard UP, 1971. Print.

26 Traffic

27 CCPSSJ report, quoted in *El Diario de Juarez*, January 11, 2010.

28 Vullaimy, pp. 134.

29 Vullaimy, pp. 49.

30 Vullaimy, pp. 50.

new addition to the Spanish language in Ciudad Juárez: “feminicidio, femicide, the mass slaughter of women.”³¹ Marisela Ortiz researches these specific cases, and their implications for gender roles in society. She denotes patterns amongst the victims: “They are poor, young, working class,” and they “have been tortured, mutilated, bruised, fractured, or strangled and violated...the killers take no trouble to cover up evidence.” In fact, a December 2009 report by *Proceso* magazine positively correlated Juárez’s escalation of violence with the number and brutality of femicidal murders.³² Ortiz believes the murders say more about the perpetrators than they do the victims:

“That men would think this was a way to exert their power, to overwhelm women and other people with such violence, until such point as that kind of violence spreads like cancer and becomes a part of the culture. So you end up with this madhouse. There was an execution in September across the street from where I teach, and the sicario came to pick up his child so it could watch the execution.”³³

Until very recently, the Mexican authorities’ passive response to these murders has been: “if you are sexually attacked, pretend to vomit. That will be repulsive to the attacker, and he will probably flee.”³⁴ Cecilia Bali, an anthropology professor at the University of Texas at Austin claims, “the feminicidios ultimately signal a crisis of masculinity... the style of the violence demonstrates a specific kind of male performance and a complete domination of the other person.”³⁵ Yet, as far as government involvement goes in Mexico’s violence, a passive disapproval is not as bad as it can get.

In addition to feminicidio, drug rehab centers have become specific targets in Ciudad Juárez’s new wave of violence. Some believe drug cartels have a logical stake in eliminating those trying to clean themselves up because once they have “fixed themselves a new life, they would become dangerous, no longer bonded to the organization and knowing too much.”³⁶ But not everyone in Juárez ascribes to this narrative. According to Gustavo de la Rosa Hickerson, legal director of the Chihuahua branch of the National Human Rights Commission, the calculated mass killing of malandros, people who sit on the periphery of the war as unaffiliated drug users, “suggests training in the army or federal police,” adding that “they often do this within three hundred yards of an army checkpoint.”³⁷ Evidence of *limpieza social*, or the cleansing of Mexico’s unwanted outcasts, can be found in General Jorge Juárez Loera’s speech to Mexican journalists on April 4th, 2008:

“The media...should not be afraid. I hope they will trust us, and I would like to see the reporters change their articles and where they say ‘one more murdered person,’ instead say, ‘one less criminal.’”³⁸

Though Ciudad Juárez’s violence has been highlighted, “the killing is everywhere across Mexico,” and is specifically “concentrated along the border with the United States—

31 Vullaimy, pp. 176.

32 *Proceso*, various articles in special edition, December 9, 2009.

33 Vullaimy, pp. 194.

34 Vullaimy, pp. 183.

35 Vullaimy, pp. 179.

36 Vullaimy, pp. 150.

37 Vullaimy, pp. 154.

38 Alejandro Salmon and Orlando Chavez, “Ejecutados son un delincuente menos,” *El Diario de Juárez*, April 4, 2008.

twenty-one hundred miles long.”³⁹ Mexican government officials tend to highlight acute victories, as occurred when a Mexican Naval Special Forces unit attacked the Beltran Leyva cartel’s head of security, causing the death of the unit’s commander.⁴⁰ But this victory must be put into perspective. Immediately proceeding the commander’s funeral procession, members of the Beltran Leyva cartel responded by storming into the commander’s grieving home, killing his sister, brother, aunt, and mother.⁴¹ Additionally, insofar as the United States government seizes every opportunity to highlight drug busts and uncover smuggling tunnels, few Americans understand that Los Zetas—a former American trained-Mexican Army Special Forces Unit turned private mercenary organization for cartel operations before entering the smuggling business themselves—obtained forty bulletproof vests marked with the letters ‘FBI’ and ‘DEA’.⁴² Understanding the violence is an important first step toward figuring out how to reduce it, but deciphering what motivates and perpetuates the violence is equally as important.

*“Education, rehabilitation; that’s not significant to these reporters, they want to see the gory aspect to it.” — Senator Harry Reid*⁴³

The means of mass communication—a single Los Angeles Times article; the murder of a Mexican journalist covering the narco beat in Ciudad Juárez; a Youtube video recording, publicly, the gory killing of a cartel’s adversary; a federal drug bust turned press conference; the categorization of architecture in Juárez “as being of the “early narco,” “mid-narco” or “high narco” period;”⁴⁴ even narcocorridos, a folk-infused Mexican musical genre dedicated to the sheer awesomeness of the narco’s luxurious lifestyle—innumerable shape perceptions about the cartels and the forces battling to defeat them. Ironically, yet unsurprisingly, members of the drug cartels have internalized a narco culture that closely resembles the lifestyles of the fictional characters portrayed by Marlon Brando and Al Pacino, among others, in Hollywood mobster classics.⁴⁵ American media is therefore a contributing factor toward creating and shaping the narco’s drive for success: “When the narco trafficker looks into the mirror, he sees not a criminal but a romantic bandit.”⁴⁶ Immoral, crass, and dehumanizing as the murders may be, the battle for territory is not about the distribution networks, nor is it about the drugs themselves. These commodities are means to an even greater end: the desire to succeed in a consumer culture based on a tangible expression of status, prestige, and rank. Though many often label the cartels as ‘drug cartels,’ such a narrow definition glosses over the other business activities in which they engage. According to a 2009 DEA briefing, “only 20 percent of” Los Zetas’ “turnover is now generated by drug trafficking.”⁴⁷ The logic for the narcos is simple: “if you have this T-shirt, you get a cute girl to show off; if you have an even more

39 Vullaimy, pp. 4.

40 Malkin, Elisabeth. “U.S. Aided Mexican Drug War, With Frustration.” The New York Times 3 Dec. 2010. 3 Dec. 2010. Web. 7 Dec. 2010.

41 Tracy Wilkinson, “Mexican Family Slaughtered as Drug Lords Take Revenge,” Los Angeles Times, December 23, 2009.

42 Dane Schiller, “Drug Cartel May Be Using Bogus ‘FBI’ Vests,” Houston Chronicle, April 1, 2009.

43 Traffic

44 Vullaimy, pp. 126.

45 See Scarface, dir. Brian de Palma, writ. Oliver Stone, perf. Al Pacino, Steven Bauer, and Michelle Pfeiffer, DVD, Universal Pictures, 1983; And see The Godfather, dir. Francis Ford Coppola, writ. Mario Puzo, perf. Marlon Brando, Al Pacino, and James Caan, DVD, Paramount Pictures, 1972.

46 Vullaimy, pp. 11.

47 Vullaimy, pp. 291.

expensive T-shirt, you get an even cuter girl.”⁴⁸ No different than the motivations behind many Ivy League students’ decisions to join corporate firms or investment banks:

“The narco war is fought for the accoutrements...of postmodern social kudos, social performance, the ability to show off the right labels, brands, and products in accordance with advertising; to wear the right clothes, to be accompanied by the appropriately desirable partner, chatter on the latest mobile phone with the latest applications, own the right gadget, and drive the right SUV. For these definitions of status, thousands die.”⁴⁹

Jorge Hernandez, the vocalist for Los Tigres, a famous and controversial narco band whose latest hit single, ‘La Granja’, which outwardly criticizes President Calderón’s recent campaign against the cartels, touched on the narcocorridos’ ability to herd public opinion favorably toward the cartels:

“Poor people idolize the narcos: they admire their bravery, and they want to be like them. When you sing the songs, the audience feels that they’re living through the characters, as if they were watching a film. That’s why people love the corrido. It lets them dream.”⁵⁰

In addition to the culture, cartels wield their influence by coercing various news outlets into withholding stories counter to their interests. Some cartels commonly force certain journalists to write stories catering to a specific cartel’s interest. Moreover, various cartels commonly kidnap journalists who choose to cover controversial topics, even if they do not realize a particular topic’s controversy.⁵¹

*“If there is a “War on Drugs” then many of our family members are the enemy. Now, I don’t know how you wage war on your own family.”*⁵²

On the other side of the border, a disconnect exists; manifested by a media that espouses “fair trade” coffee, wine, and agricultural products, yet “treats celebrity drug taking as fodder for tittle-tattle gossip...” and an “only slightly disapproving-waggle of the forefinger.”⁵³ Imagine if media outlets scorned Lindsay Lohan for snorting up the lives it took to get her eight ball of drugs across the border. Some may argue that the media, like the Mexican cartels, has no place subjecting its viewership to a privatized sense of morality; that it should be the job of families and families alone to control the behavior of their children. Indeed, families must do a better job facilitating an open dialogue with their children to reduce consumer drug demand.⁵⁴ However, not everyone has a willing parent, or an able one for that matter. By treating celebrity drug use as a mere side af-

48 Vullaimy, pp. 285.

49 Vullaimy, pp. 12.

50 Martin Hodgson, “Death in the Midday Sun,” Observer, London, September 19, 2004.

51 Booth, William. “In Mexico’s Nuevo Laredo, Drug Cartels Dictate Media Coverage.” The Washington Post 2 Aug. 2010. Print.

52 Traffic

53 Vullaimy, pp. 11.

54 This point is made clear in Traffic when judge Robert Wakefield’s daughter becomes a runaway heroin addict because of her father’s insistence on “seeing the front lines,” causing him to work long hours away from home. The movie concludes with the judge fleeing a press conference in which he was supposed to deliver a standard, pro-War speech, and coming home to fight the “war” from the actual front lines; supporting his daughter, a recovering drug addict, by attending rehab counseling together.

fect of the industry of which celebrities are a part, the media deserves blame for sending the wrong message, which is no message at all.

When director of the F.B.I., Robert S. Mueller, decried “a substantial blow to a group that has polluted our neighborhoods with illicit drugs and has terrorized Mexico with unimaginable violence” after an October 2009 raid, which seized “more than seven hundred pounds of methamphetamine, sixty-two kilograms of cocaine, nearly a thousand pounds of marijuana...and \$3.4 million in U.S. currency,” media outlets snapped photos of the seizures and conveyed the F.B.I.’s narrative to the public.⁵⁵ Important as the raid may be, the media neglected reporting an even greater truth from the scene inside the captured drug warehouse. That those drugs had been ordered and specifically calculated for distribution meant the cartels were not forcing anyone to consume their products. Americans demanded them. According to Edgardo Buscaglia, a law and economics professor at Columbia University, the battle against the cartels from the Mexican front must be fought against their assets:

“Businesses confiscated. Civil and criminal asset forfeiture. You can detain fifty-three thousand people as [the Mexican government] has done since 2003, but if you still have corrupt judges and prosecutors—a captured state—you aren’t doing anything. The conviction rate is 1.8 percent.”⁵⁶

As long as the drug demand in the United States goes unfettered via a complicit media, cartels will continue battling over disputed territory, finding ways to smuggle drugs through cracks in the border. If the United States federal government continues with an interdiction model approach—attacking drug smuggling at its borders—at the expense of a deterrence model—attacking the flow of drugs at the source of production—then it will continue fighting an aggregation of whack-a-mole type battles against cartel forces exploiting a clear economic opportunity.

“NAFTA makes things even more difficult for you because the border disappears.”⁵⁷

According to a 2009 Laredo Chamber of Commerce report, an estimated 367.4 billion dollars in annual commercial traffic crosses the Mexico-United States border.⁵⁸ With a labor force of just over 46 million, an average per capita income of \$13,200, and an economy in which 62.8 percent of the population works in the service industry, Mexico far exceeds its domestic demand for workforce (cite 2009 CIA report). Mexico’s economy has been hit harder than its northern neighbors, making it easier for cartels to recruit young people, as young as twelve years old, as hit men.⁵⁹ Unlike captains of industry, though not all that dissimilar, those who join the narcos have been unable to obtain the necessary social status through legal means. Furthermore, because Mexico’s economic infrastructure is deteriorating, which broadly encompasses the economy, education, and political life, proper methods of obtaining such status have been rendered few and are reserved for Mexico’s aristocracy. In fact, most aspiring narcos draw their awe of current cartel capos from a shared upbringing marked by extreme poverty, a lack of education, and a strong urge to provide luxurious goods for their families.

Mexico’s proximity to the world’s largest economic giant exposes many impoverished

⁵⁵ Finnegan, pp. 40.

⁵⁶ Finnegan, pp. 45.5

⁵⁷ Traffic

⁵⁸ Annual Report, Chamber of Commerce, Laredo, Texas, 2009.

⁵⁹ Finnegan, pp. 49: And see “U.S.: Accused Teen Hit Man in Mexico Is an American Citizen.” CNN World. Cable News Network, 7 Dec. 2010. Web. 7 Dec. 2010.

Mexicans to the riches of those who can afford to tour Mexico. Carlos Slim, a Mexican telecommunications magnate worth more than Warren Buffett, does not make tempering the average Mexican's economic aspirations any easier.⁶⁰ Because the cartel's profit model roughly equates to demand for illicit commodities, minus the cost of circumventing certain legal and industrial obstacles, future generations of cartel leadership are hesitant "to take a stand against what is happening. They're happy with this new culture, these new opportunities; they're growing up with it."⁶¹ Mexican cartels have effectively turned their trade into a science, raking in an annual 6 billion dollars in global cocaine distribution alone. Some have even solicited the services of pigeon trainers to fly dope packages across the border with precision.⁶² Unsurprisingly, the oligopoly can afford "to challenge the state when threatened, including access to military arms and explosives."⁶³ As Don Winslow put it in *The Power of the Dog*, Mexico's "real product isn't the drugs, it's the two-thousand mile border they share with the United States...Land can be burned, crops can be poisoned, people can be displaced, but that border...isn't going anywhere."⁶⁴

United States policymakers gave the cartels a gift when they passed the North American Free Trade Agreement (NAFTA) by providing them with "the perfect cover for their traffic, which multiplied overnight."⁶⁵ NAFTA made it even easier for cartels to focus on the production of narcotics and outsource their distribution to the newly empowered transportation sectors. Cartels often force truckers to transport their goods without any consent. According to one Mexican trucker who works during unregulated hours, "Sometimes, the bad guys just come into the yard in a troca, and just say, 'Open the container.' There's nothing you can do but turn away, wait, get in the cabin, and drive."⁶⁶ The United States' economic and border policies, counterproductively premised around free trade and interdiction, eases border officials as they lead to the arrest of outsourced Mexican truckers, effectively putting a band-aid on an infectious smuggling situation.

