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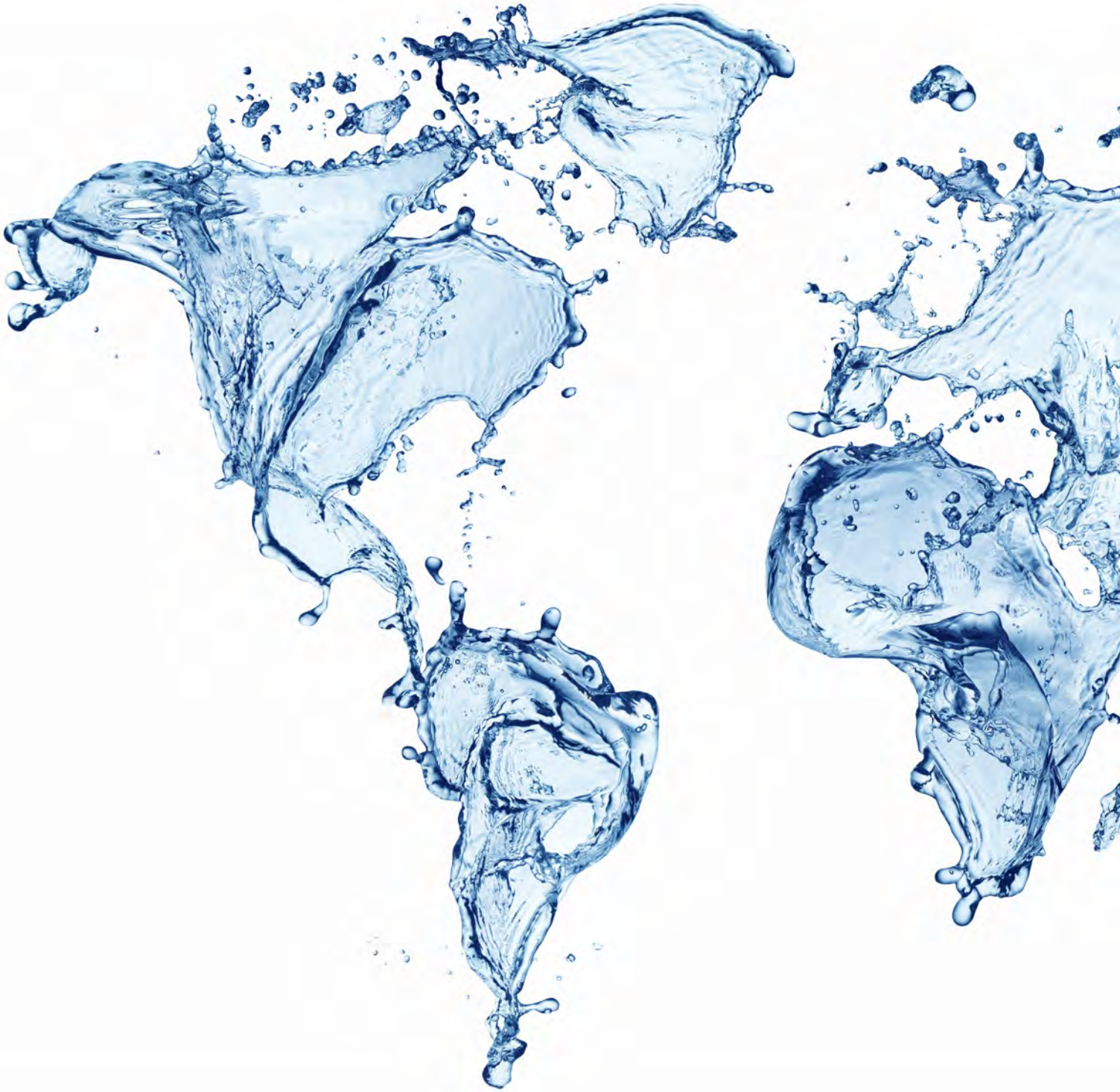

The UBC Journal of Political Studies

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editor.ubcpssa@gmail.com
http://www.ubcpssa.com/
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Contents

Special Thanks
Jessica Douzenis- The Press Room
Gordon Katic- The Terry Project
Justin Ritchie- Alma Mater Society, UBC
Andisheh Fard, Anastasia Ufimtseva &
Gaudenz Probst- UBC Political Science Students' Association

Foreword

The Journal of Political Studies has done it once again. The JPS is one of the oldest continuously published undergraduate journals in Canada and yet it always seems to be a labour of love. So my hat is off to Kelsey Croft and her editorial team, to the faculty reviewers (Andrew Owen in particular), and to the contributors. All along, one of the hallmarks of the journal has been quality, maintained by a rigorous reviewing system and an editor with an iron will. This makes for a journal of exceptional quality. Another hallmark is eclectic content, and this year is no exception. Well done, all of you!

