

“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 that 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

AN UNDERGRADUATE JOURNAL  
OF INTERNATIONAL AFFAIRS  
AT DARTMOUTH COLLEGE

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# EDITOR'S NOTE

The same basic challenges to stable governance have existed for centuries. The struggles for peace, prosperity, and justice are not new ones. Accordingly, each generation creates and upholds unique visions and solutions to these pressing questions. The most chaotic, difficult periods of history, then, are when a previous generation's answers to those fundamental questions no longer fit with the next generation's needs and environment. At the turn of the 21st century, politicians and practitioners stand at one of these crossroads, tasked with updating solutions to fit the a new context of global security, prosperity, and order.

Our goal in this issue is to display both the challenges and innovative solutions that national and supranational policymakers face in confronting global issues. As the nature of threats change, so does our response to them. Bryan Thomson lays out a compelling overview of the Obama administration's use of targeted drone strikes against terrorists and the political, and legal effects of such a policy. The piece represents the larger challenge of updating wartime ethics in light of technological advances. As the pace of modern society increases, the way we govern ourselves and interact with our political bodies requires updating also. In "Strategic Restraint and Finding Common Ground," Mark DuBuis wonders how newly-independent nations seeking national unity cope with the global economic interactions inherent to the workings of the modern state. Olivia O'Hagan then examines corruption in the Philippines and underscores the need for strong bureaucracies. The issue then turns its attention to macro-level institutions, with Victoria Nevel's exploration of changing human rights norms in international society. She traces the development of the classification of rape as a crime against humanity at the International Criminal Court in connection with international media attention.

Finally, we feature a conversation between *World Outlook* and Dr. Paul Heer, formal National Intelligence Officer for East Asia. The interview explores the United States' pivot to Asia and the future of economic and political relations between the west and China. An opinion editorial on potential conflict in the South China by Dartmouth undergraduate Joshua Tupler supplements the interview.

Are these ideas the path to a new world order? Only time will tell. Until then, we can find solace in the knowledge that young scholars are dedicated to finding innovative solutions.

Sincerely,  
Freya Jamison & Kevin Zhang

## WEIGHING IN ON THE DRONE DEBATE: ARGUMENTS TO CONSIDER WHEN ASSESSING THE OBAMA ADMINISTRATION'S TARGETED KILLING OF AMERICAN CIVILIANS

Bryan Thomson

The Obama Administration's use of unmanned aerial vehicles (UAV) to strike American citizen Anwar al-Awlaki has elicited intense debate on the targeted killing of Americans abroad. In this paper, I lay out a framework to examine the positive and negative consequences of strikes on American nationals as they relate to U.S. national security and counter-terrorism objectives. By engaging with literature on the effectiveness targeted killing program at large, questions of scope and democratic opposition, and the existing limitations and historical use of such strikes, I find that there is evidence to merit the consideration of a number of major critiques of the targeting of American citizens with UAV. I contend that questions of efficacy, domestic opposition, moral hazard, and the overextension of executive authority should all be considered when assessing if strikes against citizens contribute to American national security.

On September 30, 2011, senior al-Qaeda recruiter and jihadist imam Anwar al-Awlaki (Aulaqi) was confirmed dead after being shot by Hellfire missiles from two American Predator drones. The death of al-Qaeda's most active operational affiliate, deep within the hostile Yemeni desert, was cause for celebration within the Obama White House. The strike on Awlaki, the latest of thousands of killings by unmanned aerial vehicles (UAV),<sup>1</sup> proved exceptional not only because of the high target value, but also because of his nationality. For the first and only time since, the U.S. intentionally remotely targeted an American citizen.

The killing of Anwar al-Awlaki, coupled with the collateral deaths of his son, Abdulrahman al-Awlaki, and al-Qaeda operative Samir Khan, both U.S. citizens, opened a Pandora's box of concerns regarding the targeted killing of Americans. The debate gained traction across scholarly communities and popular media. In the interest of promoting the strongest possible policy, it is critical to determine if the use of drone strikes against American targets is a net benefit or harm to U.S. national security. Given that answering this question far exceeds the scope of this paper, I seek to define and substantiate several critical tradeoffs inherent in the program in order to structure this ongoing debate.

This contribution is made by conducting an evaluative literature review to substantiate two of the most significant considerations: that strikes against Americans do not reduce (or may even increase) terrorism, and that such strikes are not a politically viable tactic due to their negative externalities. The stakes are high: combatting terror with targeted strikes costs lives and could create obstacles to regional

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peace and U.S. security. Given the proliferation of UAV technology in blood-averse, “post-heroic” counter-terror operations,<sup>2</sup> this analysis could guide research to the most tractable issues regarding targeted killing of Americans.

## LITERATURE REVIEW

The Executive’s choice to target U.S. citizens, regardless of their perceived threat to the country, is one that rightly elicits extreme scrutiny.<sup>3</sup> By undertaking this course of action, the Administration knowingly acts in a manner inspiring domestic controversy and carrying significant risks. Since this issue is so politically polarized, it is all the more necessary to engage in an objective analysis of the costs and benefits of such strikes.

The current debate regarding the efficacy of targeted killing can be divided into four general camps.<sup>4</sup> The first of these positions is that of the Obama Administration; that drone strikes are an effective tool to further U.S. security objectives.<sup>5</sup> Along with the President’s spokespeople, Brookings Fellow Daniel Byman frames the use of UAVs against designated terrorists as an imperfect, but best available option that minimizes collateral damage in the elimination of top terrorist operatives.<sup>6</sup> While much of the pro-drone rhetoric has addressed the larger debate over counterterror use of UAV, certain scholars have defended drone use against Americans. One such commentator, Professor Michael Paulson, states that the citizenship of high-value targets such as Awlaki has no bearing on the “vitaly important” nature of UAV strikes as a component of American security policy, and that the focus on nationality can serve to distract from the effectiveness of strikes against enemy combatants.<sup>7</sup>

Three primary schools of thought oppose this normative support for the current targeted killing program. The first of these schools comes in direct opposition to the central thesis of Byman and Paulson, claiming that strikes against citizens work contrary to American aims. For if unmanned targeting U.S. citizens is to be considered effective, there must be solid evidence that decapitation strikes work generally. Forwarded most prominently by Micah Zenko<sup>8</sup> and Jeffery Simon,<sup>9</sup> this school claims that the killings like that of Awlaki are poor indicators of success in the fight against violent extremism. “Decapitation” strikes fail to fundamentally damage flexible, established terrorist networks, such critics claim, and as such it is impossible to measure progress by counting eliminations of high value targets.<sup>10</sup>

A subgroup of the ineffectiveness camp goes even further, to suggest that collateral damage produced by drone strikes could spur more terrorist activity than it prevents. By engendering the resentment of local civilians who lose family members in strikes, the U.S. risks aiding terrorist recruitment, exacerbating poverty-driven radicalism, and reducing local support and intel for allied states.<sup>11</sup>

The second school of thought cautioning against current drone policy extends beyond the general program to address considerations dealing specifically with U.S. citizens. This group advocates awareness of a moral hazard that results from drones’ military superiority and ease of use. Coauthored by Professors John

Kaag and Sarah Kreps, “The Use of UAV in Contemporary Conflict” presents the argument that drones’ technological advantage has begun to serve as the very justification for their use, thus violating international standards of proportionality and making it unacceptably easy to kill Americans instead of capturing them. This carries the potential to draw the U.S. into further unnecessary and unbeneficial strikes.<sup>12</sup> Scott Shane, author of *Objective Troy*, an account of the strike on Awlaki, professes that Awlaki would have “been heartened” to learn that the strike that killed him has drawn America further into a battle with radical Islam.<sup>13</sup>

The third school of thought counter to the administration’s use of drones warns of the potentially dire consequences of lacking a formalized set of legal criteria for targeting citizens. Professor Lloyd Gardner asserts that the targeting of Awlaki introduced a “mechanism [for the Obama Administration] for continuing operations with proven results . . . to amend the U.S. Constitution to suit the current occupant of the White House’s interpretation of national security needs.”<sup>14</sup> Though ostensibly a legal issue, this concern is also important when assessing the program’s effectiveness: if implemented with improper restraint, future iterations of current policy could make Americans unjustifiably unsafe abroad from their own government. This critique speaks to a larger policy debate of the balance between executive overreach and program effectiveness, a subject central to issues of detention, interrogation, and intercepting communications in the last decade.<sup>15</sup>

## ARGUMENT

With existing literature in mind, I wish to examine the degree of substantiation on both sides of the debate, broken down in reference to the following questions:

1. Does the drone program work to strengthen American national security?

Specifically,

(A) To what extent do decapitation strikes reduce terrorist operations?

(B) What is the potential for collateral damage to negate security gains?

2. Are strikes against U.S. citizens politically viable solutions to fight terror?

Specifically,

(A) Can domestic opposition inhibit the program from achieving increased security?

(B) Do we risk striking citizens out of convenience, not necessity?

(C) Do current legal restrictions limit future administrations from threatening the personal security of American citizens?

My goal for this analysis is to examine the degree to which evidence exists that each opposing position merits a reappraisal of current, pro-strike policy. Upon scrutiny, there exists compelling evidence that each major critique should be given bearing. Most attention will be paid to the first question, as the most available empirical evidence deals with the benefits and drawbacks of overseas strikes, where both sides draw on ample support.



In addition to providing for the possibility of such strikes being ineffective and potentially incurring resentment due to collateral damage, I contend that the Administration may also need to include in its calculus domestic opposition to extrajudicial killings when targeting U.S. citizens. Scholarly data analysis and trends in American media coverage indicate that the scale of the program may play a significant role in all of these drawbacks, each being exacerbated by increases in intensity.

The question of moral hazard, though significant, is perhaps the most difficult to examine on an empirical basis. Though it is critical to engage with the larger, moral aspect of allowing non-judicial killings of citizens, here I will seek to examine the possibility of the existence of a “slippery slope.” A comparison of the theoretical objections to the overall drone program and the historical record illustrative of restraint with respect to American nationals (targeting only the dangerous Awlaki) indicates that this particular objection is worthy of consideration, but presently lacks a consistent body of evidence to demonstrate increasingly frequent, unnecessary use to be a detrimental effect of the UAV program.

Finally, significant evidence exists to consider the objection that the overextension of executive authority could unnecessarily jeopardize Americans’ rights and therefore personal security. This issue is addressed through examination of leaked documents defining the “kill chain” based primarily on Executive judgment, in combination with appraisal of conflicting expert opinions justifying the status quo vs. increased judicial oversight.

Effectively, I assert that while the pro-strike camp’s rationale appears to stand on a solid theoretical base, there are strong and diverse reasons for policymakers to consider the possibility such strikes are, in practice, misguided, ineffective or even counterproductive to their goals. To support this claim, I survey available empirical evidence for each objection.

### **EVIDENCE—THE EFFICACY OF DECAPITATION STRIKES**

A number of scholars have forwarded a strong argument that the targeted killing program is fundamentally incapable of crippling anti-American terrorist networks. Any comprehensive assessment of the targeted killing of Americans, therefore, must include consideration that selective killing may be an ineffective weapon for national defense.

In her paper, “Attacking the Leader, Missing the Mark,” Jenna Jordan presents a robust argument that “decapitation” strikes are generally ineffective at incapacitating terrorist networks. Citing inability to conduct attacks as the measure of success, Jordan finds a mere 17% success rate among decapitation efforts of all kinds.<sup>16</sup> By adopting western bureaucratic structures, damage from individual strikes can be minimized through leadership replacement mechanisms.<sup>17</sup> Further, in instances most analogous to the strike on Awlaki, a member of the long-established al-Qaeda in the Arabian Peninsula (AQAP) network, rates of success are empirically even lower. Jordan asserts that, “The rate of collapse for decapitated groups with

between 100 and 500 members is nearly 35 percent lower than for groups with 25 to 100 members. Even using a conservative estimate, destabilizing al-Qaida will be difficult.”<sup>18</sup> The evidence Jordan analyzes provides strong support for the idea that the targeted killings of top al-Qaeda leaders are unlikely to achieve the objective of dismantling the organization.

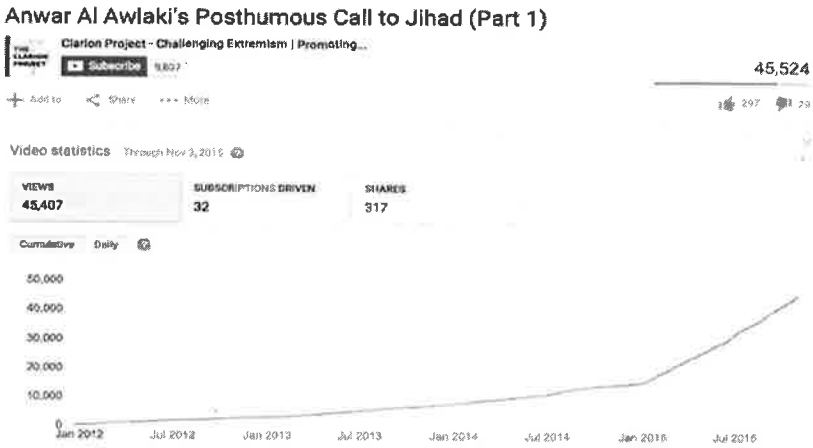
On the other side of this debate, however, it is important to examine the specific circumstances regarding Awlaki’s uniquely dangerous nature. It is reasonable to assert that Awlaki’s influence was exceptional, even among al-Qaeda leadership, and therefore his targeting had a much higher chance of damaging AQAP than the median strike Jordan examines. The main theoretical justification for the importance of decapitation strikes in such cases is laid out by Bruce Hoffman, who claims al-Qaeda operates on two levels: as a “bottom-up” organization reliant on new recruits, and as a “top-down” group whose self-perpetuation depends on core leaders.<sup>19</sup> Because of this latter aspect, one could convincingly assert Awlaki was vital to al-Qaeda leadership.<sup>20</sup>

Linked to numerous 9/11 perpetrators and having called repeatedly and planned actively for the mass-murder of Americans,<sup>21</sup> Awlaki was decidedly unique among the top American targets long before his killing even took place. Inspire, al-Qaeda’s international, mass-market publication attracted a cadre of devoted readers under his direction, to the point where analysts referred to it as his “baby.” Biographer Scott Shane considered Awlaki irreplaceable to Inspire, claiming his personal contributions were exceptionally “dogmatic and vicious.”<sup>22</sup> The most important reason Awlaki stood in a class of his own, however, was his connections to homegrown terrorism. Awlaki was the chief influence of British terrorist Roshonara Choudhry, Ft. Hood shooter Nidal Malik Hasan, and Umar Farouk Abdulmutallab, the Detroit “Christmas Day Bomber.” For the latter two men, Awlaki became “the center of their ideological universe.”<sup>23</sup> With around 11% of visitors to Awlaki’s website coming from the U.S., he is aptly considered the grandfather of lone wolf terrorists.<sup>24</sup>

In conjunction, these attributes convinced President Obama to orally argue for his elimination as early as December 2009.<sup>25</sup> Since 2010, the President additionally asked Homeland Security Advisor John Brennan to give him updates on Awlaki during every “Terror Tuesday” briefing, becoming “fixated” on his importance within AQAP.<sup>26</sup>

While substantial justification to the President’s rationale to target Awlaki clearly exists, it is important to consider what has transpired since his killing. Two incidents of terror in January of 2015 evidence the Imam’s continued inspirational effects on jihadis. Both the attackers of the satirical French magazine *Charlie Hebdo* and a foiled lone wolf bomb-plotter in Ohio explicitly cited Awlaki as inspiration for their actions.<sup>27</sup> An analysis of internet traffic on his most popular radical sermon on YouTube (Figure 2) provides further evidence that Awlaki has had a posthumous impact on many; views have steadily risen since its upload in January 2012, with the majority coming in the last six months.

Figure 1: Traffic on Anwar al-Awlaki's Most Popular Jihadi Sermon on YouTube



It is useful to note the difficulty in measuring the actual outcomes of the Awlaki case: there are simply no measures of how many terrorist attacks were never planned or potential jihadis left unradicalized by the absence of Awlaki's leadership and sermons. Though Awlaki's sermons have continued to reverberate across nations, it is far from certain the extent to which his killing limited the damage he was capable of causing.

Finally, when weighing the decision to issue a decapitation strike like that against Awlaki, it is important to critically examine Jordan's definition of success with respect to the Administration's national security objectives. Specifically, targeted killings can be used as one of many tools designed to constrain terrorist activity, and not with complete organizational collapse as the singular, expected outcome. As one unnamed White House counterterrorism advisor succinctly explained in 2010, "The president was skeptical that kinetic strikes will end the war on terror, but he is not skeptical that they can stop a terrorist who is planning to kill Americans in Times Square."<sup>28</sup> Author Daniel Klaidman furthers this point, contending that the continuation of the drone program after hundreds of strikes in Yemen, Somalia and Pakistan evidences the Executive became convinced of its benefits, even if they are short term.<sup>29</sup> While a 17% chance of complete success may not justify strikes on Americans, much higher chances of stopping immediate threats to the homeland may make the program worthwhile. The ability to distinguish exceptional cases would therefore be vital to increasing the probability of a strike devastating terrorist networks and plans. The challenge of correctly selecting these cases, however, is extremely daunting, and no existing methodology could be considered foolproof to determine whether a target fits these criteria.

## THE HARM OF COLLATORAL DAMAGE

The second contention against the use of drones—that strikes killing innocent foreign nationals make the program ineffective or worse—has been heavily discussed with respect to the American UAV targeted killing as a whole. Its application to the targeting of U.S. citizens will therefore require some extrapolation. Negative externalities such as increased terrorist recruitment or restricted access to intelligence, however, will still apply if collateral damage kills innocents regardless of the target's nationality.

The first potential issue with collateral damage is the possibility of host nation opposition. Assuming, for the purpose of debate, that decapitation strikes are effective measures for improving national security, there is a strong interest in access to airspace and permission to bomb in host nations' sovereign territory. This access has been challenged in the two nations where the vast majority of drone strikes occur: Yemen and Pakistan. Claiming that 3% of drone casualties have been civilians since 2008,<sup>30</sup> the Pakistani Parliament unanimously voted to end U.S. strikes in 2012.<sup>31</sup> The Yemeni Parliament followed suit (not unanimously) in 2013.<sup>32</sup> With the real civilian casualty rate in Pakistan estimated as high as 17%, there is reason to fear the enforcement of such resolutions if popular resentment for the program grows due to collateral damage.<sup>33</sup>

There is also empirical evidence that civilian casualties counteract American aims. In Pakistan, local violence has increased in proportion to drone strikes.<sup>34</sup> Analyzing data from coalition action in Iraq, Luke Condra et al. have found that violence spikes after civilian casualties are caused by counterinsurgent forces.<sup>35</sup> It is no stretch to apply these findings to analogous violence via foreign drone strikes. Using interview accounts, journalists have asserted high frequency UAV bombings directly fueled anti-Americanism in north Pakistan.<sup>36</sup> In 2013, Deputy Chief of the U.S. Mission in Yemen Nabeel Khoury publically warned that each produced 40–60 new AQAP recruits for every person (operative or civilian) killed, due to the nature of tribal bonds in the areas being bombed.<sup>37</sup> Even if this is an overestimate, the potential for massive terrorist recruitment is well documented elsewhere. One study by New York University Law School's Global Justice Clinic cited several mechanisms that make strikes counterproductive and resentment inducing, including killing wage earners, bankrupting families, and creating poor mental health from living in fear of further strikes.<sup>38</sup> In sum, there is strong evidence that the current drone program, at minimum, has significant externalities limiting its effectiveness.

While these issues merit attention, three points qualify the extent to which collateral limits efficacy. First, though Yemen and Pakistan have called to ban American drone strikes, neither program has stopped after almost a decade of strikes. With respect to the targeting of Americans, it is highly unlikely that the Awlaki case (which saw zero civilian casualties) evidences caution with respect to collateral. Unless expanded exponentially, or if the lack of casualties in the Awlaki bombing was

more unrepeatable luck than patience, UAV bombings of U.S. nationals will probably not shift the balance on this specific issue.

Second, there is good reason to believe the U.S. is rapidly improving on the rates civilian casualties to target deaths. The aforementioned data from the New America Foundation on strikes in Pakistan shows that, though historical rates may be as high as 17%, only 6/365, or 1.6%, of the casualties within the last three years have not been militants.<sup>39</sup> This stunning improvement from peak rates in 2010 and 2011 can be attributed to improvements in targeting, according to Professor Avery Plaw et al. These developments, including better HUMINT and the use of smaller “Scorpion” missiles instead of the traditional “Hellfire” missiles in urban areas, give “reason to believe . . . it is likely to prove broadly sustainable at least for the immediate future.”<sup>40</sup>

Third, there is a convincing case to be made that if the U.S. is committed to decapitation strikes, drone warfare provides the lowest rate of civilian casualties possible. While media interest over the technology and names like “Predator” and “Reaper” “connote killer drones and U.S. military imperialism,”<sup>41</sup> they use live stream data, longer monitoring and better precision to minimize collateral in ways that traditional bombers cannot.<sup>42</sup> Using data from the Bureau of Investigative Journalism, Slate estimates that drone strikes in Yemen have one-third of the civilian casualty rate than traditional bombing missions. In Somalia, no collateral damage has been reported, and drones are up to “seven times safer” for local populations than conventional bombing.<sup>43</sup> In aggregate, these rebuttals provide a case in support of an improving program less problematic than alternative bombings. This analysis must be qualified by assuming an inability to use ground forces, however, since non-aerial methods using Special Forces or police create less collateral damage than drone strikes.