Some conservative politicians have proposed building a fence and strengthening the borders, but "what happens to NAFTA if you check four thousand trucks a day?"⁶⁷ What is more, border patrol officials do not have any incentive from the federal government to completely stop the flow of drugs. In fact, the more drugs passing through the borders, the more likely border bureaucrats would claim that their services are essential to the safety of American citizens. Where there is a financial incentive for border patrol officers, some often take it: "Corruption cases involving U.S. law-enforcement agents have risen dramatically in recent years."⁶⁸ Though most United States policymakers are concerned with the importation of black market products to the United States, they have maintained firearms policies, which make simple the procurement of weapons for Mexican cartels. A deregulated United States gun market eases the cartels' ability to engage the Mexican Army in hostilities when their production is threatened.

It seems counterintuitive, but firearms are supposedly illegal in Mexico as opposed to the United States.⁶⁹ As demand for drugs are to the American consumer, equally, where a demand for firearms exists for the cartels, supply will follow. Five men were arrested in El Paso in 2008 on charges of obtaining firearms in the United States and

60 Coster, Helen. "Carlos Slim Helu Now World's Second-Richest Man - Forbes.com." *Forbes.com*. 4 Nov. 2007. Web. 8 Dec. 2010.

61 Vullaimy, pp. 76.

62 Campbell, pp. 15.

63 World Drug Report, pp. 237.

64 Don Winslow, *The Power of the Dog* (New York: Knopf, 2005), p. 103.

65 Campbell, pp. 218.

66 Campbell, pp. 258.

67 Vullaimy, pp. 249.

68 Campbell, pp. 7.

69 Vullaimy, pp. 279.

sneaking them into Mexico. Then United States Secretary of State, Condoleezza Rice, adamantly maintained that there was no connection between a recent Bush administration's lifting of a semi-automatic weapon ban and a evidence for a large quantity of semi-automatic weapons seized by Mexican officials.⁷⁰ This was a predictable statement from an administration that received millions of dollars of support from the National Rifle Association. But the evidence speaks otherwise. Nearly 90 to 95 percent of the weapons seized in Mexico's narco war have been produced in the United States.⁷¹

The United States government has clearly twisted itself into an ideological mess when it comes to drug usage. It prohibits drugs, creating a viciously competitive black market whose actors—from the largest Mexican cartel leaders to the smallest American gang members—violently battle for a piece of the action. By criminalizing drugs, the United States government has chosen to incarcerate its citizens with severe and complex medical issues into overcrowded prisons. According to a man named Josue, a former heroin addict turned drug rehabilitator in Ciudad Juárez:

"I was doing heroin, I got busted, I went to jail, and that's where I blew my mind...I was given a knife, and I was fighting...When I came out, I knew every gang in East LA and the San Gabriel Valley, and after a while out, I knew every barrio."⁷²

On top of these realities, the United States government has loosened its controls on traffic flows between its borders with Mexico. This has camouflaged drug smuggling north-bound and turned existing Mexican gun laws into hearsay. If policymakers wanted to seriously diminish the violence and reduce drug usage, they would strictly regulate firearms and redefine drug users as health patients.⁷³ The government should tax drugs and use the revenue to help establish the alternative system. Combining an increase in government revenue through the elimination of a black market, United States policymakers could better allocate their funds, which currently have been assigned toward maintaining an unsustainable penitentiary system. Furthermore, treating drug abuse instead of punishing addicts would more effectively reduce recidivism and crime rates. These policy options may not be explored until Mexico's violence severely threatens the United States' national security: an ever-increasing reality.⁷⁴ Conversely, United States law enforcement holds no arrest power in Mexico, obstructing its ability to conduct long-term, coordinated investigations with Mexican officials. Loosening this policy should be explored by the Calderón administration, as it continues to lose its sovereign power and trust of its citizens to private crime conglomerates.

Ultimately, defining Mexico's condition as "post-political," "fourth world," "failed state," or otherwise merely categorizes its abstract condition without assessing the factors that led to its devolvement. The situation in Mexico is as bad as it can possibly get. To re-empower the Mexican government, United States policymakers must enact

70 Diana Washington Valdez, "Firearms in Mexico Have Ties to El Paso," *El Paso Times*, December 13, 2008.

71 Lora Lumpe, "The US Arms Both Sides in Mexico's Drug War," *Covert Action Quarterly* 61, (Summer 1997). Web; And see Richard A. Serrano, "Guns from U.S. Equip Drug Cartels," *Los Angeles Times*, August 10, 2008.

72 Vullaimy, pp. 161.

73 For a detailed analysis of the Portuguese government's decision to liberalize its drug laws, see Greenwald, Glenn. *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*. Washington, D.C.: CATO Institute, April 2009.

74 In August 2008, the Los Zetas crime syndicate were linked to the tortures and murders of five men in Columbiana, Alabama. The men's throats had been slit after they were tortured with electric shocks.

legislation that makes drug smuggling a profitless enterprise. Additionally, they should create a regulatory framework for guns, making the acquisition of firearms more costly for the cartels. Empowering the Mexican government could require the United States to compromise its consumer orientation because, as the drug cartels rely on a weak Mexican government to protect their assets, so too does the United States rely on a weak Mexican economy to help protect its own consumer society. If the United States indeed fails to act, then NAFTA will be rendered as nothing more than an exploitation of Mexican labor, a legal pilferage of the country's most abundant resource.

WORKS CITED

- African Union Panel on Darfur. "Analysis of Data for Violent Fatalities in Darfur." blogs.ssrc.org/sudan/wp.../2009/11/AUPD-Annex-B-fatalities-in-Darfur1.pdf (accessed February 24, 2011).
- Akhavan, Payam. "Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal." *Human Rights Quarterly* 20, no. 4 (1998): 737-816. <http://muse.jhu.edu/> (accessed February 25, 2011).
- Akhavan, Payam. "Are International Criminal Tribunals a Disincentive to Peace: Are International Criminal Courts a Disincentive to Peace?." *Human Rights Quarterly* 31.3 (August 2009) : 624-654. <http://muse.jhu.edu/> (accessed February 15, 2011).
- Amnesty International. Press Release: "International Criminal Court: Possibly Arrest Warrants Against Sudanese Officials." July 11, 2008. <http://www.amnesty.org/en/for-media/press-releases/international-criminal-court-possible-arrest-warrants-against-sudanese-o> (accessed February 12, 2011).
- Bass, Gary Jonathan. *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton: Princeton University Press, 2000.
- BBC Monitoring Middle East. "Sudanese Presidential Advisor Interviewed on ICC Charges against Al-Bashir," BBC Monitoring-Middle East, August 11 2008. <http://www.lexisnexis.com/> (accessed February 26, 2011).
- Cobban, Helena "Think Again: International Courts." *Foreign Policy* 153, (Mar. - Apr., 2006): 22-28.
- Chung, Christine. "Justice for Bashir: What's Different Today?." Blog of the European Journal for International Law, March 5, 2009. Available at <http://www.ejiltalk.org/> (accessed March 4, 2011).
- Citizens for Global Solutions, *Darfur and the ICC: Justice is the Key to Recovery*, Global Solutions (2006), http://archive2.globalsolutions.org/publications/publications_darfur_and_icc (accessed March 11, 2011).
- Daly, M. W. *Darfur's Sorrow: The Forgotten History of a Humanitarian Disaster*. New York: Cambridge University Press, 2010.
- Darehshori, Sara. "Doing the Right Thing for Darfur: An ICC indictment of Sudan's President Serves Peace and Justice." *The Los Angeles Times*, July 15, 2008.
- De Waal, Alex and Gregory H. Stanton, "Should President Omar al-Bashir of Sudan Be Charged and Arrested by the International Criminal Court?." *Genocide Studies and Prevention* 4, no. 3, (December 2009): 329-353. <http://muse.jhu.edu/> (accessed March 1, 2011).
- De Waal, Alex and Julie Flint. "Justice Off Course in Darfur." *Washington Post*, June 28, 2008.
- Forsythe, David. *Human Rights and International Relations*. New York: Cambridge University Press, 2006.
- Forsythe, David. "International Criminal Courts: A Political View" and "Politics and the Criminal Court for the Former Yugoslavia." *Criminal Law Forum* 5, no. 2-3 (2004): 401-422.

- Hazan, Pierre. *Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the Former Yugoslavia*, translated by James Thomas Snyder. College Station: Texas A&M University Press, 2004.
- Human Rights First/Save Darfur/Human Rights Watch. "Rhetoric vs. Reality: The Situation in Darfur."
<http://www.refugee-rights.org/Publications/Papers/2008/PDFs/RhetoricVsReality%20Paper.120208.pdf> (accessed February 27, 2011).
- Human Rights Watch. "Policy Paper: The Meaning of "The Interests of Justice" in Article 53 of the Rome Statute." June 2005. Available at www.hrw.org/campaigns/icc/docs/ij070505.pdf. (accessed March 5, 2011)
- International Crisis Group. "Sudan; Justice, Peace and the ICC." *Africa News*, July 17, 2009, <http://www.lexisnexis.com/> (Accessed February 26, 2011).
- Kristof, Nicholas, "Why Should We Shield the Killers?" *The New York Times*, February 2, 2005.
- Mayerfeld, Jamie. "Who Shall Be Judge?: The United States, the International Criminal Court, and the Global Enforcement of Human Rights." *Human Rights Quarterly* 25, no.1 (February 2003): 22-28.
- Meron, Theodor. "Answering for War Crimes: Lessons from the Balkans." *Foreign Affairs* 76, no. 1 (Jan/Feb 2007).
<http://muse.jhu.edu/> (accessed February 25, 2011).
- Moreno-Ocampo Luis, Speech at "Building a Future on Peace and Justice Conference," Nuremberg, June 25-27, 2007."
[http://www.peace-justice-conference.info/download/speech moreno.pdf](http://www.peace-justice-conference.info/download/speech%20moreno.pdf) (accessed February 28, 2011).
- Office of UN Deputy Special Representative of the UN Secretary-General for Sudan UN Resident and Humanitarian Co-ordinator. "Darfur Humanitarian Profile No. 34," www.unsudanig.org (accessed February 19, 2011).
- Owuor, Henry. "After Bashir warrant, Sudan United in Protest." *The Nation*, March 5, 2009.
- Perry, Alex. "Defections in Darfur." *TIME Magazine*, March 27, 2007.
- Peskin, Victor. "Caution and Confrontation in the International Criminal Court's Pursuit of Accountability in Uganda and Sudan," *Human Rights Quarterly* 31, no. 3 (August 2009): 655-691. <http://muse.jhu.edu/> (accessed February 25, 2011).
- Power, Samantha. *A Problem for Hell*. New York: HarperCollins, 2002.
- Rodman, Kenneth A "Darfur and the Limits of Legal Deterrence," *Human Rights Quarterly* 30, no. 3 (August 2008), <http://muse.jhu.edu/> (accessed February 10, 2011).
- Reeves, Eric. "Darfur and International Justice." *Dissent* 56, no. 3 (Summer 2009): 13-18, <http://muse.jhu.edu/> (accessed February 25, 2011).
- Rice, Xan. "Chad refuses to arrest Omar al-Bashir on genocide charges," *The Guardian*, July 22, 2010,
<http://www.guardian.co.uk/world/2010/jul/22/chad-refuses-arrest-omar-al-bashir>.

Rome Statute of the International Criminal Court, U.N. Doc. A/Conf. 183/9 (1998).

Rodman, Kenneth A. "Darfur and the Limits of Legal Deterrence." *Human Rights Quarterly* 30, no.3 (August 2008): 529-560,
<http://muse.jhu.edu/> (accessed February 25, 2011).

Simons, Marlise and Neil Macfarqohar. "Court Issues Arrest Warrant for Sudan's Leader." *The New York Times*, March 4, 2009.

Simons, Marlise. "International Court Adds Genocide to Charges Against Sudan Leader," *The New York Times*, July 12, 2010.

Sudan Tribune. "Former US special envoy to Sudan Warns Against ICC Darfur indictments." *Sudan Tribune*, June 27, 2008.

Sudan Watch. "In Darfur, Bashir Issues Message Warning all Diplomats, NGO's and Peacekeepers," *Sudan Watch*, March 8, 2009,
<http://sudanwatch.blogspot.com/2009/03/in-darfur-bashir-issues-message-warning.html> (accessed March 11, 2001).

Social Science Research Center Blog: Making Sense of Sudan. <http://blogs.ssrc.org/sudan/>

United Nations Security Council. Press Release: Security Council Refers Situation in Darfur, Sudan, to the Prosecutor of International Criminal Court.
<http://www.un.org/News/Press/docs/2005/sc8351.doc.htm> (accessed March 2009).

United Nations. "Sudan Work Plan 2011: United Nations and Partners."
[http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VDUX-8CBV6W-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/VDUX-8CBV6W-full_report.pdf/$File/full_report.pdf) (accessed March 2, 2011).

Williams, Paul F. and Michael P. Scharf, *Peace with Justice?* New York: Rowman and Littlefield Publishers Inc., 2002.

Wippman, David. "Can an International Criminal Court Prevent and Punish Genocide?" In *Protection Against Genocide*, ed. Neil Riemer. Westport, Connecticut: Praeger, 2000.