Richard Johnston

Professor and Acting Head, UBC Department of Political Science

Introduction

Dear reader,

I am so very pleased to introduce to you the 2013 edition of the University of British Columbia's Journal of Political Studies. Each year we attempt to bring you the very best undergraduate work in Political Science at UBC, and I hope you will agree that we have achieved our goal. This year's edition has surpassed my expectations: for our 15th edition, we received the highest number of essay submissions ever; many of which, particularly those published, deal with groundbreaking content. From topics in security such as the Bush administration's neoconservative security rhetoric, the Obama administration's expanded use of drones, and the seemingly permanent nature of states of emergency; to the land- and institution-based issues of extractive industry in Africa and Indigenous Hawaiians' struggles for sovereignty, this year's papers address current affairs with a thoroughly critical eye. While this subject matter might be new to the Journal its spirit is not, and I believe this willingness to question existing systems of power to be the trademark of this publication.

It must be acknowledged that the student authors put in countless hours not just writing these papers but revising them as well, and that having one's undergraduate work published is no mean feat. Thanks are also due the editorial board, whose dedication was phenomenal as was its camaraderie. These nine students read over one hundred submissions, and worked in concert with authors to rigorously edit those short-listed.

Beyond them there are others to thank. Our Faculty Advisor Professor Andrew Owen was immensely helpful, as were our valued faculty reviewers, whose feedback ultimately helped us decide which papers to publish. Graphic designer David Pasca, too, is worthy of praise for taking my design suggestions and turning them into something that looked not only publishable but fantastic. Finally, thanks to JIA's Editor-in-Chief Sam Rowan for his cooperation in putting together this volume.

Most importantly I would like to thank my Assistant Editor-in-Chief Rebecca Dhindsa: innumerable elements would have been forgotten if not for your unwavering eye for detail, and the whole thing would not have been half as fun without your company.

I hope that all of this work put in is evident to you as you read the Journal, and that it is as enjoyable for you to read as it was for us to put it together.

Sincerely,

Kelsey Croft

Editor-in-Chief

Editorial Board

Editor-in-Chief

Kelsey Croft

Kelsey is in her final year of a degree in Honours Political Science, with a minor in Spanish. Her thesis examines discourses of liberal citizenship and human rights as used in debates regarding Insite, the Downtown Eastside's supervised injection site. Other academic interests include Latin American literature, post-modern political theory, and Indigenous sovereignty. Following graduation, she intends to study and work in public interest law. This is her third year working on the Journal of Political Studies.

Assistant Editor-in-Chief

Rebecca Dhindsa

Rebecca is graduating this year with a degree in Honours Political Science. She is interested in political behaviour at both the individual and institutional level, as well as understanding how political actors shape, and in turn are shaped by, social structures. She is looking forward to finishing her honours thesis, which treats political scandals as structural phenomena in order to account for their variation in outcomes. This is her second year on the Editorial Board of the Journal of Political Studies.

Editorial Board

Cathy Chen

Cathy is a fourth year student completing her forthcoming comparative political economy thesis in the Honours Political Science with International Relations program. Her academic passions include public policy, comparative politics, political theory, and international political economy. Active on campus and in her local community, Cathy loves to unite people by hosting dialogues on education. In the years ahead, Cathy hopes to acquire field experience and to pursue further education in Canadian public policy. This is her first year on the Editorial Board of the Journal of Political Studies.

Daniel Golston

Daniel is in the final year of his undergraduate studies in International Relations. He hopes pursue a career in the world of security studies or policy formation for the Canadian or American government, focusing on Middle Eastern terrorism and/or the Israeli-Palestinian conflict. He is also interested in international law, nuclear disarmament and political philosophy. He hopes to pursue a doctorate degree in the near future in one of the aforementioned topics. This is his first year on the Editorial Board of the Journal of Political Studies.

Gabby Korcheva

Gabby is a third year undergraduate at the University of British Columbia, majoring in Philosophy and Political Science. Her academic interests centre primarily on political theory, ranging from classical thought to post-modern theory, and how that extends to social behaviour and norms. Outside of school Gabby enjoys contemporary art and is hoping to find her own breakthrough. Her future plans are varied and may include: editorial and publishing work, law and public policy, or even, the fine arts. This is her first year on the Editorial Board of the Journal of Political Studies.