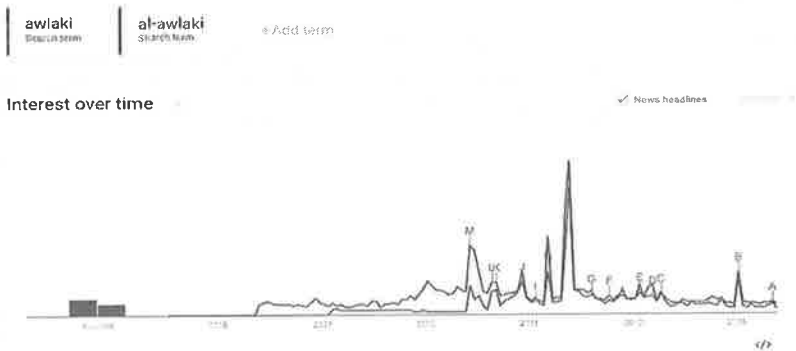
## THE RISK OF DEMOCRATIC OPPOSITION

While previous contentions have dealt with the efficacy of the current program, another negative externality could threaten the continuation of drone strikes against citizens: domestic resentment and fear could kill the program, regardless of targets’ values or the extent of prevented terrorist activities. This issue regarding UAV strikes is unique to targeting Americans, and thus lacks a large body of scholarship upon which to draw.

There is substantial reason to judge the American public as opposed to what politicians such as Ron<sup>44</sup> and Rand<sup>45</sup> Paul have contended count as the extra-judicial killings of American citizens abroad. Coming from the libertarian right, the Pauls and the American Civil Liberties Union (ACLU) have ostensibly valued Constitutional objection over the value of Awlaki’s elimination, filing that the targeting violated the fourth and fifth amendments.<sup>46</sup> Whether real or imagined, their position is consistent with the professed views of the American public; a March 2013 Gallup Survey found a mere 13% of Americans support drone strikes against American citizens.<sup>47</sup> Immediately after the Awlaki strike, articles ran in the *L.A. Times* and over NPR criticizing the decision and questioning its legal grounds.<sup>48</sup>

While this outcry could be reasonably expected to challenge the Awlaki strike and force the Administration to change tact, this has yet to occur. Regardless of professed opinion and Congressional resistance, the American public appears to be willing to weigh a dislike of the means with the perceived boon to national security, at least in the Awlaki case. As Ann Rogers and John Hill claim in *Unmanned: Drone Warfare and Global Security*, “as long as it is perceived that American lives are saved and terrorists are being killed, US public interest is quiescent.”<sup>49</sup> Despite the “years long” attempts to seek legal redress and public support, Anwar al-Awlaki’s father Nasser al-Awlaki garnered little sympathy and received “no judicial condemnation of the strikes”<sup>50</sup> And despite the initial media scrutiny, Google Trends data (Figure 2) indicates that, after October 2011, interest for “al-Awlaki” and “Awlaki” stabilized at 5–15 percent of peak interest immediately following the news release of the strike.<sup>51</sup>

**Figure 2: Google Interest in the Phrases “al-Awlaki” and “Awlaki,” 2008–Present**



Even if public dissatisfaction may not kill the program, there is inevitable political risk to any Administration who chooses to target citizens. Since the general disapproval of contra funding during the Reagan Administration, Presidents have become well versed in the constraints of public opinion. Documented in the case of Guantanamo Bay Prison, criticism of enhanced interrogation made its way to the Supreme Court, where dissatisfied justices “held the President accountable” for executive overreach.<sup>52</sup> Administrations also run the risk of Congressional restriction, as evidenced in both 2005, when a Republican Congress limited Bush’s interpretation of indefinite detention,<sup>53</sup> and in 2013, with the multiparty retooling of the Patriot Act in response to dissatisfaction over the extent of the NSA’s wiretapping.<sup>54</sup>

### MORAL HAZARD

The political viability of targeting U.S. citizens is also brought to attention by critics who argue that the Administration may begin to claim the utility of drones as the very justification for their use. From Cornel West labeling Obama’s terms “the drone Presidency,”<sup>55</sup> to Kaag’s and Kreps’ contention that drones’ unmanned status

circumvents the wording of the 1973 War Powers Act,<sup>56</sup> many have alleged that unnecessary strikes are already a facet of current policy due to the ease of conducting a perpetual “nano-war.”<sup>57</sup>

Compelling evidence for this theory comes from the President himself—in a 2008 “Town Hall” meeting, Obama responded to a question regarding killing Americans, stating,

“I taught Constitutional law for ten years, I take the Constitution very seriously. The biggest problems that we’re facing right now have to do with George Bush trying to bring more and more power into the executive branch.”<sup>58</sup>

While not outright stating he would not target Americans, one could reasonably conclude he disagreed with the concept. By 2011, however, Daniel Klaidman asserts that Obama, though “plagued with chronic self-doubt,” became willing to target citizens of high value. As Klaidman eloquently states, “capturing was proving to be difficult, killing was much easier.”<sup>59</sup>

In the case of Anwar al-Awlaki, there is considerable evidence that the convenience of UAV bombing irresolutely entered Obama’s calculus. According to Klaidman, one unnamed White House official claimed that, “in this one instance, the president considered relaxing some of his collateral requirements.”<sup>60</sup> While Awlaki eventually left the building he co-inhabited with children, allowing Obama to order a strike without inevitable collateral, the rationale for the incident was cited as still “largely an exercise in post hoc justification,” hardly what should be expected for a strike years in the works.<sup>61</sup> With five other Americans killed collaterally since the inception of the UAV targeted killing program, it is reasonable to consider the moral hazard facing the Administration.<sup>62</sup>

While those who assert the Administration is in danger of succumbing to moral hazard are far from baseless, the historical record on the targeting of American citizens appears to favor the President. Perhaps most significantly, the strike on Awlaki in September 2011 was and has been the singular reported strike against an American citizen. Not only has this method not been used since, but a reasonable argument can be made that Awlaki fit a highly unique set of criteria that, if followed, can prevent any moral slide in the future. As stated previously, Awlaki was almost universally considered America’s top target for roughly two years prior to his killing.<sup>63</sup> In concurrence with the ex post-facto analysis of Jeffery Simon in his book *Lone Wolf Terrorism*,<sup>64</sup> The CIA and DoD both judged capture preferable but infeasible, citing his in-absentia Yemeni jail sentence of 10 years impossible to guarantee due to the country’s ungovernable security situation.<sup>65</sup> As one White House official put it, “If Anwar al-Awlaki is your poster boy for why we shouldn’t do drone strikes, good f\*\*\*\*\*g luck.”<sup>66</sup> President Obama’s defense was equally straightforward; he is quoted as summarizing his choice succinctly, stating, “this is an easy one.”<sup>67</sup> The theoretical nature of this portion of the debate, along with

substantial evidence on both sides, lends itself to further evaluation and reflection as the Executive chooses how to act in future decisions.

### PERSONAL INSECURITY VIA LACK OF FUTURE LEGAL RESTRICTION

The final aspect of the debate herein addressed deals with the alleged lack of legal restrictions on the Executive's exclusive control over targeted killings of citizens via UAV. To understand the impact of this, it is first important to identify the criteria by which strikes are approved. Legal scholar Michael Eshaghian lists the criteria the Obama Administration uses to issue a strike: 1. The target must be a senior terrorist leader, 2. The target must be an immediate threat, 3. Capture must be infeasible, and 4. A strike must follow American law-of-war principles.<sup>68</sup> Leaked "drone papers" from The Intercept confirm that the President's discretion is the singular check within the system after targets are vetted by the NSC.<sup>69</sup>

Scholars and politicians have been eager to attack the second criterion used by the Administration. Speaking on Awlaki, who was involved in plotting but not actively engaged in violent activity, Congressman Ron Paul stated, "I oppose anyone who would argue that the President has the power to kill American citizens not involved in combat."<sup>70</sup> Kaag and Kreps echo this, claiming the term "enemy combatant," is "extremely vague and does very little to articulate the legitimacy of military targets."<sup>71</sup> Perturbed by the arbitrary nature of the criteria, they forward an ad-hoc court system to assess a target's value if he is a U.S. citizen.<sup>72</sup>

In defense of executive authority, Obama expounded upon how the process is the best available option. In 2013, he stressed that the U.S. strikes only with "near certainty that no civilians will be killed or injured, the highest standard we can set."<sup>73</sup> Additionally, the President personally signs off on every strike outside of Afghanistan and Pakistan, claiming,

"The decision to use force against individuals or groups—even against a sworn enemy of the United States—is the hardest thing I do as President. But these decisions must be made, given my responsibility to protect the American people."<sup>74</sup>

In response to the ad-hoc court proposal, the White House raised concerns that, in situations like Awlaki's, a single car ride can be the difference between success and stagnation. Given the immediate necessity to act in quickly changing situations, one Federal Court asserted that the judiciary is "institutionally ill-equipped to assess the nature of battlefield decisions."<sup>75</sup>

Despite consistently enforced protocols that have limited strikes to only the dangerous Awlaki, it appears that the Administration has set up little that legally defends American citizens in their safety and right to trial from new Executive leadership altering selection methodology. Though balanced, the current system appears to lack checks on power, the absence of which may or may not be critical to the expediency of the program.



## IMPLICATIONS

While the most contentious issues regarding drone use against American citizens are both multifaceted and far from determined, the importance of UAV targeted killing is certain. Lloyd Gardner concludes, “if there had been any remaining questions about it, the death of Anwar al-Awlaki settled the matter: the drone had replaced counterinsurgency.”<sup>76</sup> At least in cases where strikes were once infeasible, drones have allowed America eliminate top al-Qaeda leaders like Awlaki. With American ordinance bombing ISIS’s Western leaders in hostile Iraq and Syria, this issue is at the forefront of public agendas.

In determining what credible analysis of targeted killing of American citizens entails, I posit four recommendations. Each addresses the battle between negating immediate threats and ensuring policy is sustainable, limited, and operating in the country’s long-term interest. One subset of issues addresses if such strikes work, and another addresses the political consequences and domestic costs incurred by the Administration for having such a policy.

First, there must be a conversation about the degree to which the program must incapacitate terrorist network to be worthwhile. Though convincing scholarship asserts such strikes cannot singlehandedly destroy al-Qaeda, they may work well in the short term.

Second, killings have not lacked and will not lack consequences through negative externalities. Since the targeting of American civilians has been a minuscule fraction of the total drone campaign, the most important factor to keep in mind with regard to collateral damage and domestic frustration is scale. Evidence confirms that singular attacks may be conducted with good cause and high accuracy, yet the entire drone program has also proven that more frequent bombings come with myriad repercussions to American interests. A cost-benefit analysis of these risks should be systematically employed when considering strikes.

Third, scholars have presented a compelling case that the utility of drones may come to be the reason for their use. While it remains to be said whether or not the current Administration has fallen victim to the moral hazard of convenience, danger of a “slippery slope” must be considered when choosing to kill instead of capture U.S. citizens.

Fourth and finally, it is critical to acknowledge the extent to which the executive has power absent of external checks over the target vetting process. Whether or not this is necessary for the timely functioning of the program, this will determine the future of the targeted killing program and could jeopardize individual Americans’ security in their persons.

## NOTES

- 1 Over 2,400 in May 2014. Source: Matt Sledge, "The Toll of 5 Years of Drone Strikes," *Huffington Post*.
- 2 Edward N. Luttwak, "Give War a Chance," *Foreign Affairs*, 1999, 40.
- 3 Jennifer Griffin, "Two U.S.-Born Terrorists Killed in CIA-Led Drone Strike." Fox News.
- 4 Much of the literature regarding this debate deals with the drone program at large. This paper seeks to incorporate the useful portions of this generalized debate alongside scholarly opinion and evidence regarding the targeting of American nationals specifically.
- 5 John Brennan (Assistant to the President on Homeland Security and Counterterrorism), in an official press statement on June 29, 2011, laid out the official White House doctrine on drone strikes as the first line of attack in a world where, "If our nation is threatened, our best offense won't always be deploying large armies abroad but delivering targeted, surgical pressure to the groups that threaten us." Source: John Brennan, "Remarks on Ensuring Al-Qa'ida's Demise." Lecture, White House Press Statement, Washington, D.C., June 29, 2011.
- 6 Such operatives have typically been, as in the case of Anwar al-Awlaki, top al-Qaeda operatives in Yemen and Pakistan. Byman cautions that "superb intelligence is necessary" in order for strikes to be effective. Further, he qualifies his support to situations where arrest is infeasible and, without UAV action, the target could operate in regions entirely lacking jurisdiction, such as Yemen and northern Pakistan. Byman ultimately contends that strikes against leadership are flawed, but usable short-term measures against groups like al-Qaeda. Source: Daniel Byman, "Do Targeted Killings Work?" The Brookings Institution, July 14, 2009. Scott Shane, author of Anwar al-Awlaki biography *Objective Troy*, lays out the Obama Administration defense of drones as the best option in the war on terror, stating that "the Bush years had proven that a big conventional fighting force was no way to take them [terrorist organizations] on . . . targeted strikes are a way of minimizing the chance of getting drawn into a bigger conflict . . . A little killing, in other words, might prevent a lot of killing." Source: Scott Shane, *Objective Troy: A Terrorist, a President, and the Rise of the Drone*, (1) New York: Penguin Random House, 2015, 211–212.
- 7 Michael Stokes Paulson, "Drone On: The Commander in Chief Power to Target and Kill Americans," *Harvard Journal of Law and Public Policy* 38 (2015): 43–61. David Sanger affirms this argument in *Confront and Conceal*, claiming Obama's decapitation strikes, even down to "al-Qaeda's middle management," had proven a resounding success in Pakistan and Afghanistan by 2010. Sanger asserts the administration's "light footprint" strategy has been enabled by UAV targeting, a "perfect tool" in an era of unpopular wars in remote areas. Source: David Sanger, *Confront and Conceal: Obama's Secret Wars*, New York: Crown Publishers, 2012, 255, 243.
- 8 Micah Zenko, "Why Drones Are Overrated," *NY Daily News*, September 29, 2010.
- 9 Simon writes, "The void created by the killing of influential terrorists such as Anwar al-Awlaki is quickly filled by others ready and willing to fan the flames of hatred and intolerance." Source: Jeffery D. Simon, *Lone Wolf Terrorism: Understanding the Growing Threat*, Amherst, N.Y.: Prometheus Books, 2013, 142, 210. Author George Michael furthers this, claiming, al-Qaeda's "malleability is part of its strength." Source: George Michael, *Lone Wolf Terror and the Rise of Leaderless Resistance*, Nashville: Vanderbilt University Press, 2012, 152.
- 10 Jenna Jordan, "Attacking the Leader, Missing the Mark," *International Security* 38, no. 4 (2014): 7–38.

11 Center for Human Rights and Global Justice, "Living Under Drones," *NYU Law*, Sept., 2012. Additionally, Jordan claims, "Decapitation efforts could instigate retaliatory attacks, fuel recruitment, or generate more sympathy for the movement, ultimately strengthening it." Source: Jordan, "Attacking the Leader," 37. See also: Pir Zubair Shah, "My Drone War," *Foreign Policy Online*, Feb. 27, 2012.

12 Kaag and Kreps contend that, unlike previous weapons of above-average ease of use and lethality, weaponized drones place distance between democratic leaders and their decisions to engage in violent conflict, with no risk of immediate death on the side of the aggressor. Source: John Kaag, John and Sarah Kreps. "The Use of Unmanned Aerial Vehicles in Contemporary Conflict: A Legal and Ethical Analysis," Northeastern Political Science Association, 2012: 1–26. See Also: John Kaag and Sarah Kreps, Kaag, John, and Sarah Kreps, "The Moral Hazard of Drones," *New York Times Opinionator*, July 22, 2012.; Kaag, John, and Sarah Kreps. *Drone Warfare*, Cambridge: Polity Press, 2014, 16.

13 Shane, *Objective Troy*, 318.

14 Lloyd C. Gardner, *Killing Machine: The American Presidency in the Age of Drone Warfare*, New York: New Press, 2013., 176–178. Gardner goes on to (perhaps extremely) assert that drones threaten America's future by "creating and sustaining an endless, seemingly mystical war against terrorism," and require the abandonment of the Constitution. Source: *Ibid.*, 233. ACLU deputy legal director Jameel Jafar argues this authority is also a serious concern, stating, "It is a mistake to invest the president—any president—with the unreviewable power to kill any American whom he deems to present a threat to the country." Source: Brian Montopoli, "Ron Paul, ACLU Condemn Anwar Al-Awlaki Killing," CBS News, Sept. 30, 2011. Legal expert Micahel Eshaghian furthers this argument, warning that the unrestricted Executive authority could expand of the current targeting to lower-value targets, killing American who should be legally arrested. Eshaghian asserts, "The process currently given to targets clearly lacks a judicial component. Thus, there must be some changes in order to comply with procedural due process . . . In other words, there may be a real danger that a targeted-killing program may morph in the future to target citizens who do not meet the perhaps stringent standards required today." Source: Michael Eshaghian, "Are Drone Courts Necessary? An Analysis of Targeted Killings of U.S. Citizens Abroad Through a Procedural Due Process Lens," *Texas Review of Law and Politics* 18 (2014): 192.

15 Concern over the "escalating intensity" of counterterrorist strategies in the Obama and Bush White Houses has prompted significant scholarly review in recent years. Source: Charlie Savage, *Power Wars*, New York: Hachette Book Group, 2015, 35. See also: Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of the Obama Presidency*, Boston: Houghton Mifflin Harcourt, and Jack Goldsmith, *Power and Constraint: The Accountable Presidency after 9/11*. New York: W.W. Norton, 2012.

16 Jordan, "Attacking the Leader."

17 "Employment contracts lay out duties, holidays, salaries, travel, rewards, and punishment." Source: *Ibid.*, 24.

18 Jenna Jordan, "When Heads Roll: Assessing the Effectiveness of Leadership Decapitation," *Security Studies* 18, no. 4 (2009): 719.

19 Bruce Hoffman, "From the War on Terror to Global Counterinsurgency," *Current History* 105, (2006): 424.

20 Awlaki was a "target of legitimate interest" to the U.S. in 2011. Source: Michael, *Lone Wolf Terror*, 141.

- 21 Shane, *Objective Troy*, 21–22.
- 22 Ibid., 248–51.
- 23 Shane, *Objective Troy*, 190.
- 24 Simon, *Lone Wolf Terrorism*, 139.
- 25 Daniel Klaidman, *Kill or Capture*, 264.
- 26 Gardner, *Killing Machine*, 169. See also: Klaidman, *Kill or Capture*, 261.
- 27 Shane, *Objective Troy*, 317.
- 28 Klaidman, *Kill or Capture*, 118.
- 29 Ibid., 120–122. Hoffman adds, “Accordingly, a new approach is vital. Its success will depend on a strategy that combines the tactical elements of systematically destroying and weakening enemy capabilities (the “kill or capture” approach) alongside the equally critical, broader strategic imperative of breaking the cycle of terrorist recruitment.” Source: Hoffman, “From the War on Terror,” 428.
- 30 Bradley Jay Strawser, *Opposing Perspectives on the Drone Debate*, New York: Palgrave MacMillan, 2014, 13–14.
- 31 Richard Leiby, “Pakistan Calls for End to U.S. Drone Attacks.” *Washington Post*, April 12, 2012.
- 32 Hakim Almasmari, “Drone Strikes Must End, Yemen’s Parliament Says,” CNN. Dec. 13, 2013.
- 33 Sanger, *Confront and Conceal*, 249.
- 34 Jon Masters, “Targeted Killings,” *Council on Foreign Relations*, May 23, 2013.
- 35 They find a civilian killed by coalition forces leads to an average .16 more insurgent attacks per 100,000 citizens in the following week. Source: Luke Condra, and Jacob N. Shapiro, “Who Takes the Blame? The Strategic Effects of Collateral Damage,” *American Journal of Political Science*, 2011, 179. Further, de Mesquita et al. find that as violence of any kind increased in Pakistan’s tribal regions, rebel groups were more likely to engage in further violence. This finding may also indicate the potential for strikes to jeopardize regional stability in unintended manners. Source: E. Bueno De Mesquita, C. C. Fair, J. Jordan, R. B. Rais, and J. N. Shapiro, “Measuring Political Violence in Pakistan: Insights from the BFRS Dataset,” *Conflict Management and Peace Science*, 2014, 536–58.
- 36 Shah, “My Drone War.”
- 37 Nabeel Khoury, “Remarks on Drone Warfare, U.S. Mission in Yemen,” Lecture, Aden, Yemen, Oct. 22.
- 38 Global Justice Clinic, *Living Under Drones*, 73–80.
- 39 These six casualties include those labeled, “unknown,” not just those confirmed to be civilian. Source: “Drone Wars Pakistan: Analysis.” New America’s International Security Database. 2015.