DEVELOPING THE INTERNATIONAL COMMUNITY: AN INTERVIEW WITH JOSE OCAMPO

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WO: *You worked with the United Nations — do you think the UN is efficient as an international force in terms of development in countries and peacekeeping?*

JO: Well, let's regard two different issues that you have to deal with: one is the United Nations as an intergovernmental force. What matters as an intergovernmental force is the ability to reach consensus and, in that regard, I feel the record of the UN is actually quite good. Of course in some cases, it's difficult, and I would say that probably in some cases, major countries prefer not to use the United Nations because they don't think they have enough control over decisions. So that's one issue. In the case of international peacebuilding operations, I think the record is actually quite good. I mean, in some cases, peacebuilding operations are complex, though generally I think the record is good. Of course, some of these operations may fail. They also fail when they are undertaken by major powers, so it's not necessarily a sign. But in general, the peacebuilding operations that the United Nations built up a couple decades ago — the capacity to reduce civil conflict in Africa, for instance — have been quite good. Now, in development, the UN doesn't play a huge role, simply because its resources are small relative to the magnitude. I think it's more important to see what has been the capacity of the UN to lead in certain directions, and I think in that regard, the record is good. For instance, the major framework for development corporations today, the Millennium Development Goals, is an outcome of the United Nations and the United Nations Development Program and other UN agencies have been at the center of trying to promote that framework in countries and I think the record is actually quite good. In other areas, you know, those goals are actually not very good. Let me mention one: the UN members have agreed for sometime that the 0.7% of their gross national income should go for development corporations. Some countries, including most of the major countries, have not reached that target. And some are very far, like the United States and Japan.

WO: *I know you worked on a book called *Liberalization and Development*. What would you say the spread of liberalization has done, especially in Latin America, to the way that states are developing?*

JO: That particular book was on capital market liberalization, and I think the record is actually quite bad. I mean, one point that the book makes is that capital market liberalization in general leads to crisis. I guess the United States is not an exception now. We need alternative frameworks, particularly with relations in the financial sector, to avoid those crises. In other areas, the record is a bit different. When you think, for instance, of trade

liberalization, it has one positive aspect: I think the integration of countries into the international economic system has, in general, been positive for many countries. The speed with which trade is liberalized for that purpose has not necessarily been very good in several countries, but in the end, integration into world trade has some benefits.

WO: *In some countries, such as China, government authorities make the argument that developing economic success may come at the expense of social and political rights. Do you think that one precedes the other, or should they flow from one another?*

JO: Well, it's a complex story. Let me say that the United Nations put the issue of "rights" in the global agenda and has kept it there. It's a long-term fight. But I think probably in no time in history has the principle of human rights been so much at the center — so in that respect, you can say it's a long-term success. It's a failure because it still doesn't reach everyone. When you see the history of human rights, of course civil and political rights were at the center. In some countries, those are the only rights that are recognized. I mean, the United States, for example, does not recognize the concept of economic and social rights. But in general, one of the major contributions of the UN has also been to bring the concept of economic and social rights. In the Universal Declaration of Human Rights, economic and social rights are there, right? And, actually, interestingly, are there because of the influence of the U.S., because of the influence of Franklin Delano Roosevelt. Even the concept of development that is in the UN charter comes actually from the concept of the Four Freedoms of FDR. When you look at the broader agenda, there is no mechanism in the UN system to enforce international agreements, so the process by which this principle spreads is a very slow one. But at the end, I think it has made an influence. When you think, for instance, of the basic rights of workers, or you see the principle of gender equality, those are all developments of the agenda of social rights that has made an impact in global affairs.

WO: *What would you say the role of international nongovernmental organizations is or should be on this scale?*

JO: I think civil society in general has been the greatest ally of the United Nations. I mean, some people talk of the "three UNs": the intergovernmental, the secretariat, and the civil society. When you think of many of the areas we've been talking about, like human rights or gender equality or the rights at work, in all those areas, the civil society has been a great ally. That's in the matter of principle. Just think also of environmental issues, of the rights of indigenous peoples, in all those areas the influence of the partnership, the implicit partnership, has a very impressive record. Now NGOs can also be meant to be actors in the development process. In that regard, they also play a role sometimes with the UN — I'm talking more about the spread of norms.

WO: *Latin America has experienced a good deal of political turmoil in the past. How do you think authoritarian governments play into the international economic stage? How have they affected countries' ability to develop economically, and how is that changing now?*

JO: In the broader concept, authoritarianism is an obstacle to development because, at the end, an essential part of development is the capacity of the people to become the actors of their own development, to participate in decision-making. Latin America, of course, has a bad record. But at the same time, in the last 25 years or so, has become the region in the developing world where democracy has the strongest roots. It has spread and I don't

think a Latin American government would dare to contest the principle of democracy as an essential part of development. In practice, in some cases, it doesn't happen, but when you compare it to the rest of the developing world, Latin America is really ahead in that dimension.

WO: *Brazil in particular has grown to be an economic power: where would you say the Latin American countries are headed, economically?*

JO: This question has actually been a relative success story, in terms of the speed of recovery of Latin American countries. It's not everywhere, it's more South America. Generally speaking, Latin America is doing well by the records of crisis, and I think there are good prospects. Of course, two great advantages have been the high commodity prices, which have benefitted South America because South America is a natural resources producer, and the return of capital, which has actually become a nuance because it has come as a flood.

WO: *The relationship between the U.S. and Mexico has been strained recently by the situation with drug cartels — how does tension between Latin American governments and the U.S. government affect global and UN actions?*

JO: One of the good things that has happened is that Latin America has become more detached from the United States. Latin America is, in a sense, is capable these days of doing things by themselves. You don't just see this economically, but also politically. Some of the major political crises experienced in the region, it is Latin American processes that have played an important role in trying to solve those crises, not the influence of the United States, as it was in the past (and which was not always positive). The unfortunate record of the U.S., particularly prior to the Carter administration, is that it was too much inclined to support authoritarian regimes, and in other parts of the world, that continues to be the case. Of course, the Carter administration was quite important in terms of changing and it was a support to the process of democratization that has taken place in Latin America since then. Now in other specific areas, relations with the U.S. are quite important and the drug issue is, unfortunately, one of the major ones. There are others on which demands for cooperation comes from the Latin American side, and there are no actions — particularly the migration issue, which is very central to many Latin American countries.

WO: *And do you think the actions of Latin American governmental figures are influenced by the way they think the global community or the UN will see them? Does their perception of their own soft power and reputation amidst more influential nations compel these emerging countries to act in a certain, calculated way?*

JO: Yes, I think there is a sense in countries in which now countries do compete in the global sphere to be attractive, not only in an economic sense, but also in a political sense. It doesn't work always well, and there are problems with many democratic regimes in Latin America, but, generally speaking, I think there has been a huge advance when you think of the last 25 years or 30 years.

WO: *Would you say this idea of building a reputation should be the main focus of these governments? Might it conflict with what they deem internally productive?*

JO: All political processes are, in a sense, local. But at the same time, the perception that there is also a sort of international environment that promotes democratic values

does matter. You can see in the reaction of the more authoritarian-inclined countries that they do value, in the end, the influence of that global pressure to abide by democratic principles.

WO: *Can you tell me a little about the difference between working on this global scale for the United Nations and what it means to be a representative for an individual country?*

JO: Well, I wasn't so much a representative for my country: I was a minister in the government in the 1990s. It's a bit different. Of course I had to do some international negotiations on behalf of my country. It's a different perspective. The negotiating process is interesting, it doesn't always lead to good outcomes.

WO: *Do, and should, countries have to sacrifice things often in order to reach international consensus? Should such a consensus prevail over individual countries' interests?*

JO: The major problem is that developing countries are severely constrained. For them, many times, it's not that they have to sacrifice. They are forced by processes to sacrifice because they don't have enough autonomy. So this issue of what you sacrifice may be more appropriate for countries that have more and fuller autonomy (like the U.S.). And I will say yes, countries have to sacrifice in order to lead to global consensus. And in some cases because otherwise the processes will lead in the wrong direction. For instance, today, if countries don't see what they have to do to combat climate change, it will be a disaster for humanity. All countries have to give up something.

WO: *Do more developed countries have an obligation to make economic or political agreements with developing countries, or would autonomy prove more productive?*

JO: I think the principle of autonomy is applicable to all countries, and is applicable particularly to developing countries, which, as I said, are many times more constrained. That's why developing countries talk all the time these days about policy space, the space they have to undertake their own development processes. Well, the U.S. is not as constrained and Europe is not as constrained by those global processes. At the same time, it is true of all developed and developing countries that they have to reach consensus in order to face some of the many most important challenges that humanity faces: climate change, the global financial crisis, global migration trends. You can add several global issues, but probably climate change, these days, is the most important global issue.

WO: *Do you think that things like economic sanctions by big powers are an effective way to compel other countries to take certain actions?*

JO: I think economic sanctions are generally useless. But there are inevitable, because it's a sign. They might be bilateral, and I am generally against that. For instance, the bilateral sanctions of the U.S. against Cuba, I think, have no useful purpose. And I can think of several negative effects that they have had. On the other hand, when you think of sanctions against countries that violate international rules, you know, I generally agree with that; even if they are not fully effective, they should be adopted. That's why they might be relatively ineffective, but they are inevitable. Think of sanctions against Iran for its nuclear program that have been adopted by the Security Council. I think they are inevitable. How effective is a different question.

WO: *What's the most pressing issue, on a global scale, right now?*

JO: I mean, in terms of immediate, short-term, is to finish the global financial crisis business. But in terms of long-term decisions, climate change is probably the most pressing. Because it's going to be a global catastrophe if we don't make decisions. There are others that won't have that catastrophic effect but that are equally important, particularly overcoming poverty and inequality. Rising inequality is a pandemic. Actually, Latin America is interestingly an exception now to the global trend. It's interesting that this Davos [World Economic Annual Forum] Meeting concentrated this year a lot on inequality. Inequality's really a major problem of globalization. Of course it's not a pressing issue in the same sense that climate change is a pressing issue, because climate change is an issue of either we act together or we're going to have a global catastrophe.

WO: *You said inequality is becoming less of a problem in Latin America. What has changed in recent years to make this region an exception?*

JO: There's a lot of discussion on that issue: what has happened, whether it's a long term process or just a reversal of adverse trends that we experienced in previous decades. But there is a sense that there are some positive trends going on, which may be associated with the success in improving the quality of the labor force, through a long-term process of increasing education. I think that might be probably the most important result. There are also some transfer programs that have been successful. State transfer programs are important, especially these conditional cash transfers that are given to the poor in several countries, which are basically a monetary transfer conditional on families bringing the kids to school and on pregnant mothers going to check-ups. That has also had an effect, according to all the studies. And it has not been emphasized enough, but I think the demographic transition has also helped, the fact that the labor force is growing now much less than it used to. The countries have been growing relatively well, and the labor force is growing at a slower rate; I think that has had a positive effect on labor incomes.

THE EYE OF THE BEHOLDER: ISLAMIC FINANCE UNDERSTANDING ISLAMIC BANKING PRODUCTS, PROBLEMS, AND THE NEED TO MODERNIZE

John Spradling

With the recent explosion of available capital in “oil-rich” Muslim nations fueled by the inflow of petrodollars, Islamic finance has become an integral part of the worldwide banking industry. This paper examines the creativity, ingenuity, and future viability of Islamic finance as it attempts to mesh centuries old religious law (Sharia) with modern, westernized banking practices. The analysis begins by focusing on a number of religious restrictions outlined in both the Quran and the life of the Prophet Mohammed. These limitations, rather than completely thwarting the Muslim banking world’s ability to function, have inspired Islamic financiers to create their own set of Sharia-compliant banking products. The Islamic financial products are designed to function similarly to western banking structures while still adhering to the Muslim religious texts’ restrictions. Through an analysis of *mudarabah* (sweat-equity partnership), *wadiah* (customer loyalty reward), *murabahah* (cost plus sale transaction), and *ijarah* (lease agreement), this paper describes the complexities and potential problems that may impair the acceptance and utility of Sharia-compliant financial instruments. The perception by some of Islamic finance as a manipulation of ancient religious texts and an abandonment of original intent has divided the Muslim community over a number of contentious issues. An examination of a few of these issues exposes the problems surrounding Islamic finance, including differences in application between different geographic groups of Muslims, the lack of universal standards, the inability to adapt easily to Western markets, and, on a more fundamental level, the nature of the Sharia-compliant financial products that appear to some to be form over substance. Lastly, this paper aims to reconcile many of these problems as it calls for the modernization of existing Islamic financial practices in order to procure the longevity, viability, and acceptance of Islamic finance by lenders and borrowers worldwide.

INTRODUCTION

Since its inception in the mid-1970s, Islamic banking has grown into an \$822 billion industry.¹ After September 11th, there was a dramatic shift in the Muslim banking community as billions of dollars were transferred from Western, conventional banks into Islamic banks. In 2007, the U.S. Muslim community alone had over \$170 billion worth of purchasing power.² As large as these numbers may seem, Islamic finance is still in its infancy. The financial industry has only recently begun to realize the potential of this niche market with growth estimates of around 15% per annum.³ Both commercial and investment banks are racing to develop products and entire divisions strictly devoted to serving the pious Muslim community, not only within the Middle East, but also within Western nations. From the inception of modern Islamic banking in 1975, this

1 Islamic Finance in France: Sharia Calling, A Political Row about Muslim Law, The Economist: 2009, 62.

2 Shahzad Qadri, Islamic Banking: An Introduction. American Bar Association - Defending Liberty, Pursuing Justice: 2008, 1.

3 Shayerah Ilias, Islamic Finance: Overview and Policy Concerns, Congressional Research Service: 2009, 2.

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market has grown to incorporate over 300 financial institutions worldwide in seventy-five different nations.⁴ Understandably, the center of Islamic finance remains grounded in the Middle East with Iran, Saudi Arabia, Kuwait, and the United Arab Emirates constituting the largest portions of the market. Fueled by the influx of petrodollars coming from these oil-rich nations, Islamic finance faces difficult issues as it attempts to manage this rapid accumulation of wealth, while obeying strict investment and lending rules that Sharia imposes on such practices. Some experts question whether Islamic banking will rise to the occasion, claiming that the industry lacks the necessary tools to handle the growth and, in turn, the flood of additional capital. Unless there is a significant shift in regulation, stability, and the redefinition of underlying religious concepts its growth potential may, indeed, be limited. Islamic finance must focus on addressing its internal legal and regulatory issues in order to attract new clientele and grow as an industry.

BRIEF HISTORY OF ISLAMIC FINANCE

To fully understand the challenges confronting Islamic finance and the necessary changes it needs to undertake, one must understand the history and origin of this specific financial sector. The implementation of Islamic banking is a fairly recent development, occurring in the latter half of the 20th century. Prior to the 1970s, Western countries and their conventional notions of finance influenced banking throughout the Muslim world. Following WWII, the economic tide began to change as the Islamic community started to break away from the Western world. However, it took until the two oil shocks of the 1970s, creating an unprecedented rapid accumulation of wealth in many Muslim nations, to spawn the formation of this industry.

As its name implies, the driving force behind the creation of Islamic finance was, and still is, religion. Islamic finance is defined by the rules and regulations applicable to the investment and lending of money described in the Qur'an and Sharia, respectively, the Muslim religious text and legal code dating from the 7th century. Throughout the Qur'an and Sharia there are four principle restrictions: *riba*, *haraam*, *maisir*, and *gharar*. The most important, and consequently the most restrictive, is the prohibition of *riba*. *Riba* is defined as "any contractual increment in a loan or a debt due to the time element," or more commonly understood as "interest."⁵ Within the Qur'an, Muhammad proclaimed that God specifically prohibited *riba* and would destroy and eliminate all forms of interest payment. Moreover, the Prophet went as far as stating that God would wage war with anyone in violation of this law.⁶ By invoking the wrath of God, the Qur'an made the collecting of *riba* one of the worst sins that a pious Muslim could commit.

The second restriction, or *haraam*, prohibits investing in businesses that are considered unlawful, including businesses that sell alcohol, pork, pornography, and gossip columns.⁷ The third and fourth restrictions, *maisir* and *gharar*, are very similar to each other. *Maisir* prohibits any type of gambling while *gharar* restricts investments in any agreement with contractual uncertainty. For many modern financial transactions, *maisir* and *gharar* create significant problems. For instance, using derivatives and trading commodity futures as well as buying call or put options all involve some degree "gambling" and contractual uncertainty. Needless to say, the four restrictions have put tight limitations on the manner that the Islamic world's financial institutions can conduct business. However, as one has often seen, in the world of Western finance, rather

4 Kelly Holden, Islamic Finance: "Legal Hypocrisy" Moot Point, Problematic Future Bigger Concern, *Boston University International Law Journal*: 2008, 344.

5 Monzer Kahf, Innovation and Risk Management In Islamic Finance: Shari'ah Considerations, Seventh Harvard International Forum on Islamic Finance: 2006, 4.

6 Ibid.

7 Ibid.

than prohibiting certain actions and accomplishing their intended purpose, Sharia restrictions have, instead, rewarded innovations that circumvent, rather than obey, their initial objective.

Many Muslim and Western financial institutions have recognized the tremendous potential of the Islamic finance market and are tapping into it with innovative, Sharia-compliant products that creatively circumvent interest payments through profit and loss sharing contracts. Initially, Islamic economies focused on a moral and ethical system that shunned excess and greed, banning many Western financial instruments as a result. However, through complex structured finance models, Islamic banks have been able to duplicate conventional banking instruments that allow them to participate in modern financial transactions. Financial innovators have found numerous ways to circumvent Islamic regulations applicable to smaller, less complex, agrarian transactions thirteen centuries ago. So far, their success has hinged on three sets of individuals: financial professionals, Islamic jurists, and attorneys. Financial professionals create and structure the Sharia-compliant banking products, Islamic jurists determine whether these new products fall within the guidelines of the religious texts, and the attorneys bridge the two groups by reflecting the agreed upon structures in legal contracts. Through this three-step process, Islamic financiers have made use of old concepts to create a number of financial instruments, four of which have come to define the Islamic banking world.

ISLAMIC BANKING PRODUCTS

The first of these instruments is the use of *mudarabah*. Simply stated, *mudarabah* was a form of a sweat equity investment or sharecropping. This agreement, between the investor and the developer, allows for profit (and loss) sharing between the two parties under a predetermined ratio. Creative Islamic financiers have used *mudarabah* as venture capital vehicles. Until the developer pays the investor a return of, and the agreed return on, the investor receives most of the profits. Thereafter the profit sharing continues, but in a different proportion. This way, there are no official interest payments; rather, the predetermined ratio acts as the profit-collecting instrument for the investor. The financier provides the “start-up capital,” while the developer provides the “expertise, labor, and management” skills.⁸ The Islamic view behind this financial product is that the developer should not bear all the risk and cost of the transaction, and the financier should not receive all the profit, hence the silent partnership. This partnership is made to track conventional investment banking-style return rates and restricts the lender from monopolizing and taking advantage of the debtor.

The second product mimicking conventional, Western financial tools is *wadiah*. This contract allows for the financier to act as a safe keeper of funds. Just like a Western bank, after a customer deposits money with the Sharia-compliant financial institution, the financier is allowed to allocate the deposit for its own business investments. The one provision dissimilar from conventional banking is that instead of regular interest payments, Islamic banks periodically reward depositors with a *hibah*, or a gift. The gifts essentially act in the exact same way as interest payments; however, instead of being fixed and mandatorily payable, *hibahs* are completely arbitrary as to how much and when they will be paid.⁹ *Wadiah* functions strictly on the “honor system” and because of the ambiguity of the *hibah*, the gifts are not considered *riba*.

The third Islamic banking instrument utilized throughout the Muslim world is based on *murabahah*. *Murabahah* deals with the purchase of an asset, e.g., real estate, acting similarly to cost-plus financing. Before a *murabahah* is entered into the bank,

⁸ Qadri, *Islamic Banking: An Introduction*, 1.

⁹ *Ibid.*, 2.

a predetermined “profit margin” is calculated. The “plus” in the cost-plus financing mimics the total amount of interest that would accrue on the loan, such as total interest payable under a mortgage. Moreover, instead of simply lending the customer a sum of money to buy the asset, the bank actually purchases the property itself and “re-sells” it to the buyer at the marked-up price. The buyer is then allowed to make installment payments for a set period of time. Lastly, since the bank officially owns the property and is therefore the liable counterparty, it usually requires the buyer to secure the murabahah with some type of collateral.

The fourth, and most common, Sharia-compliant loan-like instrument is a *ijarah*, or a lease. Innovative financiers designed this financial product to mimic a sale (to the financier) and leaseback (to the customer) with rent equivalent to amortizing interest and principal. Islamic banks make certain assets available to the lessee with a fixed rental price, covering both the value lost through the depreciation of the asset and the predetermined profit. Taking *ijarah* one step further, Islamic banks have incorporated *ijarah-wal-iqti-na* (a lease with purchase option), allowing for the outright purchase of the asset by the customer after the lease period expires, closely paralleling Western leveraged leases.

In summary, there is no lack of creative innovation within the Islamic banking world and the financial products they have provided. However, it is the concept of the manipulation of ancient religious texts and the deviation from its original intent that has divided the Muslim community. As the Islamic finance industry continues to grow at the stunning rate of 15% per year, there are a number of problems that this niche market must address. These problems include, but are not limited to, the geographic dispersion and the lack of a set of universal standards of differing types of Islamic finance, the inability to easily adapt to Western markets, and more fundamentally, the hypocritical nature of Sharia-compliant financial products.

THE PROBLEMS

In order to address the differing views on specific financial products, there have been intense efforts throughout the greater Muslim community to unify Islamic banking practices. The foundation of both the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) has taken the lead in addressing these contentious issues. In theory, the creation of a global network of comprehensive Islamic banking standards would increase accessibility and liquidity within the sector as it attempted to integrate the industry with the conventional, Western financial system. Unfortunately, these two organizations have failed to achieve that goal. Region specific features of Islamic finance remain.

The spectrum of these geographical difference ranges from radically conservative to near “Western-style” banking freedom. Some of the stricter countries include Iran, Pakistan, and Sudan, all of which have completely Islamized their banking industries. These nations adhere to a classical interpretation of *riba*, and target conventional banking practices as unjust through the prohibited exploitation of the debtors.¹⁰ Taking the middle ground are states like Bahrain, Kuwait, Turkey, the United Arab Emirates, and Malaysia. These countries support dual banking systems within their borders, allowing for both conventional and Islamic banks to operate.

In particular, Malaysia has fomented much of the recent controversy surrounding the industry. Malaysian Islamic jurists have historically been much more liberal than their conservative Middle Eastern counterparts, allowing for the trading of debt-instruments, futures, and the creation of deposit insurance that other Islamic banks find

¹⁰ Holden, *Islamic Finance: “Legal Hypocrisy” Moot Point, Problematic Future Bigger Concern*, 354.

to be *riba*.¹¹ While these increasingly creative and complex innovations have allowed Malaysia to bank more efficiently, the innovation has divided the Islamic community as it questions whether these products are, in fact, Sharia-compliant.

Just as divisive is the ultra-conservative Saudi Arabian approach of bifurcating its Sharia compliance. At home, Saudi Arabia has some of the strictest laws regarding *riba*, *haraam*, and rigid adherence to centuries old teachings. However, in making foreign investments, Royal family members “freely ignore Islamic banking rules,” evidenced in the 2007 purchase of a large stake in Citibank, though they “do not necessarily discourage separate Islamic banking practices.”¹² The differences in banking practices throughout the Islamic community are vast. Clearly, the AAOIFI and the IFSB lack the ability to universalize banking policy. The lack of uniformity in approach and legal standards threatens the growth as well as the very acceptance of Islamic finance.

The difficulty of adapting to Western markets’ banking practices likewise impedes the sector’s growth. While many profit-seeking bankers argue that Sharia-compliant banking provides foreign markets with new sources of capital and, in turn, economic development, others highlight the failure of Islamic finance to abide by some of the U.S. legal restrictions.¹³ In order to capture a new, lucrative market of Muslim depositors and investors, some U.S. financial institutions have ignored legal restrictions and other economic sanctions. Likewise, although U.S. laws and regulations are broad enough to cover many of the Islamic banking financial instruments, some products go unregulated. Some of the innovative, Sharia-compliant contracts simply do not cross over well to U.S. markets.¹⁴ Specifically, in Islamic finance, due to the nature of the profit and loss sharing partnerships, there are no legal obligations on behalf of the debtor. If the debtor defaults on the investor’s loan, the investor can only seize the debtor’s pledged collateral, usually worth a fraction of the initial loan, releasing the debtor of all legal obligations under the silent partnership. The Sharia requirement (that investors share the risk with their customers) makes recovery on the investment more risky, thus undermining the solvency of the Islamic bank itself, making potential investors more wary. Without an absolute guarantee, the repayment of loans becomes questionable, especially in the case of debtor default. If Islamic banking desires to continue to grow, it must address this issue. Compliance with Western financial markets (markets that dwarf the size of the Muslim-oriented financial markets) will determine the future success of Islamic finance.

The underlying, fundamental hypocritical nature of Sharia-compliant financial products is perhaps the most significant problem facing Islamic finance. One of the principal reasons for the foundation of Islamic banking was to create a more equal partnership between the financiers and their customers. Financial products have become more and more complex with the sole focus now centered on the circumvention of Sharia law in order to mimic conventional banking. This has defeated the entire purpose of Islamic finance. Islamic scholars claim that, “God is in the details.”¹⁵ However, the underlying implication of these manipulations demonstrates that Islamic banking is straying from its well-intentioned goal—enough so to create rifts throughout the entire Muslim community. This is perhaps the most important issue to address. Full understanding and resolution of the diversion of purpose problem to the satisfaction of all the disparate Islamic finance centers would solve both the geographic disparity issue and

11 Mahmoud Amin El-Gamal, *Overview of Islamic Finance*, Rice University: 2006, 9.

12 Holden, *Islamic Finance: “Legal Hypocrisy” Moot Point, Problematic Future Bigger Concern*, 354.

13 Ilias, *Islamic Finance: Overview and Policy Concerns*, 12.

14 *Ibid*.

15 Holden, *Islamic Finance: “Legal Hypocrisy” Moot Point, Problematic Future Bigger Concern*, 356.

the adaptation problem.

THE FUTURE AND THE NEED TO MODERNIZE

Much uncertainty about the future of Islamic finance lies ahead. One major concern is that the entire basis and growth potential for this market is founded on oil. The petroleum industry is fickle, vulnerable to cyclical swings in oil prices. Therefore, while the price per barrel of oil remains relatively high and these oil-rich nations continue to prosper, the Islamic community needs to organize globally, recognize and address regulation problems, and modernize its banking practices.

In order to combat the disparity between differing interpretations of Sharia, a global regulatory board must be established. The agreement upon specific financial products is paramount in unifying the Islamic banking community. The AAOIFI and the IFSB have failed. A more universal and encompassing regulatory structure is needed to solidify the future success of Islamic finance. Without a consensus, different Islamic banks will continue to offer different products. Not only will this create disunity and confusion within Islamic finance, but the inadequate system will remain the status quo, unprepared for future growth. Once a global regulatory board is established, the discrepancies that “confuse clerics, clients, and banks” will be no more, and the first step in the modernization process will be underway.¹⁶

In order to address the adaptability of Islamic banking to Western markets, the Islamic bankers, who create and structure the financial products, must realize the fundamental role of Western finance. Commercial banks and the regulations that guide them are, above all, concerned with the security and protection of the customers and the consumers of financial services.¹⁷ While the access to a large amount of additional capital is attractive, increasing access should not shape the policies and regulations of Islamic financial markets. Rather, Islamic banking should be encouraged to adapt and change its own structures in order to gain access to foreign markets. The adaptation will prepare Islamic banking and Islamic finance, as a whole, for the final step in the complete modernization process.