- 40 Avery Plaw, Matthew Fricker, and Brian Glyn Williams, "Practice Makes Perfect?: The Changing Civilian Toll of CIA Drone Strikes in Pakistan," *Perspectives on Terrorism* 5, no. 5–6 (2011): 55.
- 41 John Karlsrud and Fredrik Rosen, "In the Eye of the Beholder? UN and the Use of Drones to Protect Civilians," *Stability International Journal of Security and Development* 2, no. 2 (2013): 3.
- 42 Ibid., 1.
- 43 William Saletan, "Civilian Deaths Would Be Much Higher Without Drones," *Slate*, April 24, 2015, 1.
- 44 Montopoli, "Ron Paul, ACLU, Condemn Anwar al-Awlaki Killing"
- 45 Andrew Kirell, "Watch: Rand Paul Filibusters Another Obama Appointee over Drone Memos." *Medialite*. May 21, 2014.
- 46 "Al-Aulaqi v. Panetta—Constitutional Challenge to Killing of Three U.S. Citizens." American Civil Liberties Union, June 4, 2014.
- 47 Kaag, *Drone Warfare*, 63.
- 48 Carrie Johnson "Debate Erupts Over Legality Of Awlaki's Killing," NPR, Sept. 30, 2011. See Also: Carol Williams, "Awlaki Death Rekindles Legal Debate on Targeting Americans," *Los Angeles Times*, Sept. 30, 2011.
- 49 Rogers and Hill, *Drone Warfare and Global Security*, 93.
- 50 Shane, *Objective Troy*, 300.
- 51 This does not necessarily contradict the uptick in YouTube hits previously mentioned—Google traffic better indicates overall public interest, specific sermons views may demonstrate interest among only followers.
- 52 Goldsmith, *Power and Constraint*, 178.
- 53 Ibid., 184.
- 54 Savage, *Power Wars*, 600.
- 55 Belinda Luscombe, "Cornel West: Obama Administration Is a 'Drone Presidency'" *Time*. Oct. 2, 2014.
- 56 Kaag, *Drone Warfare*, 76. Kaag and Kreps elucidate the mechanism by which killing becomes easy to execute beyond the strategically necessary, proffering, "semiautonomous weapons systems undermine the cultivation of virtues such as courage due to the fact that they protect soldiers from enemy retaliation." Source: Ibid., 146.
- 57 Ann Rogers and John Hill, *Unmanned: Drone Warfare and Global Security*, London: Pluto Press, 2014, 93.
- 58 CQ Transcriptions, "Senator Barack Obama Delivers Remarks at Campaign Event," Lancaster, PA, March 31, 2008. Found in: Shane, *Objective Troy*, 225.
- 59 Klaidman, *Kill or Capture*, 119.

60 Ibid., 264

61 Ibid.

62 Adam Taylor, “The U.S. Keeps Killing Americans in Drone Strikes, Mostly by Accident,” *Washington Post*, April 23, 2013. A mere two weeks later, Obama called the strike that killed Anwar al-Awlaki’s son, Abdulrahman al-Awlaki “a f\*ck up.” The State Department subsequently listed his cause of death as “unknown,” despite confirmed media reports on the strike. Source: Shane, *Objective Troy*, 296–298.

63 The CIA gave Awlaki the extremely rare classification of “a continued and imminent threat” because “Awlaki as a leader of AQAP was determined to attack the United States and was working relentlessly toward that goal.” Source: Shane, *Objective Troy*, 221. Harold Koh (Legal Advisor to the Department of State) likened the reason to put al-Awlaki on the kill list to “battered spouse syndrome”—there is reason to act preemptively when the subject demonstrates a consistent pattern of activity. Source: Klaidman, *Kill or Capture*, 219.

64 Simon claims there was an inability to capture or kill Awlaki another way. He agrees with the Administration (that “military countermeasures will not be effective”). Source: Simon, *Lone Wolf Terrorism*, 213.

65 Shane, *Objective Troy*, 263.

66 Gardner, *Killing Machine*, 175.

67 Shane, *Objective Troy*, 224.

68 Eshagian, “Are Drone Courts Necessary?”

69 Cora Currier, “The Kill Chain: The Lethal Bureaucracy behind Obama’s War.” *The Intercept*. Oct. 15, 2015.

70 Kirell, “Watch: Rand Paul Fillibusters”

71 Kaag, *The Moral Hazard of Drones*.

72 Senator Angus King (I-ME), argued that Foreign Intelligence Surveillance Act (FISA) courts could serve as examples. Source: Joe Wolverton, “Congress Considers Special Drone Court,” *New American*, Feb. 14, 2013.

73 Barack Obama, “Remarks by the President,” Fort McNair, May 23, 2013. In January 2012, Obama publicly defended his process, saying, “We are very careful in terms of how it has been applied . . . This is a targeted, focused effort at people who are on a list of active terrorists.” Source: Sanger, *Confront and Conceal*, 251.

74 Currier, “The Kill Chain.” Also; Obama, “Remarks.”

75 Al-Aulaqi v. Obama, 727 F. Supp.2d I, 45 (D. D.C. 2010).

76 Gardner, *Killing Machine*, 179.

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## STRATEGIC RESTRAINT AND FINDING COMMON GROUND: SENEGAMBIAN INTEGRATION EFFORTS IN THE POSTCOLONIAL PERIOD

Marc Dubois

This paper presents a sweeping historical analysis of Senegalese-Gambian history from colonization to the present day, with particular focus on the reasons for their successes and failures in earlier attempts at regional cooperation and integration. Despite early success at regional integration, these nations have largely failed to institute an enduring regime of cooperation, and instead hold some degree of low-intensity animosity, which has not devolved into outright conflict or direct Senegalese intervention. The questions then become why these once amicable relations have broken down, and why Senegal's restraint in securing its national interests regarding access to trade and its southern Casamance region given its greater power. This lack of overt, large-scale conflict is thus a compelling subject for analysis. Moreover, colonial interpretations rooted in the formulation of ethnic identities and artificial differences are also insufficient to explain the development of Senegambian integration. In answering this paradox, strategic and domestic considerations are instead necessary to explain the fluctuations within these nations' relationship over the past six decades.

This paper presents a sweeping historical analysis of Senegalese-Gambian history from colonization to the present day, with particular focus on the reasons for their success and failure in earlier attempts at regional cooperation and integration. A cursory glance at a map of West Africa or the literature on The Gambia and Senegal quickly demonstrates the former's geographic bifurcation of its sole neighbor and the economic and political repercussions that such a position has created. As a result, Senegal continues to face numerous foreign policy challenges, including ensuring trade and political control over the fractious southern portion of its country. In such a strategic environment, one would expect Senegal to force easy transit access across The Gambia rather than circumventing the country, or at the very least ensure mutually amicable relations. Despite some early success at regional integration, however, these nations have largely failed to institute an enduring regime of cooperation, and often experience some degree of low-intensity animosity. Yet in general, this hostility has not devolved into outright conflict or direct Senegalese intervention. The lack of overt, large-scale conflict is further surprising when considering the power disparity between these nations and The Gambia's strategic inconvenience to Senegal. The degree of Senegambian integration has thus remained remarkably fluid in the post-colonial era, with notable shifts occurring in these countries' interactions. Thus, the factors that have historically influenced this changing degree of cooperation are a compelling subject for historical analysis.

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### THE POTENTIAL FOR A COLONIAL OR ETHNIC INFLUENCE

Prior to examining the domestic and strategic factors that have influenced the fluctuating trends of Senegambian cooperation, it is perhaps beneficial to first examine the relative unimportance of other historical factors. Ethnic divisions prior to colonialism, for example, are relatively unhelpful in explaining this phenomenon. Public misperceptions of the African continent might conceivably dismiss interstate disagreements as an unfortunate inevitability of divisive ethnic cleavages. However, this has historically proven inaccurate regarding the Senegambian region due to the remarkably diverse set of intermingled socio-political groupings prior to the region's colonization.<sup>1</sup> Even in the 1800s when other peoples migrated into the region, Charlotte Quinn notes that they settled in an already highly diverse ethnic landscape, one with settlements comprised of different ethnic groups that appeared to coexist relatively peacefully and that recognized the Madingo chief rulers in the region.<sup>2</sup> As these groups migrated into the Senegambia they settled along the length of the river and throughout the valley, leading to the formation and recombination of numerous empires and cultural influences. Boubacar Barry makes a similar claim regarding the

diversity of the Senegambian peoples and the existence of their political organizations during this period.<sup>3</sup> Looking at all the differing ethnic and historical factors at play, it becomes clear that many Senegalese and Gambian peoples share some common heritages. Thus, prior to colonization, this was an area of remarkable diversity, yet one in which cross-cultural ties were constructed throughout the region prior to the start of active European colonization.

Quinn also notes that The Gambia, and to a lesser extent the region in general, benefited from extensive regional and international trading networks. Its strategic position along the Gambian River and the Atlantic Ocean made it a transit point for West African goods prior to colonization as well as a commercial hub where European manufactures and African people, peanuts, and raw materials were later exchanged.<sup>4</sup> Barry makes a similar argument, making particular note of the region's trade in "salt, gold, cola, horses, cloth, and slaves."<sup>5</sup> Stephen Golub and Ahmadou Mbaye also show the extensive regional, pre-colonial trade networks connected the Senegambian region internally and to other portions of Africa.<sup>6</sup> These findings suggest a surprising degree of economic, social, and political interconnectedness for this region in the pre-colonial period. Rather than a source of social cleavages between these two, we might instead expect to find non-receptiveness within the Senegambia for cooperation given the intermingling of societal groups throughout the region. Since the evidence that suggests that cultural diversity was as a source of both cohesion and discord between the two nations, the fact that Senegambian relations continued to fluctuate indicates something else played a role in influencing cooperation between these nations.

Colonial interpretations rooted in the formulation of ethnic identities and artificial differences are also insufficient to explain the development of Senegambian integration. Previous scholarship saw The Gambia's creation and continued existence as a direct result of its colonial legacy and The Gambia's acceptance of a distinct otherness to maintain a separate state. Indeed, "it has sometimes been described as an unworkable result of the European partition of Africa."<sup>7</sup> Golub and Mbaye also note that the artificially created colonial borders undermined Senegambia's rich social, cultural, and political ties.<sup>8</sup> However, such arguments are too simplistic to understand the country's complicated relationship with its surrounding and more powerful neighbor. This is not to discount the colonizers' influence on Senegambian society and post-colonial relationships between the two nations. Indeed, The Gambia's odd shape is a direct carry-over from Britain's tiny colony along the river nestled within French Senegal. Both colonial states perceived economic opportunities in the region's peanut production and the slave trade, and actively competed along the river.<sup>9</sup> This is in part because the British realized that The Gambia's strategic position made the colony ideal for re-export, as noted by Newbury's statistical tables, with most years showing a positive trade balance of exports to imports.<sup>10</sup> While it is unclear how much of this came from re-exporting other goods, it nevertheless demonstrates the importance of the colony's export

orientation. Both nations could at times also cooperate against their common enemy in the Marabout religious opposition leaders.<sup>11</sup> In addition, while Britain periodically considered trading The Gambia to France in exchange for concessions elsewhere, neither country seriously pursued allowing the other full control of the Senegambian region. Given its strategic position, Great Britain instead strove to prevent the colony from falling into French hands.<sup>12</sup> As a note by its Deputy Quartermaster in the region, H. Brackenbury, shows, ongoing competition amongst the colonizers made the British determined to keep The Gambia separate from France's other West African colonies.<sup>13</sup>

The impact of colonialism, however, can be exaggerated. This colonial influence was by no means absolute, and while potential social cleavages inevitably developed throughout the colonial period regarding the social, political, and cultural divisions of French Senegal and English Gambia, both nations had ample opportunities to develop cooperation following independence. More importantly, the fact that Senegal and The Gambia actually achieved some degree of regional integration suggests that colonial differences were limited, overcome, or marginalized by other concerns of these states. Indeed, as the preamble of the confederation treaty states, "[Senegal and The Gambia] constitute a single people divided into two states by the vicissitudes of history," yet their ability to form this treaty demonstrated they overcame the effects of this separation.<sup>14</sup> A discussion of Senegambian cooperation in the post-colonial period is thus little aided by justifications rooted in their colonial past.

### REGIONAL INTEGRATION: OBSTACLES

Of course, as history has shown, Senegal and The Gambia did succeed in an impressive degree of integration that lasted nearly a decade. This accomplishment, however, was by no means pre-determined. In short, both domestic politics and strategic concerns complicated this issue, yet played an important role in creating the Senegambian Confederation and had equally influential impact on its eventual decay and disbandment. First, domestic opposition, while not powerful enough to derail the integration process, nevertheless was significant even at this early stage. On a basic level, Gambian society maintained a degree of wariness regarding integration, concerned that it would be "swallowed up" by its larger neighbor.<sup>15</sup> Domestic parties in both states also opposed the process, though neither held a majority in the legislatures at the formation of the Confederation. In The Gambia, opposition groups like the National Convention Party (NCP) opposed integration, though they lacked the political power necessary to stop it.<sup>16</sup> Opposition parties within Senegal also opposed the Confederation.<sup>17</sup> In both cases, however, these appear to have been attempts by the opposition to differentiate themselves from their political competition and critique their policies for political capital. In either case, these parties lacked the political power initially necessary to block this integration.

Certain Gambian strategic interests also presented obstacles to integration. Golub and Mbaye, for example, argue that The Gambia has been heavily dependent

economically on "groundnut production, tourism . . . and its role as an entrepot for re-exporting products for trade since the 1970s."<sup>18</sup> This posed a significant threat to Gambian trade if it was forced to harmonize its customs to that of its Senegalese neighbor. Moreover, its government has relied on these sectors for revenue and has therefore maintained relatively low tariffs on exporting goods to maintain this economic activity.<sup>19</sup> A *New York Times* article from the period noted that \$10 million in goods was smuggled every year, and that this raised 70% of the country's \$40 million in revenue.<sup>20</sup> That same article also noted the potential economic risks integration and custom regulations posed to The Gambia, which requiring transition to a new currency, and was "virtually certain to adversely [affect] . . . the "border trade" (i.e., smuggling), along with tourism and peanut production."<sup>21</sup> Indeed, it was the "thorniest problem" confronting the early Confederation.<sup>22</sup> The Gambia thus had significant reasons to be wary of any efforts toward integration with its Senegalese neighbor.

### REGIONAL INTEGRATION: THE BENEFITS

Of course, the fact that Senegambian integration efforts proceeded suggests that other factors overshadowed the obstacles mentioned above. Once again, considering domestic and strategic factors is crucial to understand the signing of this treaty and the achievement of regional integration. Domestically, The Gambia's majority party worked to articulate the benefits of integration. Jeggan Senghor finds that the People's Progressive Party (PPP) maintained a dominant position within the Gambian legislature and the executive throughout this period, receiving 61.74 percent of the vote in the 1982 election compared to the NCP's 20 percent.<sup>23</sup> Gambian PPP elites then used this position to allay public fears and promote the benefits of integration. A *New York Times* article from November 1981, for example, quotes Gambian President and PPP leader, Dawda Jawara, going on record to say that both nations would maintain their sovereignty.<sup>24</sup> Senghor also claims that there was no worry of being swallowed by their larger neighbor, and instead, promised that the integration would bring benefits of "liberty, democracy, dignity, and justice to Gambians."<sup>25</sup> Gambian elites thus appeared initially successful in allaying fears and domestic opposition to Senegambian integration.

The PPP, however, also perceived domestic reasons that necessitated expediting this integration. Less than a year before, a coup nearly removed President Dawda and the PPP from power, and it was only stopped by the intervention of Senegalese troops at Dawda's request.<sup>26</sup> Gambian elites realized that without a military force to speak of, the government had little protections against future coups, and the PPP therefore turned to Senegal to protect its tenure and position. Indeed, the notion that Gambian leaders pursued integration as a result of concerns over subsequent coups resurfaces throughout news articles of that time. A report in the *New York Times*, for example, noted that Dawda signed the treaty "less than five months after being saved by Senegalese troops."<sup>27</sup> Senghor even notes the importance of the coup in spurring The Gambia's political elites to accept a confederation with Senegal, an influence

recognized by both sides in the Confederation.<sup>28</sup> It would appear that such drastic domestic events were the main cause of the countries' integration, at least in terms of The Gambia's motivations.

For Senegal, strategic factors were crucial in its efforts toward integration. As Senghor recognizes, "the security dividend was one of the main attractions of the Confederation [for Senegalese leaders]," because it allowed for the easy transit of troops into the Casamance region and throughout the country to confront potential threats from Guinea, Guinea-Bissau, and Mauritania.<sup>29</sup> This access to the Casamance region was especially important because it is a lucrative Senegalese province even though it is mired in endemic conflict. As the Uppsala Conflict Data Program details, the struggle in Casamance has continued off-and on from December 1982 until 2011, though it appears to have reached minor intensity status only in the 1990s and 2000s.<sup>30</sup> Given the risks of these potential threats, Senegal needed to insure unfettered lines of communication throughout the Senegambia for quick deployment of troops in case of conflict. Integration also pre-empted dissident groups of either country using the other as a base, particularly within The Gambia.<sup>31</sup> The fact that this treaty was built on a robust legacy of previous cooperation, with these nations signing some thirty treaties between 1965 to 1982, also aided ratification.<sup>32</sup> Moreover, the treaty itself institutionalized the power disparity between these two states, giving Senegal the dominant political position of President within Senegambia, an important distinction for the latter in terms of its national prestige and benefits of integration. Strategic concerns were thus crucial in Senegal's integration efforts, a development that simultaneously provided for the security of both states.

### THE SENEGAMBIA CONFEDERATION

Now that the factors that prompted these states' cooperation have been discussed, it is useful to examine the fruition of these efforts and the high-tide mark of Senegambian integration. The treaty creating the Senegambia Confederation was signed by leaders of both Senegal and The Gambia on December 17, 1981. While both nations retained their sovereignty, the treaty itself was the apex of Senegambian cooperation and integration in the post-colonial era, provided for the integration of both nations' security and armed forces, created an economic monetary union, and coordinated their foreign policy.<sup>33</sup> Organizationally, the treaty created positions within the new Confederation, creating the position of President held by the Senegalese leader as well as the position of Vice President designated for the leader of The Gambia.<sup>34</sup> Additionally, a third of all representatives in the Senegambia legislature were reserved for The Gambia.<sup>35</sup> The Gambia also agreed to cover a third of the costs and supply a third of the recruits for the military and police.<sup>36</sup> Senghor confirms this, and notes that the confederal army would "ensure the sovereignty, territorial integrity, and independence of the two countries against external aggression," though in practice the majority of the troops were stationed in The Gambia and that the Commander in Chief and security officers remained Senegalese.<sup>37</sup>

It is important to recognize the implications of these treaty clauses. While this integration allowed higher cooperation and addressed concerns of both nations, the Confederation's structure insured that The Gambia remained the junior partner in the relationship. This was on one level merely a reflection of empirical reality and Senegal's greater material power vis-à-vis its neighbor. Indeed, Senegal was comparatively richer (though still poor by international standards), larger, and possessed a stronger military. It is thus unsurprising that Senegal received the dominant positions within the new Confederation and kept the majority of its armed forces stationed in Gambian territory to insure easier north-south intrastate transit of its troops, trade, and supplies. This would resurface in Gambian objections later on, though it did not impede initial integration. However, the Treaty also made an attempt to insure a degree of Gambian influence and voice in the process, as noted by the concessions granted in the treaty. Moreover, the Confederation itself lasted for nearly a decade, demonstrating that Senegambian integration was neither unfeasible nor doomed to failure.

### WHY IT BROKE DOWN

Unfortunately, however, the Senegambian Confederation was not destined to last, but instead fell victim to factors that undermined support in both nations to maintain the relationship. Once again, considering domestic and strategic causes—such as a decrease in Senegal's available resources and political will to devote to integration efforts or a lack of grassroots support for integration in both countries—provides the most insightful explanation for this changing relationship. Strategically, Senghor notes that the final years of the Senegambian Confederation were “particularly turbulent.”<sup>38</sup> In two of the cases, a border dispute with Mauritania between 1989 and 1991 and a dispute over maritime territory with Guinea-Bissau nearly led to the start of two separate wars.<sup>39</sup> If this were to occur, Senegal/Senegambia would have found itself surrounded by conflict on three sides, engaged in border clashes in the north and south, and facing naval strikes on its Atlantic coast to the west. Strategic concerns regarding these threats thus left Senegal preoccupied when its partner petitioned for lowering the number of troops stationed in The Gambia. This came as an affront to Senegal, which shouldered the majority of the costs of the Confederation with a “1986–1987 budget [that] amounted to \$5 million dollars.”<sup>40</sup> Senegal was thus busy confronting other issues, and therefore had less time, resources, patience, and political will to sustain this integration effort.