Lastly, and most importantly, Islamic finance must address *riba*. In order for Islamic finance to fully modernize, Sharia scholars must redefine what constitutes *riba*. Initially, the purpose of this outdated religious concept was to protect the weak clan members from the wealthy merchants. As Muhammad repeated throughout the Qur'an, such protection was necessary and justified. In the 7th century, merchants exploited unprotected debtors, hence the focus on prohibiting *riba* within the Qur'an. However, today, the same concepts simply do not apply. The relationship between banks and their customers is not one that allows for the exploitation of the weak. Banking regulations are designed to structure the creditor/debtor relationship as an informed consensual relationship between the two parties, created to benefit both sides. It is time for Sharia scholars to accept this fact, just as some Malaysian Islamic jurists have, and to redefine *riba*, focusing much more on prohibiting specific practices that exploit the weak rather than punishing the fair and just payment and collection of “interest.”

CONCLUSION

There are two potentialities for Islamic finance: either it can maintain the status quo of unorganized, inadequate, and inefficient financial products, lacking proper preparation to face a growing but complex financial market place, or it can recognize

¹⁶ Ibid., 363.

¹⁷ El-Gamal, Overview of Islamic Finance, 12. While in theory this principal is true, many have begun to doubt the applicability of this statement. Recent times seems to show that banks are not at all concerned with customers security and are willing to leverage up to 30x the amount of assets in house.

these problems, institute necessary universal changes, and modernize. Presently, Islamic finance is suspended between two separate worlds. The industry wants to remain focused on religion, but, at the same time, it desires to mimic and reap the benefits of conventional, Western banking. Now is the time to modernize. The combination of a global regulatory board, designed to unify the greater Islamic community, with the recognition of the needed policy changes to adapt and enter into foreign markets, and the redefinition of the outdated religious concept of *riba* will prepare Islamic finance for the future and be the engine for its subsequent success.

WORKS CITED

- “Coming to America.” Islamic Finance Asia. May 2010. Web. 02 Dec. 2010.
http://www.islamicfinanceasia.com/13_cs.php.
- Dommissie, Adrian, and Wasif Kazi. *Emerging Markets Special Report: Securitisation and Shari’ah Law*. Rep. New York: Fitch Ratings, 2005. Print.
- El-Gamal, Mahmoud. “Islamic Finance.” Duke Islamic Studies Center (2008): 1-5. Web. 2 Dec. 2010.
<http://www.jhfc.duke.edu/disc/events/documents/IslamicFinance.pdf>.
- Holden, Kelly. “Islamic Finance: “Legal Hypocrisy” Moot Point, Problematic Future Bigger Concern.” *Boston University International Law Journal* 25.341 (2008): 341-68. Print.
- Ilias, Shayerah. “Islamic Finance: Overview and Policy Concerns.” Congressional Research Service (2009): 1-7. Print.
- Introduction to Shari’a or Islamic Law. Rep. Houston: Vinson & Elkins, 2007. Print.
- “Islamic Finance in France: Sharia Calling, A Political Row about Muslim Law.” *The Economist* 12 Nov. 2009: 62. *Economist.com*. 12 Nov. 2009. Web. 3 Dec. 2010.
- Kahf, Monzer. “Innovation and Risk Management In Islamic Finance: Shari’ah Considerations.” *Seventh Harvard International Forum on Islamic Finance* (2006): 1-14. 22 Apr. 2006. Web. 2 Dec. 2010.
http://monzer.kahf.com/papers/english/MAQASID_AL_SHARIAH_IN_PROHIBITION_OF_RIBA.pdf.
- Qadri, Shahzad Q. “Islamic Banking: An Introduction.” *American Bar Association - Defending Liberty, Pursuing Justice* 17.6 (2008): 1-3. Print. United States of America. Department of the Treasury. International Affairs.
- Overview of Islamic Finance: Occasional Paper No. 4. By Mahmoud Amin El-Gamal. Houston: Rice University, 2006. Print.

RIGHTS AT THE MARGIN

Sandeep Chhabra

This paper examines the European Court on Human Rights (ECtHR) and its jurisprudence concerning Article 14 discrimination claims brought by Roma applicants. After conceptualizing the Court's recent and trend breaking support of such petitions as a rights revolution, it attempts to explain what factors and conditions account for the Court's jurisprudential shift. The paper assesses three competing hypotheses and finds that the support structure hypothesis, which argues that the combination of lawyers, financing, and advocacy organizations are integral to the generation of jurisprudential shifts, best explains the emergence of the Roma rights revolution. The paper concludes with a series of normative and empirical questions for future research.

In a scene reminiscent of the racial tensions present in Little Rock, Arkansas in 1957, parents of Croatian students blocked the doors of a school in Medimurje County on the first day of classes in September 2002. Their act of protest was triggered by a well-publicized lawsuit filed on behalf of Roma students by the European Roma Rights Centre¹ (ERRC) that criticized the school authorities' use of segregated classes. The blockade was also in response to the Ministry of Education's decision to desegregate the county's schools, a decision that apparently constituted a capitulation by the Croatian majority before the Roma lawsuit.² The parents were dumbfounded by the Ministry's decision and failed to comprehend how their government could discriminate against their children. As one parent remarked to a reporter, "If this is seen as a case of segregation and threat, in this case our children are threatened and not the Romanies. There are 80 percent of them while our children make up only 20 percent. I would like to see anyone else agreeing to that their children attending a class with 20 Romanies in it, as mine have to do."³ The director of the primary school supported the parents' cause, justifying his position by noting the Roma pupils' incompetent Croatian language skills, lackluster work ethic, and inferior level of hygiene. After discussing the issue with the protesting parents and the local school authorities, the Ministry of Education capitulated to their demands and formally permitted the segregated arrangement. After litigating before the national courts and failing to attain a favorable decision, the ERRC lodged a complaint with the European Court of Human Rights (ECtHR) on behalf of the Roma students.⁴ ERRC claimed that the placement of Roma students in separate classes constituted a violation of the rights embodied in Article

1 According to the organization's website, "The European Roma Rights Centre (ERRC) is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education." <http://errc.org/en-about-us-overview.php>

2 I. Rostas and M. Nicoara, *Advocacy Strategies to Combat Segregation, Separate and Unequal Combating Discrimination against Roma in Education* (Budapest: Public Interest Law Initiative/Columbia University Kht.), 128.

3 Croatian parents refuse to let children attend same classes as Romanies, BBC INTERNATIONAL REPORTS (EUROPE), 9/8/02, available at Westlaw at 9/8/02 BBC-EURO.

4 The ECtHR is composed of two bodies: a Chamber (lower court) and a Grand Chamber (higher court). It is a regional court that serves as a court of appeals for litigants that have exhausted domestic judicial remedies.

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2 of Protocol No. 1⁵ taken alone or in conjunction with Article 14⁶ of the European Convention on Human Rights (ECHR or Convention).

Prior to this dramatic event, the ERRC initiated legal proceedings on behalf of Roma students in the Czech Republic in 1999. The litigation followed a vigorous research effort by the ERRC in 1998 of the schools in Ostrava, which concluded that Roma students were more than 27 times more likely to attend special schools for mentally incompetent children than non-Roma students.⁷ The ERRC argued before school authorities and the Constitutional Court that the disproportionate placement of the Roma in special schools was demonstrative of discriminatory testing practices and grossly detrimental to the education and development of Roma students.⁸ Following the dismissal of the case by both the school authorities and the domestic court, the ERRC filed an application with the ECtHR arguing that the Czech Republic had violated the rights contained in Article 2 of Protocol No. 1 taken alone and in conjunction with Article 14.

For the ERRC and other Roma litigants battling segregation and discrimination across Europe, victory would only be attained if the Court recognized that the educational practices of these states—which, according to the organizations, resulted in the unjust segregation of the Roma applicants—constituted a violation of Article 14. To the extent that two of the potential benefits of a favorable decision are the message that the decision sends to other political actors and the potential strategic employment of that judgment by actors within a social movement (possibly as a frame for social problems that contributes to further mobilization), the Court's articulation of a violation of Article 14 would be crucial to the success of ERRC and other litigation-oriented organizations.^{9 10} The prospect for a successful petition (given this barometer) before the ECtHR in each of the above cases was rather dim. The Court's jurisprudence in prior cases revealed that although the Court was receptive to allegations of discriminatory action and frequently found that these actions violated certain rights, the Court was prone to ignore the racial dimensions of these

5 Article 2 of Protocol No. 1 concerns the right to education and reads: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." A protocol is a revision or addition to the Convention that must be ratified by a state prior to becoming enforceable in that state.

6 Article 14 concerns the prohibition of discrimination and reads: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Article 14 is parasitic, in that a claim alleging violation of Article 14 must be made in conjunction with a violation of another article. The original Convention lacks a free-standing article concerning the prohibition of discrimination. Article No.1 of Protocol 12 potentially remedies this lacuna and reads "The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1." Most states (37 out of 47) have signed this Protocol 12, but only 17 have ratified the Protocol..

7 J.A. Goldston and I. Ivanov, "Combating Segregation in Education through Litigation: Reflections on the Experience to Date," *Separate and Unequal Combating Discrimination against Roma in Education* (Budapest: Public Interest Law Initiative/Columbia University Kht.), 152.

8 Goldston and Ivanov, "Combating Segregation," 153.

9 R. Sandland, "Developing a Jurisprudence of Difference: The Protection of the Human Rights of Travelling Peoples by the European Court of Human Rights," *Human Rights Law Review*, 515.

10 M. W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: University of Chicago Press, 1994).

violations and thus was unreceptive to Article 14 claims.¹¹ In cases where the Court briefly acknowledged the broader context by discussing the widespread discrimination against the Roma or where the Court found a violation of Article 14, it was inclined to employ language that limited its judgment to the present applicants and refused to overstep its case. According to one observer, the Court contributed a “conservative” voice to the issue of racism.¹² Another commentator dejectedly remarked after speaking with the children involved in the Czech case that “Their case is destined to be remembered either as Europe’s *Brown v. Board of Education*, or—more likely—as the *Brown v. Board of Education* that wasn’t.”¹³

THE ROMA RIGHTS REVOLUTION

The Grand Chamber’s (GC) “momentous” vindication of right claims in *D.H. and Others v. the Czech Republic* (*D.H.*) and subsequently in the segregation cases *Sampanis and Others v. Greece* (*Sampanis*) and *Orsus v. Croatia* (*Orsus*) has put to rest such fears. According to many observers, the ECtHR has since successfully responded to the “Roma challenge,” and with such zeal that it now overrules unanimous, well-reasoned Chamber judgments. These favorable decisions have included the invalidation of discriminatory electoral rules (*Sejdic and Finci v. Bosnia and Herzegovina*) and upholding the legality of Roma marriage ceremonies (*Munoz Diaz v. Spain*). The Court’s language in the latter case is indicative of its new approach to Roma rights claims:

The Court takes the view that the force of the collective beliefs of a community that is well-defined culturally cannot be ignored. The Court observes in this connection that there is an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle...not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity that is of value to the whole community.

Prior to the Chamber’s judgment in *D.H.*, the Court found a violation of Article 14 in 3 out of 13 admissible Roma-related petitions alleging a violation of Article 14. Following the Chamber’s judgment finding no violation of Article 14 in *D.H.*, the Court has found a violation in 10 out of 13 admissible Roma-related petitions alleging a violation of Article 14.

Tracking Changes in Article 14 Jurisprudence

Time Period	Number of Judgments Finding a Violation of Art. 14	Total Number of Judgments Involving Art. 14 Claims	Success Rate of Art. 14 Petitions (%)
Before <i>D.H.</i> (Chamber Decision) ¹	3	13	23.1
After <i>D.H.</i> (Chamber Decision)	10	13	76.9

11 This trend is exhibited in the line of cases alleging brutality by the Bulgarian police against the Roma. See *Assenov and Others v. Bulgaria*, 28 October 1998, Reports of Judgments and Decisions 1998-VIII; *Velikova v. Bulgaria*, no. 41488/98, ECHR 2000-VI; *Anguelova v. Bulgaria*, no. 38361/97, ECHR 2002-IV. These cases concern the rights embodied in Article 2, Article 3, and Article 14. Article concerns the right to life and the relevant portion reads: “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.” Article 3 concerns the prohibition of torture and reads: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” For the text of Article 14, see Footnote 14.

12 A. Xanthaxi, “The Proposal for an EU Directive on Integration” (March 2005).

13 M.D. Goldhaber, *A People’s History of the European Court of Human Rights* (New Jersey: Rutgers University Press, 2009), 159.

The Court's recent support for discrimination claims by Roma litigants has not gone unnoticed by scholars or ECtHR judges. According to one commentator, the Court's "Roma jurisprudence" has moved the Court into uncharted territory: "It is certainly the case that the Court's shift in focus has obfuscated, and seemingly considerably extended, the scope of its jurisdiction, as traditionally understood, and it has moved outside the relatively safe waters, in terms of avoiding politicization, of judging individual cases, and out into the more choppy political seas in which it passes judgment on the policies of State Parties."¹⁴ Judge Borrego Borrego's remarks in his dissent in D.H. (GC decision) share that sentiment: "This, then, is the Court's new role: to become a second ECRI (European Commission against Racism and Intolerance)¹⁵ and dispense with an examination of the individual applications... The GC has in this judgment behaved like a Formula One car, hurtling at high speed into the new and difficult terrain of education and, in so doing, has inevitably strayed far from the line normally followed by the Court."