Domestic factors in both nations were also crucial to the collapse of the Senegambia Confederation. As Senghor claims, the Confederation failed due to a lack of domestic support.<sup>41</sup> While the strategic factors previously mentioned weakened and preoccupied the Confederation, the integration itself “[was seen] by the average Gambian . . . as an arrangement between two heads of state and the political elite.”<sup>42</sup> It therefore lacked the necessary grass-roots support that needed to buy into the initiative to sustain it once the PPP and “no political party or other forms



of organized movement in Banjul or Dakar championed the Confederation.”<sup>43</sup> The necessary political support committed to maintaining this relationship was thus critically lacking in both nations. Further, while the Senegambia Confederation collapsed during PPP control of The Gambia, the bloodless coup on July 22, 1994, brought the military and opposition parties into power that had condemned the PPP and its policies as “corrupt and mismanaged.”<sup>44</sup> They were also opposed to efforts at integration and cemented the breach in Senegambian ties. This military coup brought President Jammeh to power, a ruler far less likely to pursue integration given his political rise to power.<sup>45</sup> Moreover, unlike in 1981, the Senegalese government refused to intervene to save the Gambian government, signaling the nadir of Senegalese cooperation and the final death knell of the Confederation.<sup>46</sup>

### POST-INTEGRATION ISSUES

Pre-existing domestic and strategic issues have remained and hindered subsequent attempts for these countries to cooperate since the breakdown of the Confederation. As previously stated, The Gambia has historically relied heavily on its groundnut production and re-export/smuggling industry. Strategically, this dynamic has remained after the breakup of the Senegambia Confederation and continues to act as an enduring obstacle to greater levels of interstate cooperation. Senegal remains very concerned over Gambian actions that threaten Senegal’s connection to its Casamance region in the south. As two separate BBC reports state, unilateral Gambian doubling of the ferry price for Senegalese crossing infuriated its larger neighbor.<sup>47</sup> Such actions not only hampered transit to its fractious southern region, but also threatened its trade and economy. Golub and Mbaye show that Senegal employs higher trade taxes to protect its economic base and small industrial sector, with noticeably higher taxes than The Gambia on every 2006 product (both agricultural and manufactured) examined in their analysis.<sup>48</sup> Other sources of contention include whether to build a bridge over the river, application of Economic Community of West African States (ECOWAS) transit agreements, and fishing rights.<sup>49</sup> A number of strategic issues thus make the road to re-integration a political minefield of obstacles these nations would have to overcome if they sought a renewed regional Senegambia framework.

Actions by both states over the past decades have further soured relations. The Gambia, for example, briefly held some Senegalese soldiers in the country in 2005.<sup>50</sup> As mentioned above, Gambian unilateral price increases on ferry transit have also soured relations with Senegal.<sup>51</sup> In addition, as a repressive dictatorship, integration poses a potential political threat to The Gambian regime domestically, and it has therefore limited subsequent cooperation between both nations to insure its tenure. Moreover, as a BBC article claims, Gambians resent Senegal’s greater power compared to their own.<sup>52</sup> Strategically, Senegal has maintained a degree of dominance over its enclosed neighbor, as demonstrated by its redirection of Malian-Gambian trade to go through Senegal.<sup>53</sup> Both enduring and new domestic and

strategic factors have thus helped solidify Senegambian separation in the decades following the failure of the Confederation.

### SENEGAL AND THE GAMBIA CANNOT SIMPLY WALK AWAY

The 1994 coup marked the nadir of Senegambian integration efforts, though as previously mentioned, relations have frequently remained strained over subsequent decades. Since then, both nations have proven incapable of attaining their previous levels of cooperation. Despite the factors impeding these efforts, however, Senegalese strategic considerations necessitate that it cannot simply ignore The Gambia or risk relations deteriorating too far. As previously stated, this is especially relevant regarding its long-lasting low-intensity conflict in its fertile Casamance region. Moreover, these separatists' attacks have continued despite agreements to cease fighting, with notable attacks in 2000 and 2002.<sup>54, 55, 56</sup> While they do not pose a threat to overthrow the entire state, these separatists seek Casamance independence and have been an ongoing annoyance "engaging in robbery, extortion, arms trafficking and drug-dealing."<sup>57</sup> Senegal has thus historically had to insure it maintained some degree of political engagement with The Gambia so that it could quickly address these threats as they arose. Moreover, it is likely that Gambian leaders have been concerned that conflict could spill across their border, or that rebels could attack through their country through Senegal. Strategically, therefore, both states have had to at least maintain a working relationship so that they can address these issues.

In response, Senegal has pursued a policy of restraint regarding disagreements with The Gambia, and has considered alternatives to circumvent its inconvenient neighbor. Rather than force the issue of Gambian price increases, it has refrained from using overt pressure to ensure easy transit to its Casamance region. And rather than a military response or economic sanctions, Senegal instead restricted itself to diplomatic complaints and allowed its transporters to boycott transit through The Gambia.<sup>58</sup> Senegal effectively limited itself to economic tit-for-tats in response to this sudden increase in prices. It also restrained its response regarding The Gambia's holding of some Senegalese troops.<sup>59</sup> Senegal's temperance demonstrates that it has controlled its responses to disagreements with The Gambia and kept Senegalese issues from escalating to threaten access to its southern region. While The Gambia is an occasional diplomatic and strategic headache for Senegalese leaders, it has also generally restrained its actions, being careful to refrain from overtly hostile acts or activities that push Senegalese leaders too far.

Senegal has also considered alternatives to completely bypass this strategic inconvenience, contemplating building a tunnel under The Gambia or operating its own ferry.<sup>60</sup> While this may solve the strategic issue, ignoring The Gambia is not a beneficial Senegalese response. Aside from a tunnel arguably infringing upon Gambian territorial sovereignty, its economic repercussions for The Gambia's economy could potentially devastate the country and region. Indeed, such an action could prove disastrous for these impoverished nations, particularly The Gambia. If

The Gambia were to be hostile, it might then suffer domestic instability that could threaten the region, and Gambian support of Casamance rebels as retribution would not be inconceivable. An at least cordial The Gambia is thus crucial to effectively addressing issues to the south and maintaining stability in the Senegambia region. Therefore, while Senegal has considered such options over the past few decades, it has wisely not pursued these ideas, but has instead continued to engage its smaller neighbor to some degree, and has maintained a level of restraint in its foreign policy.

## CONCLUSION

Senegambian relations have historically witnessed surprising fluctuations in their degree of regional integration and cooperation. While the relatively open political landscape prior to colonization allowed the spread and intermingling of a diverse set of people and groups, the colonial influences of French and British colonization separated this region into decidedly abnormal-looking states. However, neither of these aspects of Senegambian heritage is very helpful given the marked fluctuations of integration following decolonization. While Senegal and The Gambia achieved initial success at regional cooperation, subsequent events and factors after decolonization must have weakened these nations' relations and undermined their earlier attempts at economic and political cooperation. In addressing this puzzle, this paper analyzed domestic factors and strategic considerations within both countries as compelling explanations for the continuing failure of these nations to develop amicable relations. Despite the deterioration of these ties, Senegal has apparently maintained a degree of restraint regarding its weaker neighbor, restricting retaliations for foreign policy insults through economic tit-for-tats. It recognizes that despite the inconvenience, Senegal cannot ignore The Gambia, for conflicting relations or inattention have historically threatened economic relations and hindered its ability to confront secessionists operating in its isolated Casamance region. Strategic and domestic considerations are therefore instrumental in understanding the fluctuations in these nations' relationship over the past six decades, factors these nations must work cooperatively to address if they ever hope to re-attain the degree of regional integration they once enjoyed.

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## RAPE AS A CRIME AGAINST HUMANITY: INTERNATIONAL CRIMINAL TRIBUNALS AND CREATING NEW NORMS

Victoria Nevel

When and why did rape start to be considered a serious crime against humanity both domestically and internationally? This paper presents evidence that the International Criminal Court's (ICC) early landmark decisions and testimonies of victims of rape delivered to an international audience were crucial in increasing public attention to the issue and its perception as a serious human rights abuse. I document and attempt to explain this shift by analyzing both the number and the specific language of U.S.-based NGO reports, notably Human Rights Watch reports, about rape as an international war crime as well as systematic rape in a U.S. context. By examining the number of articles each year as well as the severity of language within each report, I find the number of reports on rape almost doubled each year for the first few years after the 1997 and 1998 inaugural cases and the severity of the language within each report focused more on rape as a distinct human rights violation. This increase is prominent both in international and domestic cases, suggesting the important role the ICC plays in increasing the perception and awareness of rape as a human rights abuse. The trials brought forth by the U.N. through the International Criminal Tribunal for Rwanda (ICTR) and Yugoslavia (ICTY) ultimately had a strong socialization effect in the United States, increasing awareness and acceptance of rape as a serious human rights abuse.

### HISTORY

Today, there are powerful intergovernmental organizations (IGOs) and non-governmental organizations (NGOs) dedicated to ending sexual violence,<sup>1</sup> extensive media coverage of military rapes,<sup>2</sup> and almost 200 open federal Title IX investigations in universities<sup>3</sup>—all reflecting a high level of serious attention paid to these issues in the United States. However, awareness of sexual violence in the U.S. has not always been so prevalent; rape has not always been perceived as such a pressing issue. Before the late 1990s, instances of rape both at home and abroad were often simply treated as women's issues or just an extra point to add to a long list of abuses; these acts were rarely the topic of INGO human rights reports or publicly condemned as crimes against humanity by the international community.

Rape is the primary form of sexual violence discussed in this paper. The FBI defines rape as "penetration, no matter how slight . . . without the consent of the victim."<sup>4</sup> Throughout the paper, I will use the terms "survivor" and "victim"<sup>5</sup> to refer to both children and adults who have experienced a broad range of types of sexual violence.

While wars have been rife with acts of rape from pre-biblical times to modern military conflicts, until the late 1990s rape was treated more as a consequence than a tool of war. Despite overwhelming evidence that German and Japanese forces used systematic rape as a tool of subjugation during the Second World War, sex offenders were not prosecuted by either the Nuremberg<sup>6</sup> or the Tokyo<sup>7</sup> trials. Moreover, no survivors of rape testified during either the Nuremberg or Tokyo trials.<sup>8</sup>



Without trials, survivors had few options for justice or to make their stories known, and the international community could remain ignorant of the extent and nature of these crimes. Although Article 27 of the fourth Geneva Convention<sup>9</sup> (1949) prohibited rape and forced prostitution, no acts of rape were prosecuted as war crimes for over 45 years. In this way, the classification of rape as a war crime seemed to be a largely symbolic gesture.

In the late 1990s, the international community finally acknowledged and condemned rape as a war crime. For the first time ever, the ICC prosecuted accused war criminals for sex crimes during the inaugural cases of both the International Criminal Tribunal of both Rwanda (ICTR) and Yugoslavia (ICTY). The ICTR prosecution versus Jean-Paul Akayesu in 1998 and the ICTY prosecution versus Duško Tadi in 1997 were the first trials treating rape as a war crime equal in severity to other crimes against humanity. The testimonies of survivors reached international audiences during these trials brought forth by the ICC. The verdicts set the legal precedent of holding leaders responsible for sexual violence they committed against their own people. Each trial prompted a fundamental social and legal shift from perceiving rape as a consequence of war to classifying and codifying it as a “crime against humanity” and a violation of the Geneva Convention with real consequences.

**Figure 1: Frequently Used Terms**

<b>ICC</b>	International Criminal Court
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>NGO</b>	Non-governmental Organization
<b>IGO</b>	Intergovernmental Organization
<b>INGO</b>	International Non-governmental Organization

Though often used interchangeably, the phrases “war crime” and “crime against humanity” have distinct legal meanings, defined in the Nuremberg Trial Proceedings Charter of the International Military Tribunal, Article 6. While each crime involves similar levels and types of violence, such as murder and enslavement, the former phrase refers to crimes committed during times of war that are “not justified by military necessity” and the latter describes inhumane acts committed against “any civilian population, before or during war.”<sup>10</sup> While the rape cases discussed in this paper happened in the context of civil war, they were largely committed against a civilian population, so many of these cases constitute crimes against humanity. In addition, evidence of political motivation is required to constitute rape as a crime against humanity; for example, an individual taking advantage of the chaos in war in order to

rape or kill others for personal motive could not be tried in the ICC, but may be tried in the local or national courts of the state in which the crimes occurred. Thus both war crimes and crimes against humanity can be prosecuted in the ICC, while rape cases without clear political motivation or connection to ethnic cleansing have never been prosecuted internationally. This paper examines the consequences of two of the first high-profile prosecutions of rape as a war crime and a crime against humanity.

In the early 1990s, Serbian forces used rape as one of the main forms of ethnic cleansing in the Yugoslav Wars. The belief that children inherited their biological father's ethnicity influenced Serbian troops' genocide tactics; killing Muslim men and forcing pregnancy upon Muslim women through mass rape and cases of imprisonment was meant to ensure a future "Chetnik"<sup>11</sup> population. The U.N. Special Representative on Sexual Violence in Conflict, Margot Wallström, estimates that between 50,000 and 60,000 women were raped during the conflict.<sup>12</sup> Due to these extreme levels of violence, UN Security Council Resolution 808 created the ICTY to prosecute these crimes against humanity in February of 1993. In February 1994, Duško Tadi was to be the first to be arrested and tried by an international court since the Nuremberg and Tokyo trials of 1947. The May 1997 decision was the first prosecution of sexual violence by an international court in history. Using the precedent set by Tadi's conviction, prosecutors argued subsequent ICTY cases and began making connections between rape and other human rights abuses, including torture and ethnic cleansing. Finally rape began to be perceived as a grave human rights abuse alongside other acts of genocide.

After the Rwandan genocide of 1994, the United Nations established the International Criminal Tribunal for Rwanda (ICTR) with the goal of bringing the organizers of violence, including sexual violence, to justice. The inaugural case, the prosecution of Jean-Paul Akayesu, which began in January of 1997,<sup>13</sup> empowered three survivors of sexual assault to testify to an international audience, drawing global awareness of rape as a crime of war. The judges' subsequent decision in September of 1998 set many precedents: the verdict held a high-profile leader responsible for committing rape, classified rape as an act of genocide, and treated rape as an more than just a women's issue on the international stage.

Camps of International Relations scholars disagree because Rational Choice Theory and Norm Socialization Theory both offer explanations for how individuals and societies make decisions. According to Dennis Wrong, "the fundamental flaw of all rational choice theories is that they ignore socialization and draw an artificial distinction between self-interests and both the interests of others and normative standards."<sup>14</sup> He argues that socialization precedes self-interest and therefore rational choice theories alone fail to paint a full picture of human nature in society. While not necessarily mutually exclusive, the debate at its core is "do you follow the law because you don't want to be punished or do you follow the law because you have internalized the norms that govern the actions you are about to take without conscious thought."

While “norms” are quite broadly the beliefs, customs and values held by any given society, “socialization” refers to conditions under which individuals and groups are exposed to, inherit, and disseminate these norms.<sup>15</sup> “Norm socialization” therefore is a process by which certain practices are accepted by a given group of people and are seen as “normal.”<sup>16</sup> While international criminal tribunals have the potential to play a fairly important role in deterring rational actors from engaging in criminal behavior because of fear of punishment, this paper provides evidence that international criminal courts also have the potential to socialize individual actors and societies in the issue of rape as a crime against humanity. With the validation from an international legal body about the seriousness of rape, the evidence suggests that people begin to take the issue more seriously overall—and many of them may embrace norms that previously did not guide their thinking or actions.

Evidence shows the ICTY and the ICTR increased both the coverage and perceived legitimacy of rape as a serious human rights abuse by international NGOs based in the U.S. In the sections below, I explore this shift in normative thinking by examining when U.S.-based media sources and NGOs began to classify rape as a war crime as opposed to merely a women’s issue or a consequence of war. I find that the first ICC cases “legitimized” and socialized the norm of rape as a human rights abuse for these U.S.-based organizations. By analyzing the changes in both the frequency and language of NGO reports concerning sexual violence before and after the verdict as proxies for the changing perception of rape, I find that the trial ultimately had a strong socialization effect that increased awareness of rape as a serious human rights abuse in the U.S. This shift in thinking about rape as a crime against humanity correlates with the serious attention paid to issues of rape in both international and domestic settings.

I first briefly describe the background of sexual violence and its relationship to human rights. I discuss my research methods for my qualitative and quantitative analysis. Next, I compare press releases pre- and post-trial by an international NGO based in the United States, Human Rights Watch (HRW), with analysis of media articles from the *Washington Post* to avoid single-source bias. I find correlations between the trial dates and the number of articles published about rape. This suggests that the perception of seriousness of rape as well as the amount of attention paid to it increased after the trials. I find that the ICTY and the ICTR both increased the frequency and emphasis on rape in published reports, especially shortly after the Akayesu verdict. In order to make this evidence more generalizable, I also record the number of international NGOs established against sexual violence each year. I then discuss the limits of my methodology and propose areas where more research can be done. Lastly I consider the limitations of the prosecution of rape as a war crime, specifically with regards to the victims of those crimes, and examine the policy implications of my research for improving the awareness of rape as a tool of war. The study’s broader policy implications suggest that International Courts potentially have a strong ability to socialize norms, at least concerning the issue of systematic rape.

## METHODOLOGY

My research methodology consists primarily of analyzing these NGO and media reports in order to avoid certain biases. For example, interviewing individuals about their changed perceptions of rape as a war crime was an alternative I considered for this project. I concluded that this research route would not give very reliable results because today, both individuals and society have already been affected by the trials—there is simply no way to have a treatment group and a control group. Furthermore, most people are not fully aware of their shift in thinking or unbiased in analyzing the causes of the changes in their thinking. I am better able to avoid biases in time-order by mapping the language and publication dates of the articles and examining the resulting co-variation.

Therefore I decided to map both the frequency (Quantitative) and severity (qualitative) of references to rape in NGO databases, specifically that of Human Rights Watch. The dependent variable in this quantitative analysis is the number of results from the HRW database search each year between 1990 and 2000 with the year as the independent variable. I included several other measures in order to overcome potential bias limitations in my data. To eliminate the possibility that higher numbers simply represent an increase in the overall number of articles published online, I also measured “racism” and “slavery” in the same time period. In order to have a better understanding of the effects of the trials for people who are not human rights advocates at an international NGO, I compare the pattern of media reports with the HRW reports. I chose the *Washington Post* because it is a widely read, longstanding daily newspaper with a searchable database for the 1990s. In addition, analysis of dates when various International NGOs (INGOs) were established provides further evidence that attention to the issue of rape grew outside of the U.S. at the same time that the cases were being broadcast around the world.

The three types of analysis are important for different reasons. The increase of NGO reports shows that human rights experts focused increasingly on the issue of rape, the increase in *Washington Post* articles suggests an increased awareness for average U.S. citizens who read newspapers, and the INGO growth reflects increased international attention, including both governmental and private action on these issues.

The assumption underlying these measurements is that rape itself is not happening more frequently in the world, but individual cases are gathering more attention than past cases in the media. While similar past cases were largely ignored, contemporary cases may now be taken more seriously by the international community and human rights advocates. Since rape remains one of the world’s most unreported crimes<sup>17</sup> and a study from the U.S. Department of Justice suggests that the frequency of rape actually decreased between 1993 and 2000 in the United States,<sup>18</sup> it is unlikely that the increase in news releases is due to an actual increase in the number of rapes. Therefore, the number of results likely increased each year because there has been more attention paid to the issue.

Because increased attention does not necessarily prove that rape is taken more seriously as a serious crime against humanity, I also conducted a qualitative analysis regarding language and word choice in HRW news releases. Still using the search query “rape” in the HRW database, I randomly selected four articles each year between 1996 and 1999 and analyzed shifts in the prominence and treatment of rape as a crime in each article. I looked specifically for words indicating the seriousness as well as the framing of the crime as “violence against women” or “human rights abuse.” Approximately half of the randomly selected articles were published before the September 2, 1998, coverage of the verdict of the ICTR’s inaugural case and the other half released after.

### QUANTITATIVE RESULTS

International dialogue concerning sexual violence began to increase in 1997 and continued to increase after the conclusion of the first ICTR trial in September of 1998. Using the HRW search database from the years 1990–2006, I have recorded below the number of results per year for “rape,” as well as “racism” and “slavery.” Figure 2 is a table showing the frequency of news reports concerning rape published by HRW, as a proxy for the level of international attention paid to the issue of rape before and after the Akayesu case. Figure 2 below represents this data between the years 1990–2000.

Figure 2: Frequency by year according to each search query  
Human Rights Watch

Year	Rape <sup>19</sup>	Racism <sup>20</sup>	Slavery <sup>21</sup>
1990	1	0	0
1991	0	0	0
1992	4	2	1
1993	6	2	1
1994	4	2	2
1995	13	6	5
1996	4	2	3
1997	16	2	3
1998	26	11	3
1999	47	5	6
2000	80	18	7
2001	59	41	21
2002	69	26	10

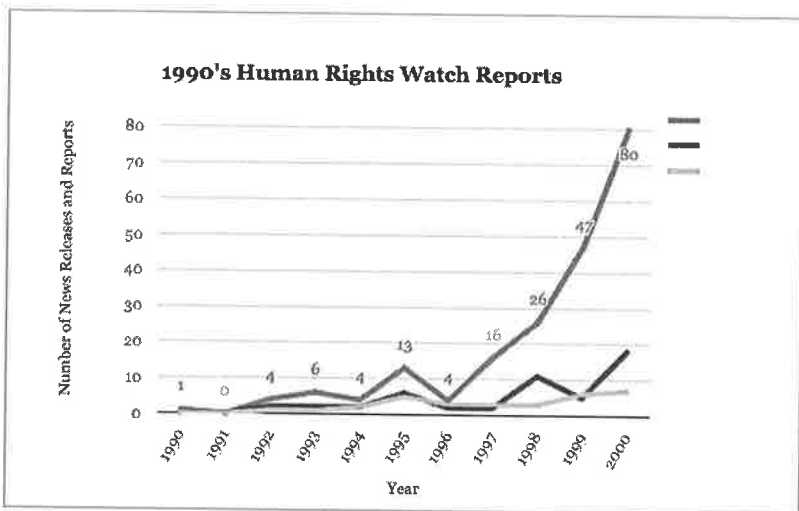
2003	123	28	28
2004	169	33	22
2005	191	40	24
2006	181	37	25

Source: Human Rights Watch database [www.hrw.org/search/apachesoer\\_search/](http://www.hrw.org/search/apachesoer_search/)

While it is clear that the number of results for “slavery” and “racism” increased gradually throughout the time period, probably as HRW grew as an organization, the number of results for “rape” increased nearly exponentially, almost doubling each year (See figure 2).

Even the second highest reporting category in the search, “racism,” does not come close to the increase in the frequency of results under the search query “rape.” The significant jump from 4 results in 1996 to 47 by the end of 1999 suggests that sexual violence gained significant importance as an issue in HRW in the late 1990s. The fact that the results nearly doubled both between 1998 to 1999 show a strong time correlation with the conclusion of ICTR’s inaugural trial in September of 1998 where rape was officially classified as a war crime in the sentencing.

Figure 3: Human Rights Watch: search query by year



Source: Human Rights Watch database [www.hrw.org/search/apachesoer\\_search/](http://www.hrw.org/search/apachesoer_search/)

I also analyzed the number of articles from the *Washington Post's* search database over the same time period (see figure 3). This was an important step for a number of reasons. First, these articles show consistency across media and lessen potential

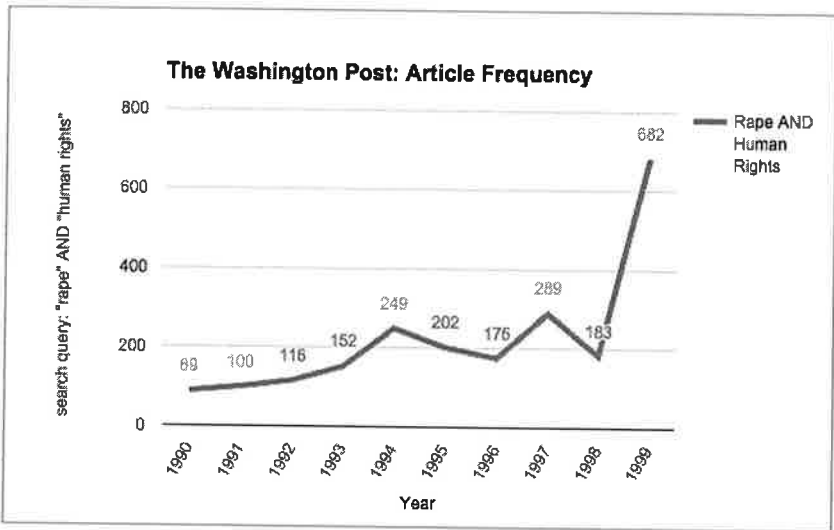
concerns about bias within HRW—essentially they make the data slightly more generalizable. Next, the *Washington Post* is consistently ranked in the top ten most widely circulated newspaper publications in the U.S.<sup>22</sup>—it is definitely not a niche paper that primarily reports on international human rights issues. The increase in the number of articles published in the years after the trial suggests that the ICC did not merely influence the type of people attracted to and knowledgeable about human rights work, but reached the average U.S. household as well. Finally, by searching for both “rape” and “human rights,” I can narrow the search more effectively on the seriousness of attention paid to the issue; namely, I measured the increase in attention paid to rape as a rights abuse versus the average article about local crimes is more relevant for the purposes of this article.

I found that the results from the *Washington Post* were very consistent with HRW results, with a small lag in the years. Between 1990 and 1999, the number of results around sexual assault and human rights increased almost 8-fold. There was a particularly strong increase from 1997 and 1998 to 1999, which aligns with the timeline of the Akayesu case. It makes sense that an international NGO would react more quickly to an international human rights ruling because their reporters pay close attention to issues affecting their work. On the other hand, a popular newspaper that reports on many issues may take longer to catch on. Still there is a dramatic increase in the year 1997 and again 1999 when the number of results increases by three-fold.

Figure 4: Frequency by year according to each search query  
*Washington Post*

Year	“Rape” AND “Human Rights”
1990	89
1991	100
1992	116
1993	152
1994	249
1995	202
1996	175
1997	289
1998	183
1999	682

Source: *Washington Post* database: <https://www.washingtonpost.com/newssearch/?query=rape>

Figure 5: *Washington Post*: search query frequency by year

Source: *Washington Post* database: <https://www.washingtonpost.com/newssearch/?query=rape>

At the same time that the serious attention paid to the issue of rape by INGOs and popular media sources increased, the number of organizations internationally dedicated to the eradication of sexual assault also increased. In their book *Activists Beyond Borders*, Margaret Keck and Kathryn Sikkink measure the number of NGOs in different issue areas as proxies for the growth of transnational advocacy networks. They state that NGO growth suggests “broader trends in the number, size, and density of advocacy networks generally” (Keck 10).

Below, Figure 6 is a table that records all NGOs established to combat sexual violence using the same database that Keck and Sikkink use: the Union of International Organizations Network’s Yearbook. This table is also important for a number of reasons that are different from Keck’s.

First, it is relatively consistent with the HRW and *Washington Post* results: between 1997–2000 the number of INGOs established was higher than the zero reported establishments between 1990 and 1991. Next, the table increases the generalizability of the results overall: namely, the rise of NGOs internationally suggests that the U.S. is not the only nation affected by the ICC trials—many of these organizations were established in a variety of countries and continents. Additionally, data points in this chart were extendable to the early 2000s whereas the *Washington Post*’s articles were not, so data may suggest that there were lasting effects after the trials. Finally the results expand upon Keck and Sikkink’s posit that the number of NGOs reflects both the size of transnational networks and the level of advocacy influence NGOs have in their government and culture; NGOs themselves may be influenced by



international events such as the ICC trials. Because More anti-sexual violence NGOs were established after the genocides, it may indicate that more people thought of rape as a serious crime even in their own community. It suggests that the issue of rape was important enough to warrant direct community action and advocacy.

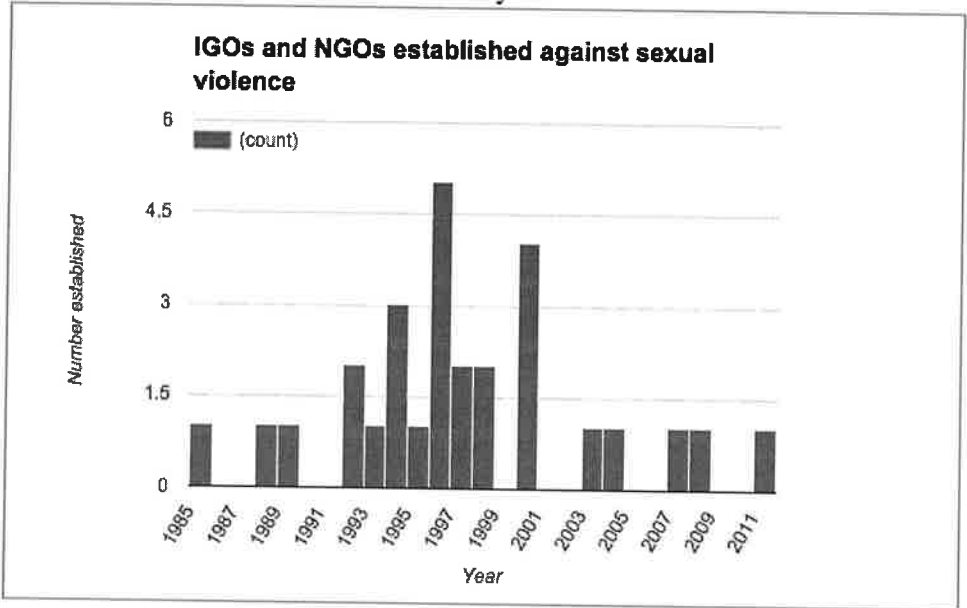
**Figure 6: List of INGOs and IGOs against sexual violence established between 1985–2012**

<b>Name</b>	<b>Year</b>
European Association against Violence against Women at Work	1985
Organization for Defending Victims of Violence	1988
Latin American Centre for the Study of Violence and Health "Jorge Careli"	1989
Latin American and Caribbean Feminist Network Against Domestic and Sexual Violence	1992
Pacific Women's Network Against Violence Against Women	1992
United Nations Declaration on the Elimination of Violence Against Women	1993
Women Against Violence Europe	1994
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women	1994
Inter-African Francophone Network of Women for the Defense of Human Rights and Against Violence Against Women	1994
International Research Network on Violence Against Women	1995
European Network on Gender and Violence	1996
European Observatory on Violence Against Women	1996
UN Trust Fund to End Violence against Women	1996
WAVE Trust - Worldwide Alternatives to Violence	1996
Women's Court - Permanent Arab Court to Resist Violence Against Women	1996
European Policy Action Centre on Violence Against Women	1997
International Violence Against Women in War Network	1997
International Network on Family Violence	1998
International Observatory of Violence in the School Environment	1998
Sexual Violence Research Initiative	2000
Arab Regional Resource Center on Violence Against Women	2000
Lutte contre la violence exercée contre les enfants, les adolescents et les femmes (DAPHNE III)	2000
Global Action Committee for the Elimination of Violence in the Family	2000
End Violence Against Women International	2003
Violence Prevention Alliance	2004
African Women's Active Nonviolence Initiatives for Social Change	2007

Pan African Organisation for Research and Protection of Violence on Women and Children	2008
Council of Europe Convention on Preventing and Combating Violence against Women	2011

Source: UNION OF INTERNATIONAL ORGANIZATIONS  
Yearbook 1985–2012

**Figure 7: Number of Sexual Violence INGOs and IGOs established each year**



Source: UNION OF INTERNATIONAL ORGANIZATIONS Yearbook

Overall the increase in results in the late 1990s, for all measured NGO reports, media reports, and INGOs establishments dedicated to preventing sexual assault, suggests a strong increase in the level of attention paid to the issue of rape. The strong correlation between these measures and the ICC cases in Yugoslavia and Rwanda as well as the consistency across these sources indicate the power of international criminal cases to shape social norms. The doubling of number of results between 1998 and 1999 and again between 1999 and 2000 across different measures suggests that the trial itself had a strong socializing effect on the U.S. However, increased attention does not necessarily prove that rape is taken more seriously as a crime; some may argue that rape was simply more prominent in the international spotlight due to these cases. Qualitative analysis of the reports before and after the trials is a useful way to infer if instances of rape were taken more seriously after they

had been classified as a crime against humanity on an international stage or in a domestic context.

### QUALITATIVE ANALYSIS

In order to counter the claim that Human Rights Watch and the *Washington Post* simply wrote more articles about rape but did not necessarily take it more seriously, I conducted a qualitative analysis regarding language usage and word choice in HRW news releases. Still using the search query “rape” in the HRW database, I randomly selected four articles each year between 1996 and 1999 and analyzed shifts in the prominence and treatment of rape as a crime in each article. I decided to choose four articles because in 1996, only four articles were even written on the topic. Some of my techniques included recording the length of the report, evidence that rape was the main focus of the paper instead of a point in a long list of abuses, and whether articles were “tagged” as “women’s rights” or “crime against humanity.” Approximately half of the randomly selected articles were published before the September 2, 1998 coverage of the verdict of the ICTR’s inaugural case and the other half released after. Figure 8 below documents a noticeable shift in the language surrounding rape as a crime against humanity in my sample and strongly suggests the existence of norm socialization after the Akayesu trial.

I additionally included one article published after the Tadi trial, specifically because his was the first case where sexual violence against men was prosecuted and this article was the first that I found explicitly focusing on sexual violence against men.

**Figure 8: Qualitative Discourse Analysis of Human Rights Watch Articles**

Date	Title	Treatment of Rape as a Crime
1996 February 1	Human Rights Abuses during a Cease-Fire	Rape or sexual abuse is not the topic; simply mentioned in a long list of abuses and does not stand alone as a crime.
1996 September 25	Rwanda’s Genocide	Same as above. Rape is mentioned in a long list of abuses and does not stand alone as a crime.
1996 December 1	All too Familiar	Makes the case that sexual conduct between male guards and female prisoners should be criminalized.
1996 December 7	Sexual Abuse of Women in U.S. State Prisons	Reporter advocates criminalizing and punishing sexual contact between guards and prisoners criminal; tagged “women’s rights.”
1997 January 1	The Unindicted	No mention of rape as a crime; in long list of abuses but there is <b>nothing specific about rape.</b>

1997 June 1	Rape for Profit	Rape is written about as a consequence of human trafficking.
1997 August 1	South Africa: Violence Against Women	Rape is the topic of the piece; it is referred to as “gender-based crime” but not a “crime against humanity.”
1997 October 1	What Kabila is Hiding	Rape is listed in a paragraph of abuses and does not stand alone as a crime. Cited more as an example to “larger” acts of corruption.
<b>1998 October 2: Akayesu is sentenced to life in prison</b>		
1998 September 1	Indonesia: The Damaging Debate on Rapes of Chinese Women	The title and topic both focus on rape, author calls for international action specifically about rape.
1998 September 2	Human Rights Watch Applauds Rwanda Rape Verdict	Title and topic suggest rape is the main focus. Subtitle explicitly refers to rape as a war crime.
1998 September 21	Women Raped in Prisons	Title and topic note the importance of this crime. A HRW director calls prison rape “a terrible abuse of human rights.”
1998 December 1	Summary of the Key Provisions of the ICC Statute	Report details rape enumerated as war crime for first time.
1999 May 10	Kosovo: Sexual Violence as International Crime	Title refers to rape as a war crime. The article is tagged “crimes against humanity.”
1999 June 24	Getting Away with Murder, Mutilation, and Rape	Title focuses on rape along with two other crimes against humanity, tagged with “war crimes.” Rape is more than just another example of an abuse listed for shock factor—it warrants a distinct section and distinct investigation.
1999 July 7	Annan Must Reject Amnesty for Sierra Leone Crimes	Majority of “atrocities” described are instances of rape and gang rape. Rape and murder are both described as “crimes against humanity” and neither is given more focus or declared the worse of the abuses.

1999 October 19	Crime or Custom?	Rape and crimes against women by private citizens are the main topics of the press release. This begins to bridge the divide between rape perceptions as war crimes versus crimes committed by non-state actors. Author argues that freedom from rape in all cases is a “fundamental human right.”
<b>2000 January 26: Tadi is sentenced to a maximum of 20 years</b>		
2001 April 1	No Escape: Male Rape in U.S. Prisons	One of the first articles that focuses primarily on sexual violence against men. 378 page report detailing abuse across multiple states

Source: Human Rights Watch database [www.hrw.org/search/apachesoer\\_search/rape](http://www.hrw.org/search/apachesoer_search/rape)

According to the database, before the conclusions of the trials rape rarely made headlines. In fact, in six out of the eight sampled articles the NGO released before 1998, “rape” or “sexual violence” was not featured in the title and was merely cited as another example in a long list of abuses or as a subcategory of women’s rights—epidemic rape was rarely treated as a human rights crisis alone or as the sole subject of a news release. However, in 1998 and after, rape was finally the topic of numerous articles, featured in titles, referred to more often as a “crime,” and treated as a serious human rights abuse by itself. Articles about rapes were tagged as “crime against humanity” instead of “women’s rights” in the database. While no article in my study published prior to the 1998 verdict refers to rape as a war crime, over half of articles after the landmark decision are tagged “war crime” or use the phrase in the body of the article to refer to rape.

Analysis of NGO reports suggest that the ICTR case increased the perceived legitimacy of the issue of rape not just in the Rwandan genocide, but also worldwide. Cases from many countries all over the world, including Kosovo, Sierra Leone, and Pakistan, were reported on just in the year 1999. Furthermore, some of these cases of rape happened outside acts of war, suggesting that the NGO linked war and peacetime violence as still constituting human rights abuses, especially in cases of systematic rape and rape related to ethnic violence.

During and after the trials, NGO and media spotlight increased on rape cases within the U.S. in the context of human rights abuses. Prior to 1998, international cases received more attention from HRW while afterwards the organization was more willing to label domestic rape cases and rape cases occurring outside the context of war as “crimes.” For example, the articles “Sexual Abuse of Women in U.S. State Pris-

ons” (1996) and “Women Raped in Prisons” (1998) cover the same topic almost exactly two years apart. While “Sexual Abuse,” describes a situation of “invisibility” of these crimes, it recommends that the U.S. acknowledge and punish “sexual contact” between guards and female prisoners.<sup>23</sup> The report is long, but the language is not as damning as the shorter 1998 report. In “Women Raped,” the situation described by the author about sexual assault of female prisoners by guards takes a more accusatory tone. In the article, a HRW director, Reagan Ralph, stated “if this were happening in another country, no one would hesitate to call it what it is: a terrible abuse of human rights.”<sup>24</sup>

The press release for the report came on September 21, 1998, only 20 days after Human Rights Watch reported on the verdict of the Akayesu trial. No article before that point had referred to U.S. prison rapes as a crime against humanity—the 1996 article was tagged as “women’s rights” and the authors described a situation where guards were not punished for rape “largely because of an ingrained belief, except in the most egregious cases, that the prisoner was complicit in the sexual abuse committed against her.”<sup>25</sup> Beyond the classification of rape as a tool of war and an act of genocide in Rwanda, reporters consciously or subconsciously found rape in Michigan to be a human rights abuse. This parallel shift in thinking between war crimes and peacetime crimes suggests that norm socialization played a role; after all, a precedent in an international criminal court does not have any direct legal ramifications on domestic criminal processes. While the Akayesu case set an important legal precedent labeling rape as a war crime, evidence suggests that this case affected the United States’ perception of rape in first world countries as a serious abuse of human rights.

An additional report I included beyond the random samples was a 378-page investigation published in 2001 about the rape of men in U.S. prisons by other men. I think this report is interesting for a number of reasons. It is one of the first reports that focus directly on the experience of male victims of sexual assault. This is especially interesting considering that approximately a year before this, Tadić’s sentencing appeal was denied and he was officially the first man ever prosecuted and found responsible in an international criminal court for acts of sexual violence against men. Second, most of the crimes described in this article are those of private citizens against other private citizens. Crimes like these do not have the clear “government motivation” required by the ICC and thus do not constitute crimes against humanity. Yet it is clear that HRW is still taking these rape cases very seriously as human rights abuses. I believe the socialization effect from the ICC not only allowed average citizens to understand rape as a crime in the context of war, but also placed rape in contexts outside of war, such as systematic institutionalized rape, as human rights abuses too.

#### LIMITATIONS FOR VICTIMS

A large body of research has discussed the negative consequences for the health, safety and recovery of the victims who testify in International Courts. At first

glance, this may seem peripheral to the subject of this paper, but in reality it is relevant and important for the purposes of policymaking. Although evidence shows that the ICC affected international norms, including increasing public acceptance of rape as a human rights abuse, these trials come at a cost for victims. While international human rights scholars and reporters may advocate for more international criminal courts to address sexual assault, it is important to also advocate for policies during and after the trials that mitigate acts of re-victimization and meet the survivors' needs for psychological and economic support. Prioritizing healing after violence is important in addition to preventing violence.

It is a common perception that "telling one's story" can be a healing experience for survivors of rape. While disclosure can be a powerful experience, it is usually when disclosure happens on the victim's own terms. Some survivors use art, storytelling, poetry, and other media to relay their experiences to an audience of their choosing. However, this is not the case for survivors of war crimes testifying in an international court. The victims are cross-examined by hostile defense lawyers who are eager to poke holes in their stories. Occasionally, the prosecutor cuts off victims if they attempt to elaborate on a feeling that the prosecutor believes is not immediately relevant to the facts of the case. In many cases, there is little debriefing after a case and women feel unappreciated for testifying in difficult circumstances. While some victims in one study described their experience testifying as positive, the majority, 24 to 7, found it "painful" and "disempowering" (Brounéus 2008). Brounéus (2008), Crider (2012), and Henry (2009) provide persuasive challenges to the "myth" that testifying is a healing experience.

In a paper examining victim insecurity and re-traumatization after testifying, Brounéus (2008) presents material from interviews with 16 women survivors who told their stories in Rwanda *gacaca* village tribunals.<sup>26</sup> First, those testifying had to worry about their physical security; women who chose to testify in her study were quite literally "re-victimized" in that they were threatened before, during, and after the trials. Next, the trials exacerbated many of the physical and psychological ailments the victims suffered; Hutu extremists often used rape not only to humiliate and injure Tutsi women and girls, but also to spread HIV and to force pregnancy on Tutsi women. Brounéus cites another study, which found testimony often "disrupted lives and relationships . . . [causing] nausea and vomiting, as well as psychological distress" (Herman 2003). The women who testified in local villages in Rwanda were often not provided with any safety measures or adequate, if any, medical care for physical or mental afflictions after disclosing that they were survivors.

Crider (2012) describes the negative feelings survivors in Rwanda and Bosnia had when they felt their testimonies were not taken seriously. Though they were encouraged to testify, they noticed that charges of rape could be dropped in exchange for the rapist pleading guilty on other counts; moreover, other rapists received the minimum sentencing even when the women did testify. Crider describes the Kunarac case of 2001, where Bosnian women exclaimed "Justice has not been done" as three

men were found guilty yet sentenced to the minimum possible punishment for their crimes (34). Crider argues that cases like these are a failure on the part of the international community to take these crimes seriously and that “simply acknowledging rape in war is not going to solve the problems” (35).