The ECtHR's recent support for Roma discrimination petitions can be conceptualized as part of a rights revolution. According to legal scholar Charles R. Epp, a rights revolution is "a sustained, developmental process that produced or expanded the new civil rights and liberties."¹⁶ A rights revolution consists of three interrelated parts: judicial attention to rights, judicial support for rights, and implementation of rights. Applying these concepts and definitions to Roma litigation before the ECtHR, the "Roma rights revolution" consists of the ECtHR's recent and sustained support of Roma rights claims under Article 14 of the Convention, demonstrated by a series of legal victories for the Roma before the ECtHR.



Countries in which the ECtHR has delivered a judgment concerning the Roma.

14 Sandland, "Developing a Jurisprudence," 22.

15 The European Commission against Racism and Intolerance (ECRI) is a monitoring body within the Council of Europe. It is responsible for "combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law (Article 1 of ECRI's Statute)." ECRI publishes country reports assessing domestic legislation and policies concerning discrimination. The body also receives and considers submissions from NGOs in the process of developing its reports.

16 C.R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998), 7.

The primary purpose of this paper is to explain and analyze the factors and conditions that contributed to the “Roma rights revolution.” The paper is divided as follows. Section 1 presents an array of theoretical perspectives that attempt to answer the primary research question. These perspectives are largely borrowed from the existing literature on rights vindication. These perspectives are then employed as hypotheses in Section 2 and are empirically tested against the “Roma rights revolution.” The conclusion provides a brief overview of the findings and some final remarks.

THEORETICAL PERSPECTIVES

This section will present a selection of theoretical perspectives that attempt to explain what factors and conditions contribute to the occurrence of rights revolution. These perspectives are derived from a variety of existing literatures on rights rhetoric and judicial recognition of rights claims. Although the perspectives selected here present unique causal mechanisms, the reader should not assume that this selection is representative of all theoretical perspectives that attempt to explain the occurrence of rights revolutions.

Hypothesis 1: Support Structure

In his study analyzing the occurrence or non-occurrence of rights revolutions in the United States, India, the United Kingdom, and Canada, Epp presents his hypothesis explaining why rights revolutions occur. Epp hypothesizes that rights revolutions cannot occur without the presence of a support structure. Put differently, support structures must be present prior to a rights revolution to occur. A support structure consists of “rights-advocacy organizations, rights-advocacy lawyers, and sources of financing, particularly government-supported financing.”¹⁷ Epp conceptualizes each component of the support structure as an independent variable and the occurrence or non-occurrence of a rights revolution as the dependent variable. According to Epp, a strong, vibrant support structure is needed to transform “parchment rights” into rights that have substantial meaning in reality. A viable support structure is able to promote a geographically widespread and sustained litigation campaign and acquire the significant resources needed to conduct such a campaign. A weak, disorganized support structure will fail to result in the sustained stream of judgments needed to constitute a rights revolution and thus rights will remain ineffective and rather meaningless in reality.¹⁸ It is also worth noting that according to this theoretical perspective, a rights revolution will not occur spontaneously or suddenly, but rather will be the result of the judiciary’s incremental movement towards judicial support of these rights claims. Epp also speaks to the normative implications of his hypothesis. He asserts that these support structures are likely to have “a broad base in civil society” and thus concludes that rights claims that generate a rights revolution are compatible with notions of democracy.

This hypothesis is clearly concerned with “bottom-up” factors. Epp’s hypothesis is an explicit rejection of hypotheses that attempt to form a causal link solely between the constitutional rights contained in legislation or constitutions and rights revolution. It is also a rejection of judge-centered explanations of rights revolutions that only consider the causal link between the ideological or political stances of judges and the production of a rights revolution: Epp’s hypothesis is also a rejection of culture-centered hypotheses, which posit that certain cultures are more likely to embrace the notion of rights and thus contribute to the emergence of a rights revolution.

Epp’s focus on legal and non-legal resources of social movements and how those resources impact the likelihood of success when movements pursue litigation seems rath-

¹⁷ Epp, *The Rights Revolution*, 3.

¹⁸ Epp, *The Rights Revolution*, 199.

er intuitive, but his explicit linking of material resources and judicial success was innovative at the time. For the purposes of this paper, the simplicity of his theory facilitates its empirical testing. As noted above, Roma litigation has resulted in a rights revolution. The empirical testing of this hypothesis in Section 2 will thus involve an examination of whether the components of a support structure, namely rights-advocacy organizations, sources of stable funding, and rights lawyers, were present during the period of Roma litigation.

Before leaving this hypothesis, a few criticisms on Epp's hypothesis are worth noting. Epp assumes in his book that the components of the support structure are conceptually distinct explanatory variables and that there is no correlation between either two or all three of the variables. Thus, Epp concludes that the emergence of certain components of the support structure are generated by factors external to the social movement, such as government institutions providing legal aid to criminal defendants solely through the initiative of government officials or that the emergence of rights-focused lawyers that were concerned with the rights of the poor or other marginalized groups occurred independently of the efforts of rights-advocacy organizations. This criticism deserves further elaboration. If rights-advocacy organizations exhibit the capacity to generate cause lawyers through legal handbooks, seminars, or human rights training, and gain funding through their own efforts, then the conceptual distinction between these three independent variables must necessarily be called into question. It may be that rights-advocacy organizations alone are necessary to the occurrence of rights revolutions, rather than all three components as Epp hypothesizes. It is also worth assessing whether sources of funding alone can produce rights revolution. For example, billionaire entrepreneurs like George Soros who are committed to a rights-based cause may have the capacity to establish their own rights-advocacy organizations and hire lawyers to fight for their adopted causes. This criticism is even more damning because many rights-oriented organizations (especially in Central and Eastern Europe) are increasingly dependent on wealthy donors and thus are susceptible to donor influence.¹⁹ In order to overcome these potential correlation problems, this paper will assess Epp's hypothesis, but then also disaggregate the three components of and analyze the importance of each component.

Hypothesis 2: Judicial Redemption

This perspective is drawn from an article written by Alexandra Huneeus. In her article, Huneeus attempts to explain why the previously reticent and complicit Chilean judiciary has recently issued a series of decisions condemning officials for human rights violations during the Pinochet regime. She concludes that the judiciary's "turn to human rights" is an attempt by the courts to redeem its image in the eyes of the Chilean people and distance the judiciary from the court that neglected abuses.

This perspective explicitly argues that judicial culture and internal legal ideology—particularly how judges' view themselves and their role in the broader society—are not static ideas that are borrowed from that past, but rather are continuously contested and fluid.²⁰ As the situation surrounding judiciaries changes (for example, regime change), judges are able to reassess the role they have played in the past and re-conceptualize what role they should play in the present. It is also worth stressing, as Huneeus does, that this reconstruction of the role judges should play in society is often part of the broader society's attempt to reconstruct not only contemporary social rela-

19 N. Trehan, "In the name of the Roma? The role of private foundations and NGOs," *Between Past and Future: The Roma of Central and Eastern Europe* (Hatfield: University of Hertfordshire Press, 2002).

20 A. V. Huneeus, "Judging from a Guilty Conscience: The Chilean Judiciary's Human Rights Turn," *Law & Social Inquiry* (2010), 110-111.

tions and norms, but also the legacy of social relations and norms of the past.²¹

Applying this theoretical perspective to the emergence of the “Roma rights revolution,” this perspective hypothesizes that the rights revolution occurred because judges of the ECtHR became cognizant of their neglect (or mistreatment) of Roma discrimination claims and the “staining” of the ECtHR’s image as the guardian of human rights. Put differently, if Huneeus’s hypothesis explains the “Roma rights revolution,” then the evidence should reveal that the ECtHR initially ignored the Roma’s marginal situation and then rapidly and suddenly “moved” towards supporting their claims. In order to examine whether judges attempted to “redeem” the Court, this paper relies on a content analysis of the ECtHR judgments concerning the Roma, particularly dissents.²²

Hypothesis 3: Judicial Independence

Many commentators that examine judicial independence find that the more independent a judiciary is, the more likely it is to protect the rule of law and vindicate minority and human rights claims.²³ The logic behind this perspective is as follows. States in which the judiciary is subordinated or monitored by other branches of government are constrained by the forces within those branches. Only judges that share ideological views with those in power will be placed on the bench. Judges that fail to share sentiments of the dominant political actors will likely be purged from their positions. This translates into judges who frequently share the view of the majority of the society (if the polity is a procedural democracy) or the view of a small group of individuals (if the polity is an oligarchy or autocracy). Under such conditions, judges owe their position solely to political actors and are accountable only to these actors. Thus, the judiciary can indiscriminately enforce the rule of law, minority rights, and human rights only if political actors deem such acts permissible. Another thread in this perspective is that judges that are vulnerable to public opinion will also fail to enforce rights and the rule of law. The logic behind this argument is similar to that discussed above: instead of enforcing rights (if they exist), judges under such circumstances will enforce public opinion.

Implicit in such analyses is that the political actors that monitor and shape the judiciary are hegemonic or non-principled actors. In other words, these actors attempt to further their self-interest or the majority interest at the expense of the broader society, especially the marginalized. Such actors will pack the courts with judges who are willing to bend the law and serve as instruments to maintain or further power for specific political actors or the majority. Even if these political actors are ideological rather than solely self-interested, this ideology may result in political actors who appoint judges that are willing to enforce this ideology. If this ideology is exclusionary in nature, then judges will be responsible for enforcing this exclusionary ideology.

Thus, according to this perspective, courts will only enforce the law when they are granted a certain degree of judicial independence, along with the right to employ—either explicitly or implicitly—the power of judicial review.

Applying this perspective to the subject of this paper, this perspective hypothesizes that the more independent the ECtHR is from other political institutions, the more likely it is to vindicate rights claims by marginalized groups. Since the ECtHR is a regional court, it is worth clarifying what this paper refers to as “political institutions.” The Court is a

21 *Ibid.*, 112.

22 I acknowledge the criticism that judges are unlikely to discuss the Court as an institution or delve beyond the intricacies of the case before them in decisions. For the time being, I only wish to state that ECtHR judges tend to candidly (and perhaps too candidly) provide their unfiltered views on such issues, especially in dissents.

23 C. Guarnieri, *International Journal of Constitutional Law* (2007).

body within the Council of Europe (CoE). The Council of Europe also consists of the Parliamentary Assembly of the Council of Europe (PACE), the Committee of Ministers (CoM), and several commissions and other bodies that assist in the work of the CoE. The primary institution that the ECtHR interacts with and is impacted by is the CoM. The CoM consists of representatives from each of the Contracting States and sets the Court's yearly budget. Furthermore, it is responsible for supervising the implementation of ECtHR judgments.²⁴

The Court also interacts with political entities outside of the CoE structure, namely the Contracting States that appear before the Court as respondents. The relationship between the Courts and Contracting states is difficult to conceptualize, but one issue worth discussing is the Court doctrine known as the margin of appreciation. This practice "allows a greater degree of discretion to a state in circumstances where the [court] feels it is ill-placed to second guess the national judgment."²⁵ According to many observers, the Court's use of the margin of appreciation demonstrates the Court's reluctance to assert its autonomy and enforce Convention rights without giving consideration to the political backlash it may face from disgruntled states.²⁶

The testing of this hypothesis will focus solely on the extent to which the activities of other CoE bodies have impacted the Court's judgments. This will be done by conducting a content analysis of the Court's judgments concerning the Roma and examining whether and how the activities of these bodies is discussed.

EXPLAINING THE ROMA RIGHTS REVOLUTION

This section examines the empirical validity of each of the three theoretical perspectives presented above. It first assesses the validity of each component of Epp's support structure hypothesis and then assesses the components together. Next, it analyzes Huneus's judicial redemption hypothesis and the judicial independence hypothesis.

Hypothesis 1: Rights Advocacy Organizations

Since the 1990s, there has been a significant surge in the number of rights-oriented non-governmental organizations (NGOs) engaged in the Roma cause.^{27 28} Although these organizations are often grouped together under the label of "Roma rights organizations," they diverge tremendously in their attempts to elevate the Roma from their marginalized position. Rather than providing a comprehensive overview of all the Roma rights organizations, this section will focus on the activity of three such organizations: the ERRC, the Legal Defense Bureau for National and Ethnic Minorities (NEKI), and Union Romani (UR).

The ERRC is based in Budapest, Hungary and was established in 1996.²⁹ The organization (which describes itself an international public interest law organization), is modeled after the American Civil Liberties Union (ACLU) and "attempt[s] to utilise

24 E. Bates, "Ethnocultural Justice in East European States and the Cast of the Czech Roma," *Can Liberal Pluralism Be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (New York: Oxford University Press, 2002), 71-72.

25 R. O'Connell, "Cinderella Comes to the Ball: Art 14 and the right to non-discrimination in the ECHR," *Legal Studies* (2009), 224.

26 D. Hawkins and W. Jacoby, "Agent permeability, principle delegation and the European Court of Human Rights," *Rev Int Org* (2008), 20.

27 Z. Barany, *The East European Gypsies: Regime Change, Marginality, and Ethnopolitics* (New York: Cambridge University Press, 2001).

28 Trehan, "In the name of the Roma?"

29 Barany, *The East European Gypsies*, 275.

legal advocacy and litigation in Europe to advance the human rights of Roma.”³⁰ According to the organization’s website, the ERRC has engaged in over 500 cases and won more than 2.5 million dollars for its clients. The ERRC has been victorious in 255 of the 300 cases it has completed, a success rate of 85 percent. ERRC has litigated at the domestic, European, and international level and has also made *amicus curiae* briefs in other cases.



Countries in which the ERRC has initiated litigation concerning the Roma, either at the domestic, European, or International level.