Henry (2009) further describes the negative treatment of victims in rape hearings by the Court itself and the outcome this treatment had on their perceptions of procedural fairness. A large part of the psychological trauma caused by rape is a loss of control over one’s own body and life. In the ICC cases this feeling repeated as the prosecutor—not the victim—decided if there was enough evidence to move forward, decided if the defendant could get off by pleading guilty to other charges, and decided the questions to be asked of both the victim and the defendant. The victims did not have the right to confront the accused and the (mostly male) judges ultimately decided if what the women experienced was “enough” to constitute a crime. Accounts of judges falling asleep during trial proceedings and allowing the defendant’s lawyers to ask unnecessarily hostile and accusatory questions likely left victims feeling ignored by the justice system meant to protect them (121).

Henry notes that survivors cited four main motivations to testify: to speak for the dead, to tell the world the truth, to seek justice, and to prevent further crimes from occurring. While many women felt a duty to speak for these very reasons, they were frustrated by the experience of speaking out and often felt their testimony was meaningless. Though victims described their motivation to “tell the truth,” they were not allowed to tell it in the way that they wished. Henry cites an excerpt from the Celebici trial that makes it clear that the prosecutor’s goals and the victim’s goals were sometimes at odds. In this case, the survivor began to tell her story and make sense of what had happened to her, but the prosecutor interrupted the victim at the beginning of her testimony to elicit “facts” to secure a guilty verdict. Though the prosecutor has the right motivations, he effectively shut the victim off from her own words and story and prohibited her from expressing herself in the way that she made sense of her own experience (126). The lack of freedom victims had over their own stories and lack of control they had over most of the legal processes left many feeling powerless, frustrated, and disillusioned.

Due to these clear limitations, it is important to weigh benefits and detriments when seeking policy recommendations for the eradication of sexual violence. Michael Reisman describes “judicial romanticism” as a key pitfall to avoid: the “glorification of legal entities” as panaceas (Henry 134). Survivors should not be misled to believe that testifying would be good for them—unless important changes are made in the way that prosecutions for rape proceed; this will involve a real effort to educate prosecutors and judges on the distinctive problems of testimony by rape victims. Governments and the ICC should ensure that the resources available to each individual testifying satisfy basic needs of victims, including healthcare and security. The ICC should continually improve “best practices” to give survivors power and control over their own stories and experiences. While international criminal trials have the poten-



tial to increase awareness and influence cultural change, in their current state they do not have the power to heal the community in which they occur.

### AREAS FOR FURTHER RESEARCH

Scholars should conduct further research on causal relationships and generalizability in order to strengthen the validity of these findings. First, the direction of the causal relationship must be investigated. Evidence suggests that increased media attention could have prompted the ICC to take action in the first place. For example, a researcher in Bosnia at the time of the war, Alexandria Stiglmayer, “credits the media with putting pressure on the Red Cross and larger international community to deal with the issue [of rape in war].”<sup>27</sup> While the media likely influenced the ICC, however, it is clear that the ICC influenced the media. The number of news releases regarding sexual violence increased slowly before the trial but increased at a much faster rate after the Akayesu verdict in 1998. The serious attention paid to sexual violence against men also increased after the Tadi verdict in 2000. The timeline suggests that the inaugural ICTR and ICTY cases affected NGO and media treatment of sexual violence as a war crime.

In order to make more generalizable statements about the impact of the ICC, further research including countries besides the United States should attempt to measure the causal interactions while controlling for possible confounding domestic factors. For example, other international and domestic contemporary events besides the ICTR and the ICTY may have increased attention to the issue of rape, such as the mid-1990s US prison rape scandals or the 1990s feminist campaign urging the U.S. government to recognize marital rape as a crime. Using data from other sources outside of the U.S. would improve generalizability. Large-scale analysis of language shifts in a number of different media including television, journals, NGO reports, and newspapers would demonstrate if the shift is consistent across news sources and NGOs in numerous countries and cultures. Extending the time period of the study to the 2000s and 2010s may provide evidence that other international trials played a role in increasing awareness of rape or other human rights abuses.

Furthermore, examining how other domestic or international laws and treaties changed after the 1998 verdict would provide more evidence the transformation in the treatment of rape as a crime. For example, the Kunarac, Kovac, and Vukovic ICTY case, which began in March of 2000, used legal precedents from ICTR cases to expand the definition of enslavement to include forced sexual servitude.<sup>28</sup> This suggests that the ICTR’s legal legacy improved the ability of international courts to hold leaders responsible for human rights conditions. Moreover, the level of serious attention governments pay to the issue of rape could be assessed by examining changes in national criminal laws concerning rape, the percentage of guilty verdicts, and the number of prosecutions. Since international trial verdicts do not serve as legal precedents in domestic cases, legal changes in the treatment of rape would likely be due to a socialization effect.

Finally, this study could be repeated with analyses of other human rights abuses. Trials that set precedents for cases involving torture, forced disappearances, or the death penalty, and the subsequent reactions, would give a wider picture of the possible policy implications for international criminal tribunals beyond the prosecution of rape. If increases in media and NGO reports also occur after important verdicts in these types of cases, one could make a strong argument about the ICC's influence in socializing norms and increasing the attention paid to human rights issues in general.

## CONCLUSION

The evidence of socialization effects laid out in this paper suggests best practices for increasing the serious attention paid by the international community to human rights abuses; specifically, international criminal tribunal cases can increase NGO and media coverage and the perceived legitimacy of labeling rape as a human rights abuse. While it is important to prioritize empowering survivors of the crimes, the ICC has the potential to socialize our norms around the issue and change attitudes about the severity of these crimes.

Prior to the late 1990s, rape had never been prosecuted in an international court. Instances of rape domestically and internationally were often described as simply a "woman's issue" or treated as an extra point to add to an already long list of abuses. In fact, these acts were rarely the topic of human rights articles or publicly condemned as crimes against humanity by the international community. I find evidence that the perception of rape as a serious crime changed in the late 1990s after the trials of Duško Tadi and Jean-Paul Akayesu, the first men tried and found guilty in an international court for sexual violence as a war crime. I measure the level of serious attention paid to rape using NGO reports, newspapers, and INGO establishment dates. The data shows a strong positive shift after the ICTR and ICTY inaugural trials in 1998 and 2000, respectively.

The three types of analysis are important for different reasons. First, the number and language of NGO reports measure the amount of attention and resources human rights experts devote to the issue of rape. Second, the number of *Washington Post* articles suggests the general level of awareness of rape for average U.S. citizens who read newspapers. Finally, the INGO growth reflects international attention paid to sexual violence, including both governmental and private action on this issue.

All analyses showed an important shift after the trials. First, the number of NGO and media reports increased sharply after 1998 along with a general increase in the number of INGOs established during the course of the trial. Next, the language surrounding these reports increased in intensity, and the NGO began to label acts of sexual violence as "crimes against humanity" more often. Finally, the NGO not only paid more attention to rape in times of war, but also started to focus on domestic cases of systematic rape as human rights abuses even if private citizens committed those crimes. After the ICTY case set a precedent in finding a state leader responsible

for sexual violence against men for the first time in an international court, Human Rights Watch even began to write about the ways in which sexual violence affected specifically men.

The classification of rape as an act of genocide mattered because NGOs were able to devote limited time, money and human capital to an issue that would be taken seriously by the international community. Due to increased ICC attention to these issues, HRW may have increased reporting on these types of abuses because they believed that the international community would pay attention. The *Washington Post* began publishing significantly more articles about rape in the context of human rights in the years 1998 and 1999. This suggests that the ICC had strong influence in “setting the agenda” of human rights NGOs and even capturing the attention of the media. The fact that more NGOs were established around the issue of sexual violence around the time of the trials suggests that the internationally community was not merely paying attention—it was also taking action to prevent sexual assault.

These findings suggest international criminal tribunals play an important role in broadcasting stories of violence and in holding perpetrators responsible on an international stage. The ICC may have more influence than a simple deterrent effect through the punishment of high-level leaders—they can also change our norms regarding violence in individual countries and in the international community. They can “set the agenda” for human rights organizations and even increase the number of people reading about human rights issues in the daily papers.

The trials brought forth by the U.N. through the International Criminal Tribunal for Rwanda (ICTR) and Yugoslavia (ICTY) ultimately had a strong socialization effect on the United States, increasing awareness and acceptance of rape as a serious human rights abuse. At the same time that international criminal trials have had positive effects on the treatment of rape as a serious crime, they also have the potential to have negative effects on the health, safety, and empowerment of victims of these crimes. While ICC trials have the potential to increase awareness and create some cultural change, in their current condition, they do not have the power to heal the community in which they occur.

## NOTES

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## ELECTORAL VIOLENCE IN THE PHILIPPINES: THE RESULT OF A WEAK PATRIMONIAL OLIGARCHIC STATE

Olivia O'Hagan

This paper explores the Filipino state's failure to achieve a monopoly on violence and the impact on the political sphere today. The paper argues that the highly decentralized democracy established under US colonial rule led to the Filipino state's inability to enforce the rule of law in the 21st century. The lack of state authority and control opened the state up to plunder and manipulation by an elite class with increasingly oligarchic and patrimonial behaviors.

### INTRODUCTION AND THEORY REVIEW

In 2009, 58 relatives and supporters of a local politician were killed en route to file the politician's candidacy. Those who were brutally murdered included the candidate's wife, sisters, and more than 30 journalists; the victims were buried in a mass grave while some were still alive.<sup>1</sup> This atrocity, the Maguindanao Massacre, is just one example of a slew of incidents of electoral violence in the Philippines.

The Philippines is home to one of the oldest and most violent democracies in Asia. At first glance, the Philippines seems conducive to a successful democracy. The Filipino constitution is based on the American constitution. There are dynamic civil society organizations, the electorate is engaged with two-thirds participation in elections and mass mobilization movements have occurred in the past. However, rampant corruption and violence lie below the surface.

American colonization left a legacy of both a weak bureaucratic state and extensive decentralization of democratic institutions. The consequence of this was the failure of the Filipino government in enforcing the rule of law and establishing a monopoly on violence. This resulted in the exposure of a weak state to plunder by the elite and a political system that has come to be defined by institutionalized patterns of violent, oligarchic and patrimonial tendencies.

The Philippines is an interesting case to examine using the Leviathan and state-formation theories advanced by Thomas Hobbes, Francis Fukuyama and Steven Pinker. Hobbes' preeminent Leviathan theory contends that the state, an unbiased third party, can enforce a social contract between people and state by establishing a monopoly on violence.<sup>2</sup> Citizens must sacrifice certain freedoms like the ability to murder with impunity, in return for other rights such as security and protection of property.<sup>3</sup> Fukuyama describes a few key distinctions between a state and a tribal society. State-level societies possess a sovereign, centralized source of authority that

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is legitimized by the state's monopoly on coercion and violence. In addition, membership in the state is determined by territory instead of kinship. In the transition to a state, citizens tend to lose a degree of freedom and equality as a political-elite class emerges. Hobbes argues that a Leviathan must exist as a solution to anarchy, which clearly is not the state of affairs in the Philippines. This paper will argue that the Filipino state does not effectively fulfill the role of an unbiased third party. The state is too weak to monopolize violence and to enforce the rule of law on its citizenry.

James Payne's work on political murder establishes a framework for considering the ineptitude of the Filipino democracy. Like Hobbes, Payne concurs that a primitive state exists to fulfill the basic role of wielding force over its territory. Thus, it is unsurprising that a violent struggle for the government ensues.<sup>4</sup> Payne differentiates between the types of murder. One of these, political murder, occurs when a member of the elite kills a government official in hopes of securing higher rank and accessing power.

In order for a legitimate democracy to be established, violence must be set aside. During the Roman Republic, political murder was unexpectedly rare, due to a constitutional device that made such violent acts unnecessary: term limits.<sup>5</sup> On the other hand, political murder was common, accepted and endorsed, during the Roman Empire: "kill or be killed."<sup>6</sup> Payne cites this as one of the reasons for the Roman Republic collapsing into the violent Roman Empire. In contrast, the majority of murders in Western democracies are non-political. Payne concludes that meaningful democracy cannot be established until candidates stop using violence to gain political power.<sup>7</sup> This paper will contend that violence and political murder have not been set aside in the Philippines and thus democracy cannot flourish yet.

### COLONIAL LEGACIES AND EARLY DEMOCRACY

Typically, colonists focus on forming a powerful bureaucratic state, one that achieves the basic assumptions of a Leviathan, before establishing democratic institutions.<sup>8</sup> However, the opposite has occurred in the Philippines. American colonizers emphasized the establishment of representative institutions before a strong bureaucratic apparatus was established, which exposed the weak state to patronage-seeking politicians. In an effort to win over the elite, who had already secured an economic base, the U.S. began to offer them political power in the form of strong local governments. Over the period of U.S. colonial rule from 1898–1946, the colonizers gradually expanded the political arena for the elite, endowing them with meaningful political authority. Thus, the enfranchisement of the economic elite and exclusion of the masses was a deliberate decision made by the American colonizers.<sup>9</sup>

Internally mobilized political parties emerged at the start of the 20th century, before a strong bureaucratic apparatus had been established, resulting in patronage-oriented parties. The political parties were founded by elites who already filled seats in the government. Thus the parties were "internally mobilized" and functioned within the regime, where patronage resources were centralized. The party leaders



quickly began to use the readily available financial resources to attract supporters.<sup>10</sup> Wealthy patrons exchanged material favors for votes from poor, dependent local clients.<sup>11</sup> If a strong bureaucratic apparatus existed, the state would have been able to resist pillage by internally mobilized parties, but the Filipino bureaucratic apparatus was weak and poorly developed.

The Filipino commonwealth was established in 1935, under the direction of American colonizers. The commonwealth was a governing body that further centralized patronage resources in the hands of the executive. The deliberate endowment of the executive branch with uncontested authority exacerbated the issue of favor based patron-client relationships. The president plainly controlled the distribution of funds. Therefore, political-economic elites were increasingly motivated to manipulate local networks in order to gain access to the executive.<sup>12</sup> As a result, there was a decline in ideological variation among the elite and parties became entirely focused on accessing patronage.<sup>13</sup> The U.S. colonizers' decision to establish a decentralized democracy with a strong executive branch prior to entrenching the bureaucratic apparatus facilitated the emergence of a weak state with non-ideological, patronage-oriented parties.

The Philippines achieved independence in 1946, with an increasingly clientelistic political system. A clientelistic political party is a confederation of elites. The party exists to coordinate campaigns via the exchange of material benefits for political favors in hierarchical networks of personal relationships. Clientelism typically wanes as a country modernizes and the electorate becomes increasingly involved. However, the opposite has occurred in the Philippines. Post-independence, the Filipino electorate base expanded massively through a series of reforms, creating the need for elites to capture the votes of the non-elite.<sup>14</sup> During the first decades of independent Filipino democratic rule, power alternated between two clientelistic parties. These two parties were defined, not by ideological differences, but by networks of personal relationships. In order to secure votes, vertical networks existed in each party, involving extensive patron-client relationships from the national to *barangay* (village) level, based on kinship, friendship and the exchange of favors and money.<sup>15</sup>

Even as the economy diversified, the economic elite solidified as a group and engaged in increasingly patrimonial and coercive behaviors causing clientelism to balloon into patrimonialism. Patrimonialism is defined by the merging of the public and private sphere in a system ruled by a small group of oligarchs. The oligarchic elite had an economic base outside the state: their property. Hence, rather than being subordinate to the state, the elites manipulated it.<sup>16</sup>

At the local level, local "bosses" achieved monopolistic control of major economic resources and solidified profitable patron-client relationships. These patron-client ties and access to the state became fundamental to the generation of wealth for bosses, which marked the transition to patrimonialism.<sup>17</sup> Like the pre-martial law period of democracy, the synergetic relationship between the bureaucratic apparatus and the political elite caused the privatization of public resources, which further weakened the state. Rent-seeking activities plunder of the state took place in

the capital because funds were centralized at the hands of the executive. Meanwhile political violence was used to secure votes in the provinces. In areas of weak central government control local politicians, or warlords/bosses, imposed their rule through mafia-style coercion and private armies.<sup>18</sup>

The oligarchy consolidated its power, thus demonstrating the state's inability to impose the rule of law and successfully uphold a social contract with the citizenry. During the first decades of democratic rule in the Philippines, the decentralized system and seemingly horizontal dispersion of power veiled the strong vertical patron-client networks. By the 1971 elections, however, this cover vanished and "guns, goons and gold" openly dictated activities in the political sphere.<sup>19</sup> Political intimidation and killings became increasingly common, as the competition for votes intensified. The 1971 election saw an astonishing 905 deaths and 534 violent incidents.

The astounding violence associated with elections in the Philippines can be examined through Thomas Hobbes' code of honor. Hobbes' theory states that men fight for three reasons: competition, diffidence, and glory. John Linantud, who studies Filipino politics, argues that the prevalence of political turmoil has resulted in a political subculture that places a premium on defending one's manhood and pursuing elected office, in order to achieve upward mobility. The honor code, according to Linantud, justifies political violence among local politicians who are supported by a small clan-like network.<sup>20</sup> Men compete for resources and the general unrest and violence allows the honor code to perpetuate a destructive political subculture. Linantud recognizes that the Hobbesian honor code is not a sufficient explanation for the political violence that plagues the Philippines, but elucidates underlying behaviors.

Some scholars theorize that the Philippines is not a weak state but, in fact, a strong predatory one. In a predatory regime, clientelism devolves from the exchange of favors to rampant corruption and systematic exploitation of the state.<sup>21</sup> John Sidel, a specialist in comparative politics, argues that it is the very structure of the state that creates conditions conducive to the survival of local strongmen and politicians.<sup>22</sup> Neither profitable patron-client relations nor the wealth of the landowning elites can explain such established relationships by local bosses. Instead, Sidel argues that the rapid enfranchisement of the Filipino citizenry by American colonizers relative to the Philippines' geographic neighbors established a framework that empowered local governments and politicians.<sup>23</sup> Elsewhere in Southeast Asia, colonizers first insulated the central bureaucracy from the power of local governments preventing the emergence of a powerful and predatory state. Other scholars of Filipino politics point out a key point Sidel misses: the relationship between powerful local politicians and the federal state continually depletes the state's resources and weakens the bureaucratic apparatus.<sup>24</sup> Thus, the power dynamic falls in favor of predatory local politicians and not the impotent state.

The violence of the early democratic era led the struggling Filipino democracy into a period of crisis: the Philippines collapsed into authoritarianism. In 1972, President Marcos declared Martial Law, to supposedly "end the rule of the oligarchs."

Even the drastic shift to authoritarianism did not sufficiently strengthen the state to unseat clan-based political parties.<sup>25</sup> Seeking legitimacy from the public, Marcos reintroduced presidential rule in 1978 and established his own political party, *Kilusang Bagong Lipunan* (KBL). However, the semi-democratic reforms were introduced without reinstating most of the other civil liberties. While the pre-Martial Law parties had begun to shift towards patrimonialism, the KBL was the first openly patrimonial Filipino political party that blatantly plundered the state.<sup>26</sup> Under the guise of Martial Law, Marcos sought to undermine the extensive network of clans and accompanying diffuse centers of power. However, through selective expropriation and endorsement of particular cronies, Marcos heightened the problems of the distinctly undemocratic political party system that merely sought wealth from the political machinery.<sup>27</sup>

### RE-ESTABLISHMENT OF DEMOCRACY AND INSTITUTIONALIZATION OF POLITICAL PARTIES

Martial Law ended in a mass mobilization movement that triggered a military uprising in 1986 and restored democracy. The result was an unusual multi-party system that further weakened the central government causing uncontrolled provincial violence. The People Power Revolution, a civil resistance movement against the fraudulent regime, brought hundreds of thousands of Filipinos into the street, ultimately overthrowing Marcos. Unfortunately, the incredible display of civilian engagement simply reinstated pre-Martial Law institutions, which returned power to the local clan networks and brought a member of a powerful oligarchic family into office.<sup>28</sup> Unlike pre-martial law democracy, multiple political parties emerged, which is unusual for a single-member plurality system (a system in which one elected candidate represents the district in the legislature). Scholars contend that the appearance of the multi-party system is a result of the exceedingly weak political party system, thus the number of candidates defined the number of parties.<sup>29</sup>

The contorted existence of multiple parties became a regular feature of Filipino democracy. Local politicians, who are seen as the source of patrimonial ills, are nicknamed *trapo* meaning dishrag and head their own parties. *Trapo* parties are amorphous organizations characterized by pathetic membership bases, exclusion of the masses and the utter absence of a defining ideology. *Trapo* parties are patrimonial: elites used the parties to secure elections and thus access the state's resources. Parties often merge with other parties or entirely re-invent themselves. Politicians regularly switch parties in a phenomenon called *turncoatism*.<sup>30</sup> Like the clientelistic parties that existed before Martial Law, the *trapo* parties are internally mobilized.