The countries it has litigated against include many Central and East European states, including Romania, Bulgaria, Czech Republic, Slovakia, and Hungary. Following the passage of Bulgaria’s Protection Against Discrimination Act that included a provision (Art. 71) explicitly permitting the use of lawsuits by individuals and NGOs to challenge discriminatory practices, the ERRC filed suit in its own name against a school in Sofia. The district court found in favor of the ERRC and clearly adopted the ERRC’s portrayal of systemic discrimination against the Romas:

Therefore, it has been proven under Article 9 PDA that there exist the facts of isolation, based on ethnic origin, of Roma children in an educational institution (school)...it can be inferred that there is segregation...violating the right to equal treatment and opportunity to participate in the public life (Application No 11630).³¹

The ERRC has also litigated against states outside of this region, including influential European regional powers such as France, the United Kingdom, and Russia.

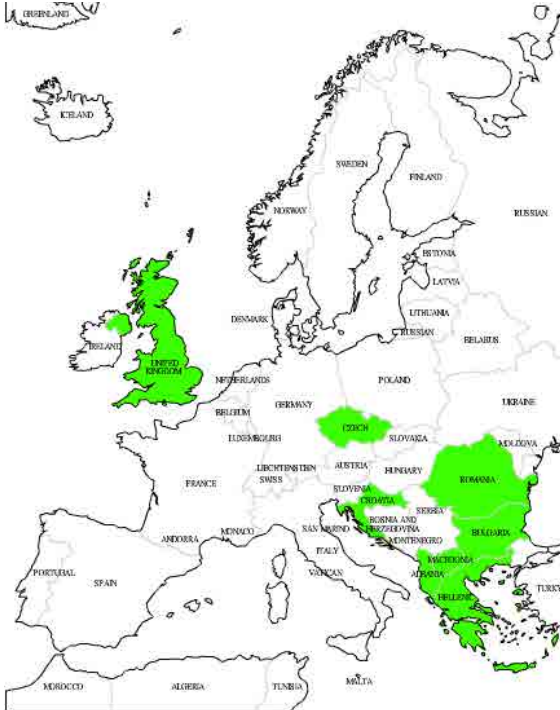
The ERRC was involved in 25 of the 33 (76 percent) Article 14 rights claims

30 Rob Kushen, “Note from the Executive Director,” European Roma Rights Centre.

31 The English translation of this judgment was obtained from the ERRC.

brought before either a Chamber or a GC of the ECtHR by Roma applicants. It has won a total of 24 cases before the ECtHR. Its litigation has involved a range of issues that are deeply integral to the broader Roma movement, including segregation in schooling, police brutality, and housing.

ERRC also provides various other services to the Roma community and Roma activists, including internships, workshops, and presentation material. The ERRC, in cooperation with other NGOs, published a comprehensive manual on antidiscrimination litigation entitled "Strategic litigation of race discrimination in Europe: from principles to practice." It has also offered training sessions for NGOs and individual lawyers involved in Roma litigation since 1996.



Countries against which the ERRC has brought cases before the ECtHR.

In addition to its litigation efforts, the ERRC has also produced important research publications that have drawn the attention of the media (domestic, regional, and international) and also submitted reports to European and international bodies that combat discrimination.³² In a report entitled *A Special Remedy* that took several months to compile, ERRC researchers described the overrepresentation of Roma students in schools for the mentally disabled (known as special schools), the inferior curriculum employed in these schools, the inability of students to transfer from special schools to mainstream schools, and the abuse Roma students suffered in mainstream schools.³³ This report was released in June 1999, the same month that ERRC filed a complaint with the Czech Constitutional Court in the case that was later dubbed *D.H.*

The conclusions contained in *A Special Remedy* and other publications by the

32 D. Herbert, "Gypsy children fill Czech special schools," CNN.com International (Sept. 2000).

33 Claude Cahn and David Chirico, "Roma and the right to education," *Roma Rights Journal* (Sept. 1998).

ERRC also had a significant impact on supranational bodies such as ECRI and PACE. The ECRI made two brief references to segregation of Roma children in a 1998 recommendation (CRI (98) 29 rev.) and failed to explicitly mention segregation in its 1997 monitoring report of the Czech Republic (CRI (97) 50). ECRI's 2000 report of the Czech Republic, however, explicitly references the segregation of Roma students and discusses the segregation in several paragraphs (CRI (2000) 4). Included in the list of references of the latter report are written submissions sent by ERRC to the U.N.'s Committee on the Elimination of Racial Discrimination and ERRC newsletters. ERRC's research has also had an indirect impact on judgments delivered by the ECtHR. In *D.H.*, the GC, in finding that the Czech Republic's educational practices amounted to indirect discrimination, explicitly refers to ECRI's 2000 monitoring report on the Czech Republic.

Two other rights organizations that have been active in the Roma cause are NEKI and UR. NEKI is a Hungarian organization established in 1993. According to their website, "NEKI was the first professional NGO specialized in minority rights protection." NEKI has conducted litigation primarily at the domestic level on a wide range of Roma-related issues, including segregation, employment, the refusal of patrons to allow Roma teenagers to enter clubs, and policy brutality.³⁴ In total, it has engaged in 250 to 300 cases. NEKI has fought one case before the ECtHR.³⁵ NEKI also engages in dialogues with the media, conducts training sessions on issues related to discrimination, and provides legal aid.

UR is a Spanish organization that also specializes in Roma affairs. It provides various services to the Roma community including providing legal aid and legal consulting, promoting the Roma culture, and "campaign[ing] to foster intercultural understanding." UR has litigated one case before the ECtHR, *Munoz Diaz v. Spain*.

The presentation of these three organizations is meant to illustrate the significant divergence in resources and tactics that these NGOs employ. Although they all fall under Epp's explanatory variable, it would be a grave mistake to assume that these organizations are fighting for the same goals. The geographic breadth of ERRC's litigation campaign itself is indicative of the vastly superior resources it has at its disposal and its ability to not only converse with but significantly influence supranational actors.

From the above analysis, it is concluded that a strong and effective array of rights-advocacy organizations was present prior to the occurrence of the Roma Rights Revolution.

Hypothesis 1: Rights-oriented Lawyers

This explanatory variable has been already been discussed to some extent in the introduction, but some additional observations are in place. Attempting to assess this variable is difficult because of the American transplants that have contributed significantly to the litigation efforts made by the most prominent litigation-oriented NGO, the ERRC. It is not clear as to whether Epp was referring to "homegrown" rights lawyers or if the origins of the rights-oriented lawyers are of no consequence. Such analysis, however, seems redundant in this particular instance, since the ERRC is modeled after the ACLU and does contain the word "rights" in its name. Nevertheless, a proper analysis of this explanatory variable is given.

Epp does emphasize in his work that a liberal legal education is key for the engendering of such rights-oriented lawyers and that such legal education is in the United States.³⁶ Given this empirical difficulty, this section will analyze two emblematic Amer-

34 White Booklet 2001-2003, 2005-2007

35 Balogh v. Hungary, no. 47940/99, 20 July 2004

36 Epp, *The Rights Revolution*, 54-58.

ican lawyers that have impacted Roma litigation and comment briefly on the presence of rights-oriented lawyers. The American lawyer James A. Goldston has represented Roma applicants in two prominent cases before the ECtHR, *D.H. and Orsus*. It is uncertain whether Goldston was responsible for the references to the Civil Rights Act and *Brown* in ERRC's application to the ECtHR on behalf of the Czech Roma students, but such a conjecture does seem logical. Goldston also served as the Legal Director of the ERRC and now serves as the Executive Director of the Open Society Justice Initiative. Goldston graduated from Harvard Law School and has engaged in human rights work in Africa, Asia, Europe and Latin America.

The current Managing Director of the ERRC is also an American transplant. Kushen received his legal degree from Columbia University and is a member of the New York Bar Association. Kushen worked for the Open Society Institute (OSI) from 1996 to 1999 and from 2003 to 2007. Kushen has worked in a diverse range of fields and countries, including Yugoslavia and Rwanda.

Confirming Epp's hypothesis, my analysis indicates that rights-oriented lawyers were present prior to the "Roma rights revolution" and remain integral to litigation-oriented NGOs.

Hypothesis 1: Sources of Funding

Scholars studying the role of NGOs in the Roma movement have noted the increasing dependence of these organizations on "international private foundations."³⁷ The financial resources of one human rights entrepreneur, Hungarian-born billionaire George Sores, has a tremendous impact on the Roma cause. Initiatives funded by Soros include "minority scholarships, meetings...self-help programs, the Romani News Agency [and] several schools for Gypsy students."³⁸ Several other Western sources have supported projects attempting to assist the Roma, including the Carnegie Corporation.

Although it is evident that financial resources are available to litigation-oriented NGOs, it is not clear as to whether such funding is necessarily contributing to litigation efforts; a link must be drawn between these sources of funding and such NGOs. An investigation of the donors who support the ERRC indicates that this link does exist. Among the sources providing funding to the ERRC are the European Commission (the executive body of the E.U.), the OSI (funded by Soros), the Sigrid Rausing Trust (an organization located in London that provides grants to human rights initiatives and has a budget of nearly 30 million dollars), the Swedish International Development Agency (an entity responsive to directives given by the Swedish parliament), and the U.N. Democracy Fund. Although ERRC does not disclose the amount of funding each source provides, it can be concluded from the sources listed and the organization's geographically diverse and intense litigation campaign that the organization is well-funded.

Hypothesis 1: Support Structure

The analysis reveals that each component of Epp's support structure was present prior to the emergence of the "Roma rights revolution." The pattern of judgments delivered by the ECtHR is also compatible with this conception of the rights revolution. The Court did not suddenly begin issuing judgments favorable to the Roma, but rather gradually moved towards judicial support of these rights claims. In several of the early cases, the Court failed to find a violation of Article 14. The Court then found violations of Article 14, but only in its procedural aspect. Then, over the course of seven cases, the Court found a substantive violation in each of its judgments.

37 Trehan, "In the name of the Roma?" 135.

38 Barany, *The East European Gypsies*, 278.

Hypothesis 2: Judicial Redemption

The reader will recall that this hypothesis posits that judges, after consistently failing to recognize and vindicate rights claims, will attempt to “redeem” themselves by persistently supporting these claims. Content analysis of the Court’s Article 14 jurisprudence in which claims were made by Roma applicants indicated that judges, while not willing to find violations of Article 14, were aware that state practices discriminated against the Roma. This concern for the Roma was exhibited in the first Roma case that appeared before the ECtHR, *Buckley v. the United Kingdom*, 25 September 1996, Reports of Judgments and Decisions 1996-IV. The case concerned a Roma who had pitched her caravan on property she owned. The local authorities notified her that she could not continue to reside on this land, but the applicant refused to consent to their demands and petitioned the Planning Inspector and the Secretary of State.³⁹ In his dissent, Judge Pettiti wrote “In attempting to comply with the disproportionate requirements of an authority or a rule, a family runs the risk of contravening other rules. Such unreasonable combinations are in fact only employed against Gypsy families to prevent them living in certain areas.” In *Chapman v. the United Kingdom* [GC], no. 27238/95, ECHR 2001-I, the Court repeatedly acknowledges the Roma’s marginalized position and their unique culture. In one section of its judgment, the Court notes that “the applicant’s occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle.” In another section, the Court notes that the “the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle.” The Court also remarks that “there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle... not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community.” The Court then states, however, that an “emerging consensus” is not a consensus and proceeds to explain why the failure of the Contracting States to arrive at a consensus on this issue prevents the Court from finding a violation.⁴⁰ Although the Court recognized this “emerging consensus,” it was unwilling to serve as the vanguard of this trend and potentially, through its judgments, solidify this consensus.

As the above analysis indicates, the Court had acknowledged the special needs of the Roma community and their marginal position since the first Roma case appeared before it in 1996. This does not mean, however, that every single judge of the ECtHR was satisfied with the incremental nature of the Court’s jurisprudence concerning the Roma and its failure to find Article 14 violations. In his dissent in *Anguelova v. Bulgaria*, no. 38361/97, ECHR 2002-IV, Judge Bonello scathingly criticizes the Court’s approach to Roma claims and Article 14 jurisprudence:

Leafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia. The

39 Sandland, “Developing a Jurisprudence,” 481.

40 Contrast the qualification made in *Chapman* regarding the consensus to its omission in the later case of *Munoz Diaz*: “The Court observes in this connection that there is an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle ...not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity that is of value to the whole community.”

Europe projected by the Court's case-law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination. The present case energises that delusion...Kurds, coloureds, Muslims, Roma and others are again and again killed, tortured or maimed, but the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it.

Bonello's dissent essentially represents an attempt to convince fellow judges of the shockingly unrealistic construction of Europe they hold and the need for the Court to make the "turn" to vindicating Article 14 claims, and thus redeem its image. It is worth noting that his dissent was issued in 2002, in the midst of a growing awareness among European and CoE actors of the need to address the "Roma challenge." Subsequent cases reveal that, in spite of Bonello's remarks and this "emerging consensus," the Court continued to take a conservative approach to Article 14 rights claims.

Notwithstanding Bonello's critical assessment of the ECtHR and its Article 14 jurisprudence, it is evident from the above analysis that a redemptive bid did not occur.

Hypothesis 3: Judicial Independence

Content analysis of Roma cases before the ECtHR revealed that the Court's insulation from other bodies did not result in judicial support of Article 14 rights. On the contrary, the judgments revealed that the more receptive the Court was to the activity of other Council of Europe bodies, the more likely it was to find a violation of Article 14. As mentioned above, the GC took into serious consideration ECRI's reports on the Czech Republic that detailed the systemic discrimination faced by Roma in its judgment in D.H and others.

Conclusion

This paper attempts to explain the factors and conditions that contributed to the emergence of the "Roma rights revolution." The above analysis demonstrates that the hypothesis that best describes the emergence of the Roma rights revolution is Epp's support structure. The presence of each component of the support structure was essential to the eventual success of the litigation strategy. Advocacy measures by several Roma rights organizations, especially ERRC's reports to CoE and UN bodies and its research publications, placed the Roma issue on the agenda of several significant European level actors and grabbed headlines across Europe. These measures contributed into an environment that was conducive to ERRC's transnational litigation campaign. Since other CoE bodies had already adopted the Roma cause because of these advocacy measures, the Court was able to join the relatively settled discourse established by these other institutions. American lawyers equipped with a significantly un-European conception of what rights and the law can accomplish provided ERRC with the long-term ideological vision necessary to conduct a sustained litigation campaign.⁴¹ Funding was also essential. Substantial funding was pivotal to the ERRC geographically and jurisdictionally diverse litigation. Funding was also required for the several notable advocacy measures the ERRC and other Roma NGOs have taken.

According to the analysis presented in this paper, the "Roma rights revolution" occurred because of the presence of a support structure—consisting of rights-advocacy organizations, rights-oriented lawyers, and sources of funding—that facilitates litigation campaigns. As the above analysis shows, a single NGO, the ERRC, has generated the majority of litigation conducted in the name of the Roma. This "monopolization" of litigation by a single NGO at the European level raises several interesting questions that

41 K. Ashton, "Standing for Equality," *The Prague Post* (Nov. 2007).

are beyond the scope of this paper, but are worth mentioning. Are the Roma comfortable with the ERRC and the American lawyers that litigate “in their name”? Does the ERRC’s production of a “Roma rights revolution” represent the interests of all Roma, or does it prioritize a certain vision of “post-marginality” that represents only a portion of the Roma community? Has the “Roma rights revolution” been a democratic undertaking? These questions, as well as the question of what social changes the legal decisions will engender, are left for further research.

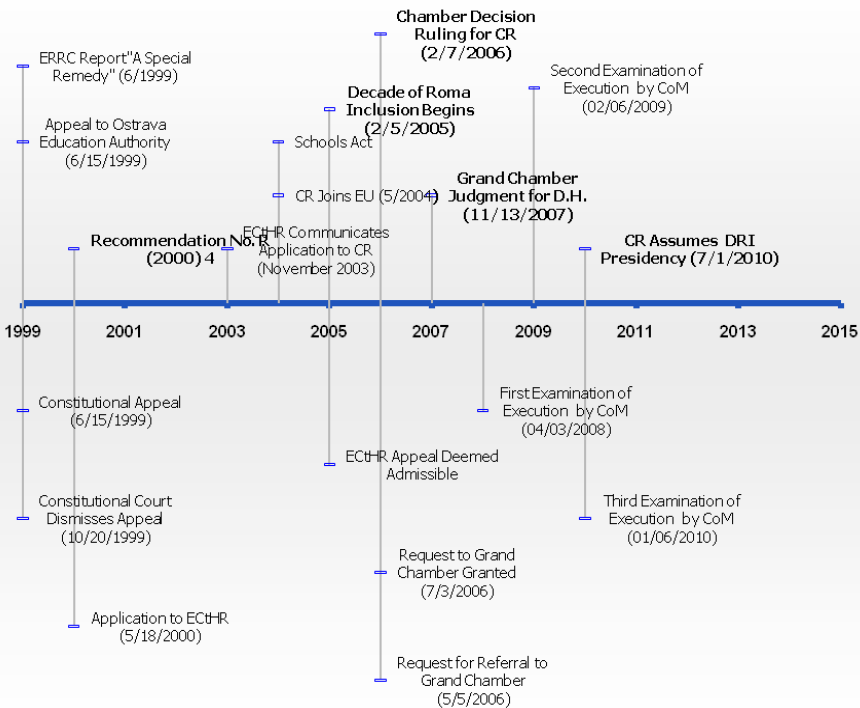
ECtHR Judgments Involving Roma Petitions Under Art. 14

Case	Date	C/ GC	Art. 14 Violation	ERRC Involvement
Buckley v. the United Kingdom	9/25/1996	C	No (8-1)	No
Velikova v. Bulgaria	5/18/2000	C	No (U)	No
Jane Smith v. the United Kingdom	1/18/2001	GC	No (U)	Yes
Lee v. the United Kingdom	1/18/2001	GC	No (U)	Yes
Coster v. the United Kingdom	1/18/2001	GC	No (U)	Yes
Beard v. the United Kingdom	1/18/2001	GC	No (U)	Yes
Chapman v. the United Kingdom	1/18/2001	GC	No (U)	Yes
Anguelova v. Bulgaria	6/13/2002	C	No (6-1)	Yes
Nachova and others v. Bulgaria	2/26/2004	C	Yes (U)	Yes
Balogh v. Hungary	7/20/2004	C	No (U) Friendly	No
Moldovan and others v. Romania (No. 1)	7/5/2005	C	Settlement No (11-6), Yes	Yes
Nachova and others v. Bulgaria	7/6/2005	GC	(U)1	Yes
Moldovan and others v. Romania (No. 2)	7/12/2005	C	Yes (U) No (U), Yes	Yes
Bekos and Koutropoulos v. Greece	12/13/2005	C	(U)	Yes
D.H. and others v. the Czech Republic	2/7/2006	C	No (6-1)	Yes
Ognyanova and Choban v. Bulgaria	2/23/2006	C	No (U)	No
Kalanyos and others v. Romania	4/26/2007	C	Struck Out	Yes
Gergely v. Romania	4/26/2007	C	Struck Out	Yes
Secic v. Croatia	5/31/2007	C	Yes (U)	Yes
Cobzaru v. Romania	7/26/2007	C	Yes (U)	Yes
Angelova and Iliev v. Bulgaria	7/26/2007	C	Yes (U)	No
D.H. and others v. the Czech Republic	11/13/2007	GC	Yes (13-4)	Yes
Petropoulou-tsakiris v. Greece	12/6/2007	C	Yes (U)	Yes
Stoica v. Romania	4/3/2008	C	Yes (U)	Yes
Sampanis and others v. Greece	6/5/2008	C	Yes (U)	Yes
Orsus and others v. Croatia	7/17/2008	C	No (U)	Yes
Beganovic v. Croatia	6/25/2009	C	No (U)	Yes
Munoz Diaz v. Spain	8/12/2009	C	Yes (6-1)	No
Sejdic and Finci v. Bosnia and Herzegovina	12/22/2009	GC	Yes (14-3)	No

Sashov and others v. Bulgaria	7/1/2010	C	Dismissed (procedural)	Yes
Orsus and others v. Croatia	3/16/2010	GC	Yes (9-8)	Yes
Stefanou v. Greece	4/22/2010	C	Dismissed (procedural)	No

C/GC refers to Chamber/Grand Chamber. CEC refer to Central and Eastern Europe. (U) refers to a unanimous decision.

D.H. and others v. Czech Republic - Timeline of Events



Key:

CR: Czech Republic

EU: European Union

ECtHR: European Court on Human Rights

CoM: Committee of Ministers

DRI: Decade of Roma Inclusion

WORKS CITED

- Ashton, K. Standing for Equality. The Prague Post. Nov. 2007. Retrieved April 23, 2010, from <http://praguepost.com/archivescontent/4650-standing-for-equality.html>
- Barany, Z. The East European Gypsies: Regime Change, Marginality, and Ethnopolitics. New York: Cambridge University Press. 2001.
- Barsa, P. Ethnocultural Justice in East European States and the Case of the Czech Roma . Can Liberal Pluralism Be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe (pp. 243-259). New York: Oxford University Press, USA. 2002.
- Bates, E., Buckley, C., Harris, D., & O'Boyle, M. Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights (2nd ed.). New York: Oxford University Press, USA. 2009.
- Cameron, R. 85,000 join Facebook campaign against voluntary Romani lessons in schools. March 2010. Retrieved April 24, 2010, from <http://www.radio.cz/en/article/126449>
- Cichowski, R. A. Courts, Rights, and Democratic Participation. Comparative Political Studies, 39(1), 50-75. 2006.
- Coomans, F. Justiciability of the Rights to Education. Erasmus Law Review, 2(4), 427-443. 2009.
- Devroye, J. The Case of D.H. and Others v. the Czech Republic. Northwestern University School of Law, 7(1), 81-101. 2009.
- Dimitras, P., & Papanikolatos, N. Reflections on Minority Rights Politics for East Central European Countries . Can Liberal Pluralism Be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe (pp. 186-199). New York: Oxford University Press, USA. 2002.
- Drakulić, S. Anti-Roma prejudice not demolished in a day | Slavenka Drakulić | Comment is free | guardian.co.uk . Guardian. March 2010. Retrieved April 8, 2010, from <http://www.guardian.co.uk/commentisfree/2010/mar/21/roma-croatia-discrimination-echr>
- ERRC Opposes Ethnic Boarding Schools in Slovakia. March 2010. ERRC.org. Retrieved May 1, 2010, from <http://www.errc.org/cikk.php?cikk=3580>
- Epp, C. R. The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective. Chicago: University Of Chicago Press. 1998.
- Frymer, P. Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party (Princeton Studies in American Politics: Historical, International, and Comparative Perspectives). Princeton: Princeton University Press. 2007.
- Goldhaber, M. D. A People's History of the European Court of Human Rights. New Jersey: Rutgers University Press. 2009.
- Goldston, J. A., & Ivanov, I. Combating Segregation in Education through Litigation: Reflections on the Experience to Date. Separate and Unequal

Combating Discrimination against Roma in Education (pp. 145-171). Budapest: Public Interest Law Initiative/Columbia University Kht. 2004.

Guarnieri, C. *International Journal of Constitutional Law*. *International Journal of Constitutional Law*, 5(2), 187-210. 2007.

Guy, W. *Between Past and Future: The Roma of Central and Eastern Europe*. Hatfield: University of Hertfordshire Press. 2002.

Hawkins, D., & Jacoby, W. Agent permeability, principal delegation and the European Court of Human Rights. *Rev Int Org*, 3, 1-28. 2008.

Henders, S. J. *Democratization and Identity: Regimes and Ethnicity in East and Southeast Asia* (Revised ed.). New York: Lexington Books. 2007.

Herbert, D. CNN.com - Gypsy children fill Czech special schools. September 27, 2000. CNN.com International. Retrieved April 23, 2010, from <http://edition.cnn.com/2000/WORLD/europe/09/26/czech.school/index.html>

Huneus, A. V. Judging from a Guilty Conscience: The Chilean Judiciary's Human Rights Turn. *Law & Social Inquiry*, 32(1), 99-135. 2010.

Johnston, R. Education minister says ten years needed to improve situation for Roma children in Czech schools. *ÄeskÄ½ rozhlas*. Aug. 4, 2009. Retrieved April 20, 2010, from <http://www.radio.cz/en/article/115103>

Kagan, R. Should Europe Worry About Adversarial Legalism. *Oxford Journal of Legal Studies*, 17(2), 165-183. 1997.

Kagan, R. Globalization and legal change: Themâ€™â€™ Americanizationâ€™™ â€™™ of European law?. *Regulation & Governance*, 1, 99-120. 2007.

Kelemen, R. D. Suing for Europe Adversarial Legalism and European Governance. *Comparative Political Studies*, 39(1), 101-127. 2006.

Kushen, Rob. Note from the Executive Director. European Roma Rights Centre. Retrieved May 1, 2010, from <http://www.errc.org/en-about-us-executive.php>.

Kymlicka, W. Reply and Conclusion. *Can Liberal Pluralism Be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe* (pp. 345-413). New York: Oxford University Press, USA. 2002.

Kymlicka, W. *Can Liberal Pluralism Be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe*. New York: Oxford University Press, USA. 2002.

Kymlicka, W. *Western Political Theory and Ethnic Relations in Eastern Europe. Can Liberal Pluralism Be Exported?: Western Political Theory and Ethnic Relations in Eastern Europe* (pp. 13-107). New York: Oxford University Press, USA. 2002.

Mbaye, J. K., & Singh, N. *Enforcement of Human Rights: In Peace & War and the Future of Humanity*. Boston: Kluwer Law International. 1987.

McCann, M. W. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago Series in Law and Society) (1 ed.). Chicago: University of Chicago Press. 1994.

- Merry, S. E. *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago Series in Law and Society). Chicago: University Of Chicago Press. 2006.
- O'Connell, R. *Cinderella comes to the Ball: Art 14 and the right to non-discrimination in the ECHR*. *Legal Studies*, 29(2), 211-229. 2009.
- Rosenberg, G. N. *The Hollow Hope: Can Courts Bring about Social Change?* (2 ed.). Chicago: University Of Chicago Press. 2008.
- Rostas, I., & Nicoara, M. *Advocacy Strategies to Combat Segregation. Separate and Unequal Combating Discrimination against Roma in Education* (pp. 115-134). Budapest: Budapest: Public Interest Law Initiative/Columbia University Kht. 2004
- Sandland, R. *Developing a Jurisprudence of Difference: The Protection of the Human Rights of Travelling Peoples by the European Court of Human Rights*. *Human Rights Law Review*, 8(3), 475-516. 2008.
- Sarat, A., & Scheingold, S. *Cause Lawyers and Social Movements* (Stanford Law Books) (1 ed.). Stanford: Stanford Law And Politics. 2006.
- Scheingold, S. A. *The Politics of Rights: Lawyers, Public Policy, and Political Change* (2 ed.). Ann Arbor: University of Michigan Press. 2004.
- Trehan, N. *In the name of the Roma? The role of private foundations and NGOs. Between Past and Future: The Roma of Central and Eastern Europe* (pp. 134-145). Hatfield: University of Hertfordshire Press. 2002.
- Union Romani. *Union Romani*. Retrieved April 8, 2010, from http://www.unionromani.org/union_in.htm
- Vanhala, L. *Anti-discrimination policy actors and their use of litigation strategies: the influence of identity politics*. *Journal of European Public Policy*, 16(5), 738-754. 2009.
- Vermeersch, P. *The Romani Movement: Minority Politics and Ethnic Mobilization in Contemporary Central Europe* (Studies in Ethnopolitics). Providence, Oxford: Berghahn Books. 2007.
- Xanthaxi, A. *The Proposal for an EU Directive on Integration*. March 24, 2005. Retrieved February 9, 2010, from <http://errc.org/cikk.php?cikk=2211&mkeyword=conservative%20european%20court>

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