The stability of a developing political system depends on the quality and strength of its political parties.<sup>31</sup> Most theorists argue that socio-economic development and globalization ultimately erode clientelism and patrimonialism, leaving behind transparent, ideology-based, democratic political parties. The institutionalization of *trapo* parties in the Philippines defies most theories on modernization and democratic consolidation. In another step away from democracy, the non-ideological,

patronage-based political parties became an institutionalized component of Filipino democracy. Taken as individual entities, the *trapo* parties are weak and have short lifespans. However, the constant adjustment and regeneration of the *trapo* parties as a collective system is powerful and predatory. The corruption of the economic elite has evolved to leverage the liberalized economy.<sup>32</sup> Furthermore, as *trapo* parties worsen political corruption, they simultaneously re-establish their institutional presence, thus creating a vicious cycle. The nebulous *trapo* parties have become the defining institution of the patrimonial oligarchic state present in the Philippines.

In 2001, the Filipino people gathered again in a four-day demonstration of People Power II. People Power II occurred when the military was persuaded to withdraw support from the incumbent government, again demonstrating the state's lack of monopolization of violence. The movement criticized critical institutions and attempted to revitalize the debate over the political and economic reform process.<sup>33</sup> People Power II paradoxically resulted in the appointment of a leader with growing authoritarian tendencies: President Arroyo. She did little to capitalize on the momentum for reform. Despite the mass mobilization, the *trapo* parties proved resilient. They maintained their control over government institutions at local and national levels and did not struggle to re-emerge after the enormous upheaval of People Power II.

Election violence returned to astonishing levels in the Philippines under President Arroyo. The 2004 elections were the most violent since 1971: 189 people were killed and 279 were injured. Then, in 2006, Arroyo essentially declared war against the communist insurgency. The extrajudicial killings of 900 leftist activists and disappearances of 180 more are attributed to Arroyo's campaign against communism.<sup>34</sup> All levels of the government failed to condemn the killings.<sup>35</sup> According to Reporters Without Borders, the Philippines was the second most dangerous country for journalists after Iraq.<sup>36</sup> Under the Arroyo administration, there were at least 56 journalists killed with just two of the cases resulting in convictions.<sup>37</sup> The absence of justice demonstrates the state's inability, or rather its unwillingness to enforce the rule of law. During Arroyo's 10-year period of leadership, the civil and political liberties of the Filipino citizens were grossly disregarded.<sup>38</sup>

President Arroyo demonstrated unmistakably authoritarian tendencies, adding to the ills of the patrimonial oligarchic system. Arroyo managed to further centralize power in the executive, whilst being involved in some of the most blatant and shocking political scams to date. Notably, a phone call was recorded in which Arroyo requested a one million vote margin in an election. According to a 2007 survey by Pulse Asia, Arroyo was more corrupt than the five preceding Filipino presidents, defeating even Marcos who declared Martial Law.<sup>39</sup> Corruption, coercion, fraud and violence were perceived to be at their worst under her leadership.

The democratic institutions that remained in 2001 rapidly disintegrated under Arroyo. The House of Representatives, which is designed as a check on the President's power, was simply populated with her personal "cheering squad." The commission on elections provided no oversight to the democratic process but facilitated

the fixing of elections. Meanwhile the justice system did little to defend victims of this predatory system and often participated in political intimidation. The national police and Philippine armed forces failed to provide security to the electoral process. In fact, the forces are often exploited in favor of one candidate or another.<sup>40</sup> The fragmentation of the bureaucratic apparatus and erosion of key branches of government left the state incapable of imposing the rule of law or protecting the citizenry from reckless political violence.

President Arroyo secured a degree of loyalty from military generals during her regime but was unable to dictate the patterns of violence in the Philippines. Though the generals helped prevent a coup in 2006, the junior officers of the military were the perpetrators of the potential coup.<sup>41</sup> In addition, Arroyo did not seek to reform the perception (or reality) that elections are about controlling the central government's resources. Thus, politicians who used violence to secure election were rewarded with access to patronage resources.

### THE CURRENT PRESIDENCY AND PROSPECTS FOR REFORM

In 2010, Benigno Aquino III was elected President, campaigning on a promise to combat corruption. To date, the Aquino administration has followed through on that promise with an iron will. The Aquino administration has imposed the rule of law on the Philippines for the first time in decades. Aquino arrested and prosecuted former politicians, including former President Arroyo on crimes of plunder, corruption and electoral fraud. The House of Representatives impeached two judges, who were Arroyo's key allies. While one judge preemptively resigned, the other was charged with a slew of misconducts including betrayal of public trust and culpable violation of the constitution.<sup>42</sup> In addition, Aquino's cabinet is comprised of mostly professional technocrats who are in favor of reform, demonstrating a shift away from patrimonialism.

While Aquino has made strides in the battle against corruption, he has been unable to affect meaningful change in the underlying structure of clientelism. Aquino's zest for reform has shifted the Philippines from a patrimonial oligarchic state back into clientelism, in which established political families continue to plunder the state.<sup>43</sup> Aquino must remain steadfast in his reform efforts, specifically contesting the ingrained patronage-seeking behaviors and strengthening the rule of law.

Patrimonial oligarchic states are highly resistant to reform efforts from below, which was demonstrated by the failures of People Power I and II. This makes prospects for fundamental restructuring and improvement in the Philippines seem bleak. The oligarchy, which benefits from the patrimonial system, has also gained from the country's economic growth and liberalization, due to sustained close relations with other public officials. It has managed to resist challenges to the system by lower classes.<sup>44</sup> While bottom-up efforts seem to be futile, any reforms that are pushed from the top suffer from an incoherent bureaucracy that is unable to exert influence over the powerful oligarchy.<sup>45</sup>

The Philippines needs a strong central state with a much higher degree of bureaucratic capacity. Political parties that seek patronage dominate the existing democratic structures, while the majority of society is excluded and marginal to political activity. Thus, the state must simultaneously be protected from select demands made by the oligarchy and open itself up to the collective grievances and demands of the rest of society.<sup>46</sup>

## CONCLUSION

The Filipino state suffers from the absence of a capable and forceful state that can monopolize violence, enforce the rule of law and guarantee justice. Therefore, the state fails to create conditions conducive to free and fair elections with democratic outcomes. In the Philippines, the central bureaucratic apparatus simply serves as a resource for financing and is too weak to act as the impartial third party that enforces a social contract among its citizenry that Thomas Hobbes describes in his Leviathan theory. The weak state, in combination with the establishment of diffuse democratic institutions by American colonizers, facilitated the emergence of political parties that sought access to patronage resources centralized in the hands of the executive. Aggressive politicians who used any means necessary to win elections were rewarded with access to financing. As a result, electoral violence quickly became a regular feature of Filipino political life. Drawing on the arguments delineated by Payne, it is evident that authentic democracy cannot gain a stable footing in the Philippines until electoral violence is curbed. The re-emergence of clientelism under the current administration is a cause for hope. The Philippines needs sustained pressure from the top with complementary pressure from the bottom to reform its predatory political party system and to strengthen the state.

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## THE FUTURE OF U.S. FOREIGN POLICY IN EAST ASIA: A CONVERSATION WITH DR. PAUL HEER

Conducted by Freya Jamison, Steffi Colao, and Alexis Allen

World Outlook (WO): What you would say are some of the biggest challenges to gathering intelligence in China specifically? Is there anything that is unique to that environment? Or would you say it shares the general challenges of intelligence gathering anywhere in the world?

Dr. Paul Heer (PH): No, I think that it's not typical of intelligence gathering in other parts of the world. A lot of issues are not unique to China, but China is on the list of what we call "hard targets." And the biggest challenge, basically, is just the secretiveness of the Chinese leadership system and decision making processes. Their entire foreign policy process is completely lacking in public transparency. It's simply very hard to get a handle on how the Chinese leadership makes decisions, both in terms of foreign and domestic policy. It's not unique, but it fits within the small category of countries like North Korea and Russia. That's the hardest thing about China—it's just a very, very tight system. And so much of our understanding of Chinese international behavior—or frankly domestic leadership behavior—has to be based on our knowledge of internal leadership decision-making.

WO: Do you think that, given that challenge, we've been generally successful in making analysis regarding China? Or do you think that's a huge detriment to decision-making or intelligence production?

PH: Well, if I say we haven't been successful, I would be denigrating the success of the offices I've worked with for the last thirty years. I think we've been very successful in assessing Chinese behavior, even given the gaps in our knowledge. As I said last night in a session with some students, doing intelligence analysis is like putting together a 500-piece jigsaw puzzle with only 300 of the pieces.

Dr. Paul Heer is the 2015–16 Robert E. Wilhelm Fellow at the Center for International Studies at the Massachusetts Institute of Technology. He served from 2007 to 2015 as the National Intelligence Officer for East Asia—the senior analyst of East Asian affairs in the US Intelligence Community—in the Office of the Director of National Intelligence. A career officer of the Central Intelligence Agency's Directorate of Intelligence, he began that career in 1983 as a political and foreign policy analyst on Southeast Asia before specializing on China as an analyst and analytic manager. He served on the staff of the President's Daily Brief, and as a member of the CIA's Senior Analytic Service and the Senior Intelligence Service. He is a recipient of the CIA's Distinguished Career Intelligence Medal and the DNI's National Intelligence Distinguished Service Medal. Dr. Heer was the Visiting Intelligence Fellow at the Council on Foreign Relations during 1999–2000 and was subsequently elected a Life Member of the Council. He is also a member of the International Institute for Strategic Studies. He holds a B.A. degree from Loras College in Dubuque, Iowa; an M.A. in history from the University of Iowa, and a Ph.D. in diplomatic history from The George Washington University.

But I think we have enough expertise on China, enough of a record of assessing how the Chinese behave under certain circumstances, what their motivations and drivers are, that we do a pretty good job of filling the gaps in our knowledge with assessment that is well grounded in prior information and reporting. I think we understand the Chinese pretty well even though we don't know everything.

WO: Given the relationship that the U.S. currently has with China, do you see it evolving in the next 10 years, or do you see it tapering off? What in particular does the U.S. want from its relationship with China?

PH: Well, first of all, I should say that when I worked in the intelligence community, I did not work as a policy maker or as a policy commentator. It's kind of new to me to be addressing policy questions. But I think what the U.S. wants from its relationship with China is pretty self-evident. We want a cooperative, constructive relationship. We have both a genuine desire and need for a relationship with China, and we can work effectively together on areas of mutual interest and where we have shared concerns. We also want to be able to find ways to manage our inevitable disagreements, which are a product of competing national interests and certainly conflicting political systems. And I think that we have been evolving pretty effectively in that direction despite all of the tension and conflict that sometimes emerges in the relationship. If you look at the trajectory over the last twenty years, we have a much more cooperative and interactive relationship with the Chinese than we did twenty years ago. This is certainly more true after Tiananmen Square crises of 1989. There's a long way to go because, as I said, there's still going to be problems there. I think there's the potential for it to devolve in the wrong direction because of lack of mutual trust and disagreement on security policy and human rights. There's always going to be the potential for faults in the relationship; the fear is that tension in the military or security realm will spin out of control. So, I guess I tend toward optimism because I think there is such potential there. I think China recognizes the need for and is genuinely interested in pursuing the same kind of relationship that I said Washington is pursuing. And neither side wants to get into conflict. It's just a difficult relationship to manage because of the mistrust and tension that a lot of commentators have drawn attention to. Many have pointed to what appears to be inevitable conflict between an established power and a rising power. I think that we're just facing the challenge of managing that process in a way that avoids things getting worse.

WO: Speaking of tension and security issues, one obvious issue to note is the dispute over the islands in the South China Sea. We're wondering what the strategic or symbolic meaning of control over these islands is for the U.S. and China, and do you think that those motivations are strong enough to actually lead to conflict, or can the areas of cooperation between the two countries prevent it?

PH: Well, the U.S. doesn't have a sovereignty claim there. The issue itself is between China and the other countries in the region that have claims to the same islands and territories and waters that the Chinese do.

WO: So do you think the U.S. interest is strong enough there to actually provoke a response in defense of the smaller nations?

PH: There is a strong, legitimate U.S. interest there, even though we don't take a position on the sovereignty claims themselves. The United States is firmly committed to ensuring or at least advocating that the claimants pursue their disputes in a way that is peaceful, which is deliberative, and which is based on the principles of international law that applies to these islands and the waters around them. We pursue this rather than attempting a coercive, unilateral approach—which is the way the Chinese are behaving. So I think that it makes perfect sense for us to be involved, especially because of our obligations to one treaty ally, the Philippines. We are committed to a mutual defense pact with them if the Chinese were to actually attack the Philippines, which I don't think the Chinese are going to do. So we have a security obligation there. But the broader obligation is promoting a rules-based pursuit. I think there is enough mutual interest between the U.S. and the Chinese to avoid escalation of this into a direct conflict. I think the danger is miscalculation, or an unpredicted incident escalating simply because tensions are high. The Chinese and all the other claimants are increasing their military deployments, particularly their naval operations and coast guard. And the United States, in order to emphasize the principles that I mentioned, is conducting navigation operations in the region with our own naval forces to refute the perceived, exclusive Chinese claims to the waters. The danger is basically that we have a lot more ships and planes operating in that area than we had twenty years ago. I think there's always going to be the risk that two of these ships run into each other, or that any of the claimants try to interfere with the operations of other countries' ships in what they think are their waters. Sometimes the ships run into each other deliberately, sometimes they try to interfere with the operations. That's the kind of incident that, under the right circumstances, could escalate into a real tense situation.

WO: In your experience, what makes it worthwhile for the United States to engage in a relationship of mutual benefit and respect with an authoritarian country like China?

PH: Well I think diplomatic and realistic necessity often requires cooperation or the establishment . . .

WO: Or perhaps, considering the fact that the U.S. is a strong power, do you think there is a trade off between respecting and trying to curb China's growing power?

PH: I think that there is both basis and a need for a relationship simply because we have shared interests. That would be issue number one. We have dealt historically with a lot of distasteful governments across the world because there was always a necessity to do so. And because even if we find the nature of another regime offensive to our values or our sensitivities, that doesn't obviate the possibility that there are other interests that we have elsewhere in the world. In fact, a professor at Princeton, named Todd Christianson, published a book last year called *The China Challenge*, which goes into great detail on the need for cooperation with China and a constructive working relationship with China. Global and regional issues like climate change exist, where the U.S. and China have both the opportunity and the need for cooperation.

WO: Could you also speak to respecting a rising power versus a curbing one?

PH: Well I think that's really one of the core challenges we're facing right now. The tension between a rising power and an established power has been referred to as "the Thucydides trap." This comes from a classic history of the Peloponnesian War by a Greek historian named Thucydides, which sounds obscure and arcane—and it is to most people. The main theme of this history is the kind of tension and conflict that developed between an established power and a rising power. A lot of people have noted that conflict seemed inevitable and in fact developed, and pointed to our relationship with China. And the question now is, how do we avoid falling into that trap and letting the tension both real and perceived divergence of interest between the U.S. and China develop into conflict? I don't think it's inevitable. One of the things that the two sides have going forward is that enlightened leadership on both sides recognize a mutual desire to avoid conflict. Now, respect is a particularly problematic issue with the Chinese because they have a lot of historical baggage based on their own historical experience with and perception of powers. Western powers especially have not respected China's power or sovereignty. The Chinese refer to what they call the "Century of Humiliation," between the opium wars of the 1840s when the British invaded China and the end of World War II, which ended over twenty years of Japanese occupation. During that period in the middle, China was colonized by Western powers including the United States, but especially the European powers that had extraterritorial privileges within Chinese territory. This historical memory is also one in which China was disrespected, abused, insulted, and inflicted great damage upon. I should also say that this was in light of the previous Chinese experience. The Chinese historical mindset was that of one of the greatest civilizations of the world. It was the Middle Kingdom and had the mandate of heaven to govern East Asia. That, juxtaposed against this more recent history from the mid-nineteenth to the mid-twentieth centuries, gave the Chinese a very divided mindset. Ever since the establishment of the People's Republic of China at

the end of the Chinese civil war in 1949, one of the primary goals of their foreign policy has been to rectify that period and to restore China's place as a great power and as the preeminent power within East Asia. But I should add that its not just a Chinese communist ambition, it's a nationalist Chinese ambition that even pre-dates the establishment of the Chinese Communist Party. The Chinese claim to the South China Sea is actually derived on a claim that was made by the non-communist nationalist government in the 1930s. The island of Taiwan basically still retains the same claim to the islands that the government in Beijing does. This is a long-winded history lesson, but it comes down to the fact that mutual respect is a very tall order because the Chinese are particularly focused on just that. They do not think they have been respected as a great power. And a lot of their regional foreign policy, particularly their approach to the South China Sea, their relationship with Japan, and their fixation on the Taiwan issue are all legacies of this period when foreign powers were trying to prevent China's territorial unity and integrity and were not respectful of what the Chinese saw as their rightful place in the region. It is important to keep this in mind to fully understand the why the Chinese have inflated some of their sovereignty claims to a very questionable legal basis, and why they have created a lot of propaganda and twisted truths in their telling of this history. I think we still need to be attentive to that history because we're not going to be able to deal with them effectively unless we at least understand where they are coming from historically. The other complicating factor is simply the fact that the Chinese have become that more wealthy and powerful. They are a much more consequential power because of the success of their economic reform program over the last thirty years. They are a force to be reckoned with. This shift in the material balance of power in the region makes one of the challenges for establishing a respectful relationship recognizing some of the limits and constraints it imposes upon U.S. power and influence in the region. I don't think this is a zero sum contest. I'm not convinced the Chinese believe that it is, but it is a very difficult historical transition for the two sides to manage. There are a lot of layers to that issue.

WO: So now I'm going to move towards the internal dynamics of China, another big issue given talk of economic liberalization, potentially increasing civil liberties for citizens, and a growing business class starting to gain power. I'm wondering if you think China will reach a stable point where its economy can continue to grow while simultaneously ensuring the balance of power continues to favor the government?

PH: That's a very good question and I wish I had the magic answer to it. As a historian I'm not terribly optimistic, but let me start with the Chinese mindset. Bill Clinton, on a trip in 1998, said publicly at a press conference in Beijing that China is on the wrong side of history because communism had proven itself invalid when the Soviet Union collapsed. However, the Chinese don't read history that way they don't

think they're on the wrong side of it. They spent the last 25 years trying to study the Soviet collapse and look at the causes for it. They believe, contrary to what we think, that the collapse of the Soviet Union did not invalidate Communism or socialism. It invalidated the wrong version of it, which they attribute to Gorbachev. Their economic success over the last thirty years has validated their version. And I think that they believe that the lesson they took away from the Soviet Union was the importance of demonstrating good governance to your populace. My own shorthand version of this is the Chinese believe that what they're trying to do is make the case to the Chinese people that prosperity and international competence was brought to them by the Chinese Communist party. In a sense they've tried to coopt capitalism and take credit for it, and it's made them actually somewhat popular within China. The Chinese government, aside from some of the dissident issues, often gets better domestic popularity ratings than the U.S. government does, strangely enough. But I don't think that this is a persuasive case that they can sustain power forever. As you said, the kind of economic reform that they have conducted inevitably produces pressure for political reforms. I don't think this is a simple cause and effect equation; there are different constituencies in China that think of this in different ways. For example, a lot of middle class Chinese who have been beneficiaries of economic reform are not fans of total democracy because they don't have a lot of confidence in the will of larger elements of the population in China. That's kind of a strange internal dynamic. Basically, economic reform will not necessarily bring the Western-style democracy that we would like to see China adopt. The other reason the collapse of this equation isn't necessarily inevitable is that you do have a lot of technocratic expertise in the Chinese governmental leadership. They know the challenges that they're facing and that they are riding a tiger. A lot of people would've predicted they couldn't sustain it as long as they have, so they're doing a pretty good job. But then of course every time the Chinese stock market faltered or growth rates start to fall these questions still arise. The bottom line is that I just don't think you can in perpetuity sustain a one-party system that governs that huge of a polity with such profound social and economic change happening at the same time. So my own guess as a historian is that something discontinuous is bound to happen here. I don't think they can hold this this machine together forever. Something comparable to the collapse of the Soviet Union may very well happen, but again I would emphasize if you look to the Soviet example, the collapse of the Soviet Communist Party did not bring in a thriving democratic system. You still have all kinds of nationalist impulses and a style of leadership that is still autocratic. I think that if China is ever going to evolve into a democratic system, it's going to be a long, hard slog even after the Chinese Communist Party ceases to be the sole source of authority.

WO: Do you have a guess on a time frame here or is it way too speculative?

PH: It's way too speculative. People predicted thirty years ago that the North Korean government would collapse and that's still not happening. There's so much vola-

tility in the Chinese system. I think the Chinese leadership has such effective control over their system that they have less reason to be afraid of regime-threatening instability than the Soviets. Yet certainly environmental disasters, serious economic collapse, or an international crisis involving a territorial conflict could provide the catalyst for a serious split within the leadership through a crisis of confidence that quickly evolves into a regime-threatening situation. That's what happened with the Soviet Union, and that is why the Chinese leadership is concerned about the loyalty of the military. There's any number of things that could that could lead to a much more precipitous collapse of the Chinese Communist party than what seems to be on the horizon right now.

WO: Right. To transition: would you recommend a career in intelligence to undergraduates, and what kind of person do you think thrives in the analytical culture of intelligence work?

PH: I would definitely recommend it. I miss it myself already. And it's a fantastic career that combines being able to work on international affairs topics and having a direct impact on policy makers. Your analytic work directly feeds into policymakers' inboxes and deliberations. When I worked for the Director of Intelligence at CIA and the National Intelligence Council, I called the organizations the two greatest international affairs think tanks in the world because of the breadth of issues that we assessed and the many sources of information we had to bring to bear. You can't ask for a more impactful, although anonymous, influence on policy. I think the people who thrive there are those who certainly have that appetite and level of interest for analysis. If you want to get into the operational collection side at CIA or other agencies, there are 17 different intelligence agencies in Washington. But I think the most competitive candidates are folks that have a particular depth expertise on a specific geographic area, like a Middle East or Latin America specialist. Functional specialties, such as specialization on proliferations or weapons or international finance are also value-added qualifications. The most competitive analysts are people who have some direct experience in the country that they're working on, and certainly possessing language skills makes a big difference. Obviously, a graduate level degree is going to deepen your experience. The last thing I have to say is that established general skills are really important. In fact, I think they're foundational regardless of your substantive area of expertise. I'm a diehard fan of the liberal arts. Never stop reading and never stop learning. You have to be a really good researcher, analyst, and writer. I can't emphasize that enough—clarity of expression is incredibly important to the intelligence trade.

WO: Great. Just to wrap up, we're looking forward to what's next for you. You've had a long career, but you still have a good bit of time ahead. Will you continue to focus on East Asia?



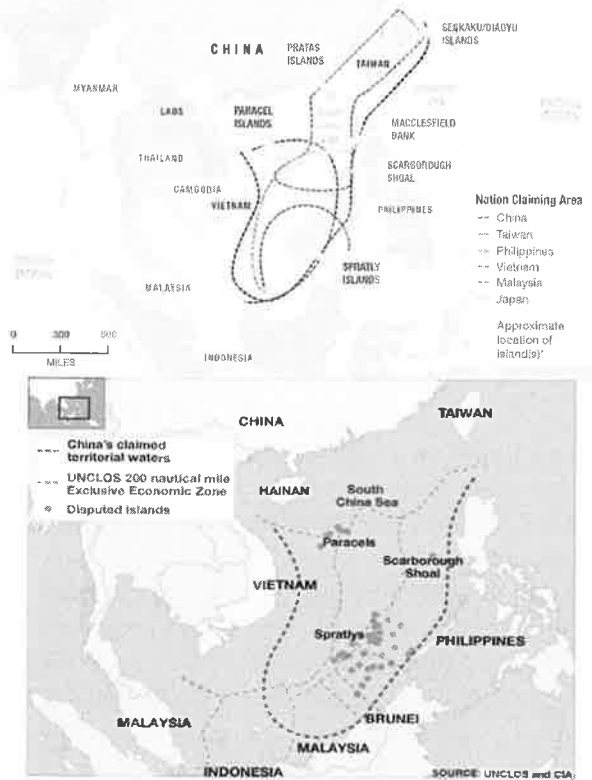
PH: I don't know—I say I'm trying to decide what I want to be when I grow up. I'm in transition now since I retired from the agency and the intelligence community after thirty-one years and four months. I'm currently visiting the research center at M.I.T., where I'm working on writing my doctoral dissertation on George F. Kennan's role on East Asia policy. Kennan was one of the most famous U.S. foreign service officers in history as well as a Russia specialist who promoted the policy and containment of the Soviet Union after the war. He was deeply involved in East Asia, so I'm hoping that I can turn this into a published book and that it will open opportunities for me to transition into a longer-term academic teaching position. Of course I would also like to travel, too.

# UNDERSTANDING CHINA'S COMMITMENT TO THE CONFLICT IN THE SOUTH CHINA SEA: THE IMPORTANCE OF HISTORY AND NATIONALISM

Joshua Tupler

China is involved in a heated dispute with Taiwan, the Philippines, Vietnam, and Malaysia over the sovereignty of several islands in the South China Sea. Other countries—including Indonesia and Brunei—do not claim ownership over any of the disputed islands, instead claiming that China has unduly asserted control over regions within the Southeast Asian nations' exclusive economic zones. China rejects these claims and maintains its sovereignty over nearly all of the South China Sea (Fig. 1).

Figure 1: Maps of the South China Sea<sup>1</sup>



Joshua Tupler is a member of the Dartmouth class of 2016. This op-ed was adapted from his honors thesis, written for the Government Department.

China's recent "militarization" of the region has alarmed many Western media sources. This alleged militarization started in 2006, with China constructing artificial islands, building airfields, and deploying military infrastructure—including fighter aircraft and surface-to-air missile systems—in the disputed territories.<sup>2</sup> Most news articles have offered three main hypotheses regarding what is driving China's bold actions. The first and most pervasive narrative argues that a Chinese interest in acquiring large, potential reserves of oil and natural gas is the principal driver of Chinese fervor in the region.<sup>3</sup> Other articles often cite Chinese economic interest in regulating trade and establishing control over fishing as a key motivator of Chinese behavior.<sup>4</sup> Still others cite Chinese geostrategic interests related to establishing military bases in the region.<sup>5</sup>

Although there might be some truth to all these claims, there is a fourth less-discussed hypothesis that more adequately explains Chinese activity in the region: historical and national interest. In order to develop a more nuanced understanding of Chinese interest in the region, I will review the existing scientific and academic literature supporting the three widely held beliefs and find that the evidence for commonly-touted explanations is much weaker than the media portrays. I will then argue that historical and nationalist interest might be motivating Chinese attempts to gain greater control over the South China Seas, and that more attention ought to be paid to this explanation.

### RESOURCE-BASED INTEREST

The "race for oil" in the South China Sea began in 1969–70 when an international report held out the prospect of finding vast hydrocarbon reserves. The oil and gas that has since been extracted has largely come from the littoral regions of Vietnam, Philippines and Malaysia. Because of these findings, there has been much speculation about the prospects of finding resources in the region surrounding the Spratly Islands, principally fueled by the Chinese government and news sources providing exaggerated figures that are generally viewed with skepticism by foreign oil companies and scientists alike.<sup>6</sup>

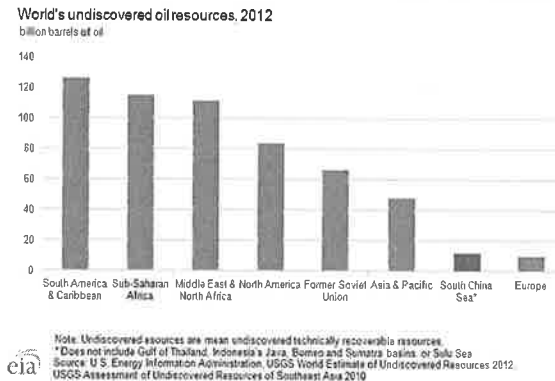
The first wave of scientific studies was carried out in the 1990s. A study conducted in 1997 by the Norwegian firm TGS Nopec (on the behest of Indonesia, Malaysia, and Vietnam) found huge structures that might contain hydrocarbon reserves but noted geological risk factors such as the uncertainty about the presence of proper source rocks, concluding that accurately assessing the potential for reserves required drilling.<sup>7</sup> Nevertheless, no drilling has occurred due to the high political volatility in the region, which has made it difficult to assess resource potential in the region.

Following several studies over the Nasha Islands in the Spratly archipelago, in the 1970s to the early 1980s, the Chinese Ministry of Geology estimated that there may be 25 billion cubic meters of gas and 105 billion barrels of oil present.

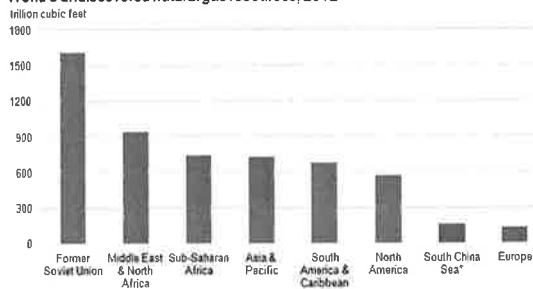
This estimate was revised to upwards of 225 billion barrels in 1994.<sup>8</sup> Russian estimates during the same time were much lower and estimated that there were potentially 5.25 billion barrels of oil and 2.25 billion barrels of natural gas.<sup>9</sup> The most recent Chinese estimates, conducted by the Chinese National Offshore Oil Company (CNOOC) in 2012, claim that the region contains 125 billion barrels of oil and 500 trillion cubic feet of natural gas—a finding that is drastically higher than their previous estimates from the 1990s and significantly higher than all other estimates confirmed by independent studies.<sup>10</sup> These reports have led Chinese media outlets to call the Spratly region “the second Persian Gulf.”<sup>11</sup>

The international oil industry and almost all non-Chinese sources have a much less optimistic perception of potential reserves. A 2012 study conducted by the U.S. Energy Information Agency estimates that that the South China Sea contains approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and probable reserves. This study is consistent with the work of the energy consultancy Wood Mackenzie estimating the sea to contain only 2.5 billion barrels of oil, and a separate 2010 U.S. Geological Survey study that estimates the region to contain between 5–22 billion barrels of oil and 70–290 trillion cubic feet of gas in undiscovered resources.<sup>12</sup> Comparing these estimates to other major oil producing regions worldwide reveal that this region contains a relatively small proportion of the world’s undiscovered reserves (Fig. 2). A common rule-of-thumb for estimating how much oil and natural gas can be extracted from such frontier areas is based upon assuming that ten percent of the “potential” or “undiscovered” resources can be economically recovered; so even if one uses the CNOOC 2012 estimates one would only expect China to be able to produce 12.5 billion barrels of oil and 50 trillion cubic feet of natural gas, still less than 2% and 3% of the oil produced in the Gulf.<sup>14</sup> As such, one should be highly skeptical the South China Seas might be the “second Persian Gulf.”

Figure 2: World’s Undiscovered Oil and Natural Gas resources<sup>13</sup>



World's undiscovered natural gas resources, 2012



Note. Undiscovered resources are mean undiscovered technically recoverable resources.  
 \* Does not include Gulf of Thailand, Indonesia's Java, Borneo and Sumatra basins, or Sulu Sea.  
 Source: U.S. Energy Information Administration, USGS World Estimate of Undiscovered Resources 2012, USGS Assessment of Undiscovered Resources of Southeast Asia 2010

## ECONOMIC AND GEOSTRATEGIC INTEREST

In addition to the hydrocarbon-related economic interest, pundits sometimes speculate about the importance of access to the South China Sea for fishing and the total volume of trade that passes through region as other potential motivators of China's expansion into the South China. China's fishing industry as a whole is large, in 2012 producing 13.9 million tons, which accounted for 17.4% of the world total fishing exports. Interestingly, China has been offering financial and political support to encourage fisherman to operate in contested waters to help establish Chinese claims to disputed region.<sup>15</sup> It is unclear precisely how much the Chinese fishing industry gains from operating in the South China relative to other regions, and it seems highly unlikely that such fishing is key to the to China's economy; instead, fishing activities appear to be a means for staking a Chinese claim over disputed regions. The other major economic interest commonly discussed pertains to the volume of trade flowing through the region. Some articles cite the 5.3 trillion dollars of trade that passes through the South China Sea as a de facto rationale for China interest in policing the region, but these authors overlook the fact that China has benefited immensely from this and has little incentive to disrupt the flow of goods and services through the region.<sup>16</sup>

Another prominent theory explaining China's commitment to the region is based on geostrategic interest. These theories hold that the forward deployment of military forces in the region—such as deployment of fighter aircraft, early warning radars, and Surface-to-Air Missiles (SAMs)—is an important step in continuing Chinese attempts to develop A2/AD (Anti-Access Aerial Denial) to prevent Western powers from operating military forces in the Pacific region. Although these theories might be correct in the long term—in that an extremely well developed and integrated air defense network might increase the cost of projecting military force into the region—these geostrategic theories do not appear to hold much weight in the short term as we live in an age of precision strike where even weak militaries can destroy

almost any fixed target with ease.<sup>17</sup> In the long term, such military developments will not prevent foreign powers from operating in the region but simply increase the cost of doing so. As such, the construction and deployment of military assets appears to be another means for staking a Chinese claim in the region rather than to an end in itself. Weaker versions of this geostrategic thesis maintain that China wants to flex its muscles and assert its military dominance (colloquially be the “big boy” on the beach). In the short term however, military infrastructure in the region will not have a serious effect on the balance of power in the region.

### **HISTORICAL AND NATIONALISTIC INTEREST**

A strong theory explaining Chinese commitment to attain sovereignty over the Spratly Islands is based on China’s historical claim to the region. China first claimed the islands in 111 B.C. under Emperor Wu Di of the Han Dynasty who sent over 100,000 sailors to claim all the islands in the South China Sea.<sup>18</sup> China has manuscripts from the Three Kingdoms Period in A.D. 220–265 containing maps and detailed descriptions of the geographic features of the islands.<sup>19</sup> The Chinese have lived on parts of the Spratly Islands since the Tang and Song dynasties, between A.D. 618–907 and 960–1279 respectively, as confirmed by the discovery of artifacts and architectural remains such as living quarters, pottery, utensils, and knives from the time period. During the Yuan, Ming, and Qing dynasties (13th through 18th centuries), China continued naval exploration of the region, employed astronomers to conduct observations from the region, and even established a governmental prefecture to administer the islands. In addition to a series of Chinese and European maps, British and French books have documented Chinese shrines and persons living on what are now referred to as the Spratly and Paracel Islands.<sup>20</sup>

There have been a series of challenges to Chinese sovereignty in the last two centuries. France first challenged China’s claim to sovereignty over the Spratly and Parcel Islands in the 1930s, subsequently withdrawing their claim due to Chinese protest. The Japanese next occupied the islands including Taiwan during WWII but returned them to China in the San Francisco Peace Treaty of 1951 and Sino-Japanese Peace Treaty of 1952. In the San Francisco Peace Conference of 1951 facilitated by the United States, of which China was not a participant, Vietnam claimed sovereignty over the Spratly and Parcel Islands and was rebuked by both China and Taiwan. From 1973 to 1988, armed conflicts occurred when Vietnam invaded the Paracel and Spratly Islands, and the Philippines and Malaysia occupied other island territories.<sup>21</sup> China has consistently rejected all other countries’ claims to the islands and refused to participate in any intentional adjudication process.

Supplementing this historical account of China’s commitment to the Spratly Islands is a nationalist narrative. Many historians and political scientists refer to the years before and after the collapse of the Chinese dynasty system between 1839 and 1949 as the “century of humiliation” in which Western powers and Japan intervened in East Asia. China lost a series of wars and faced several

internal uprisings—including the First Opium War, the Taiping Rebellion, the Second Opium War, the Boxer Uprising, the Sino-French War, the First Sino-Japanese War, the British invasion of Tibet, the Second Sino-Japanese war—and subsequently had to grant major concessions to foreign powers in various treaties including important territorial concessions such as that of the Shandong province to Japan.<sup>22</sup> Some political scientists and historians argue that domestic discontent and utter sense of embarrassment that plagued Chinese society during the century of humiliation allowed for the rise of nationalism and gave birth to the modern Chinese Communist Party (CCP); the May 4th movement in particular explicitly protested giving the Shandong territory to Japan. China's national identity and sense of pride can thus be seen as directly tied to maintaining control over, and preventing foreign powers from acquiring, any territory China views rightly as their own. In this light, China's commitment to maintaining sovereignty of the Spratly Islands can be understood as an unquantifiable symbol of Chinese pride and an essential step in China's plan to return to global dominance that they once exhibited in dynastic times.

## CONCLUSION

Given China's recent actions and the increasing risk of an armed military conflict breaking out in the region, understanding Chinese motivations in the South China Sea is essential to prevent or de-escalate conflict. The Western media overlooks what is arguably the most important driver of Chinese interest: the role of history and nationalism. Given that scientific literature casts significant doubt on the oil and gas-yielding potential of the South China Sea, the Western media's focus on natural resources in explaining the conflict is likely misguided. Although discussions of economic and military interest are important, these factors do not appear key to understanding what is currently driving Chinese action in the South China Sea. Rather, the theory that best explains China's interest is one that addresses the country's strong historical claim to the region and the powerful symbolism that reacquiring the territories would play in its nationalist discourse.

It is important to note that no one theory can perfectly explain China's recent behavior in the South China Sea, and that the four categories of interest discussed are not intended to be mutually exclusive or exhaustive. I only maintain that any discussion of China's militarization of the region should start with an acknowledgment of history, and use Chinese nationalist interest as lens or filter to discuss other potential motivators.

## NOTES

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1 The sovereignty dispute map on the left is taken from: Domonoske, Camila. "U.S. Sails Near Disputed Island In South China Sea." NPR. January 30, 2016. <http://www.npr.org/sections/thetwo-way/2016/01/30/464966081/u-s-sails-near-disputed-island-in-south-china-sea>. The

EEZ dispute map is taken from: “Q&A: South China Sea Dispute - BBC News.” BBC News. October 27, 2015. <http://www.bbc.com/news/world-asia-pacific-13748349>.

2 For more on the construction of the artificial island and airbase completed on the Fiery Cross Reef, see e.g., Hardy, James, and Sean O’Connor. “China Completes Runway on Fiery Cross Reef.” *China Completes Runway on Fiery Cross Reef*. September 24, 2015. <http://www.janes.com/article/54814/china-completes-runway-on-fiery-cross-reef>. For more on the deployment of Surface-to-Air Missile systems on the Paracel Islands, see e.g., Fisher, Richard D. “China Deploys HQ-9 Surface-to-air Missiles to Woody Island.” *Defence & Security Intelligence & Analysis*. February 17, 2016. <http://www.janes.com/article/58071/china-deploys-hq-9-surface-to-air-missiles-to-woody-island>.

3 For articles that cite resource-based interest as the core of the conflict, see e.g., Glaser, Bonnie S. “Armed Clash in the South China Sea.” Cfr Press, 2012; Perlez, J., *Dispute Flares Over Energy in South China Sea*, *New York Times*, 2012; Kate, D., *S. China Sea Oil Rush Risks Clashes as U.S. Bolsters Vietnam*, *Bloomberg.com*, 27 May 2011; Sant, S.V., *Contest Over South China Sea Spurred in Part by Resources*, *VOA*, 23 February 2016; Chapman, B., *China’s Nine-Dashed Map: Maritime Source of Geopolitical Tension*, *Mackinder Forum Commentary*. The Mackinder Forum, 2014; Chaudhury, D.R., *Vietnam Invites India to Explore Resources in Disputed South China Sea Region*, *Economic Times*, 24 February 2016.

4 See the section about “economic interest” in: Bonnie S. “Armed Clash in the South China Sea.” Cfr Press, 2012

5 Forsythe, Michael, and Jane Perlez. “South China Sea Buildup Brings Beijing Closer to Realizing Control.” *New York Times*. March 08, 2016. [http://www.nytimes.com/2016/03/09/world/asia/south-china-sea-militarization.html?\\_r=0](http://www.nytimes.com/2016/03/09/world/asia/south-china-sea-militarization.html?_r=0).

6 See e.g., Sarewitz D.R., Karig D.E. Processes of allochthonous terrane evolution, Mindoro Island, Philippines. *Tectonics*. 1986 Aug 1;5(4):525–52; Tonnesson, S., *The Economic Dimension: Natural Resources and Sea, War or Peace in the South China Sea*, 57 pp, Google Books, 2002.

7 See e.g., Tonnesson, S., *The Economic Dimension: Natural Resources and Sea, War or Peace in the South China Sea*, 57 pp, Google Books, 2002.

8 See e.g., Hutching, G., *China’s Hopes for Islands Oil Bonanza*, *Daily Telegraph*, 7 September 1994.

9 See e.g., Vysotsky, V.I., Rodnikova, R.D., Shlefer, V.M., & Larkova, Z. N., *The Spratly Islands region: petroleum potential (abs)*. Oil and Gas Asia Conference, Manila, Jan 1995.

10 See e.g., U.S. Energy Information Administration, *South China Sea*, *EIA.gov*, 7 February 2013.

11 See e.g., Scott, D., *China and the international system, 1840–1949: power, presence, and perceptions in a century of humiliation*. SUNY Press; 2008 Nov 7; Amry, S., *An Analysis of the South China Sea Dispute: Focusing on the Assessment of the Impact of Possible Solutions on the Economies of the Region*, CUNY Academic Works, 2015.

12 See e.g., U.S. Energy Information Administration, *South China Sea*, *EIA.gov*, 7 February 2013.

13 Ibid.

14 Ibid.



15 Hongzhou, Zhang. "China's Fishing Industry: Current Status, Government Policies, and Future Prospects." In Center for Naval Analyses. Proceedings of China as a "Maritime Power." CNA Conference, Arlington, Virginia, July 29, 2015. [https://www.cna.org/cna\\_files/pdf/China-Fishing-Industry.pdf](https://www.cna.org/cna_files/pdf/China-Fishing-Industry.pdf).

16 See e.g., Goldstein, L., *The South China Sea Showdown: 5 Dangerous Myths*, The National Interest, 29 September 2015.

17 Ibid.

18 See e.g., Yeh S., Nansha Feng Yun Yo Kuo-Chi Kung-Fa (Nansha Situation and International Law), *19 Econ. & L.* 27, 1998.

19 See e.g., Chang T.K., China's Claim of Sovereignty over Spratly and Parcel Islands: A Historical and Legal perspective, *Case W. Res. J. Int'l L.* 1991, pp. 23:399.

20 Ibid.

21 Ibid.

22 See e.g., Scott, D., *China and the international system, 1840-1949: power, presence, and perceptions in a century of humiliation*. SUNY Press; 2008 Nov 7; Pfaelzer, J., *Driven out: The forgotten war against Chinese Americans*. Univ of California Press; 2008.

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