Ivo Martinich

Ivo is in his fourth year in the Honours Political Science with International Relations program. His academic interests lie mostly within the field of international relations, and include international humanitarian law, transitional justice and peacekeeping operations. Upon graduation, Ivo hopes to complete a J.D. degree, enter the legal profession and eventually work as an international lawyer. He also enjoys reading 20th century French and Latin American literature, and is always planning a trip to a place he has never visited. This is his first year on the Editorial Board of the Journal of Political Studies.

Morag McGreevey

Morag McGreevey is in her last hear of undergraduate studies at the University of British Columbia. As a student in the English Honours Program, her research interests include Victorian literature, urban geography, and economics. In her study of political science, she is drawn towards gender studies and political theory. Next year, she intends to continue her education by attending law school at UBC. This is her first year on the Editorial Board of the Journal of Political Studies.

Allison Rounding

Allison is a fourth year Honours Political Science student who is also doing a minor in Gender Studies. She is interested in social justice issues, and more specifically, issues surrounding HIV/AIDS stigma as well as childcare and the welfare state. She plans to continue her education at a graduate level after completing her undergraduate degree in December 2013. This is her first year on the Editorial Board of the Journal of Political Studies.

Clement Salaun

Clément is a fourth year student in the Honours Political Science with International Relations and UBC-Sciences Po Dual Degree programs. His primary academic interests include security and conflict studies, post-conflict development and military humanitarian interventionism. Upon graduation, Clément plans on pursuing further education, in the fields of human rights or conflict and peace studies. This is his first year on the Editorial Board of the Journal of Political Studies.

Zach Swannell

Zach Swannell is finishing his fourth and final year of a Bachelor of Arts degree in Honours Political Science at UBC. He has interests across the discipline, although recently he has become particularly interested in political behaviour, in both Canadian and comparative perspective. After graduating, Zach plans on pursuing a Master's degree in political science, and perhaps later a PhD. This is his second year on the Editorial Board of the Journal of Political Studies.

Katherine Tyson

Katherine is pursuing an Honours Political Science with International Relations major, and Economics minor. Her research interests are international political economy, development, and international relations theory, with a particular focus on the Asia-Pacific region. Katherine is learning Japanese and in September will be doing a 12 month exchange to Waseda University in Tokyo. Following graduation, she intends to seek a PhD in international relations. This is her first year on the Editorial Board of the Journal of Political Studies.

No More *Status Quo Ante Bellum:* Responding to (Indefinite) Emergencies

Zoé Kruchten

Zoé Kruchten is a fourth year International Relations student with a minor in Migration and Globalization Studies. Her current academic interests include immigration and integration politics, European politics, and critical theory. She will most likely venture back to academia to pursue a Masters in immigration politics or public policy.

In emergencies, many argue for extra-legal measures or widespread discretionary powers as a form of response. Civil liberties are suspended in the short term to guarantee their safety in the long term. Yet given the common normalization or indefinite nature of emergencies, such as the global war on terrorism, how can one balance the opposing concerns of national security and civil liberties? By looking at both the short term and long term effects of emergency reactions, this paper argues that the rule of law and an entrenched bill of rights should maintain priority when responding to crises.

In *The Lesser Evil: Political Ethics in an Age of Terror* Michael Ignatieff asks, "[w]hat lesser evil may a society commit when it believes it faces the greater evil of its own destruction"?[1] In times of perceived existential crisis, some call for the use of wide discretionary power. Others argue for an entrenched bill of rights and the rule of law. The question is how does one balance national security with civil liberties? The justification for discretionary power or extra-legal measures is that civil liberties are suspended in the short term to protect those very liberties in the long term. Ignatieff positions his question in the contemporary discourse of the war on terrorism. This modern war is crucial to understanding the question – as Marilyn Young understands it, the war on terrorism is a war against a tactic and therefore is indefinite.[2] The crisis becomes the status quo. It is with this contemporary context in mind that we must ask ourselves if the justifications for discretionary and extra-legal power still hold. By looking at both the short term and long term effects of emergency reactions, this paper argues that the rule of law and an entrenched bill of rights should maintain priority when responding to crises.

It is first important to understand what constitutes an emergency, the concept of necessity, and the trend of normalizing emergencies. This will be followed by an analysis of possible responses: wide discretionary power, extra-legal or extra-constitutional measures, and adherence to a bill of rights and the rule of law. In conclusion the cause and effect of emergencies will be discussed.

I. What Emergency? Necessity and the Normalization of the Exception

According to Clinton L. Rossiter in his seminal work *Constitutional Dictatorship: Crisis Government in the Modern Democracies,* there are three different types of crises democratic nations face: war, rebellion, and economic depression.[3] These are defined as crises or emergencies because they threaten the very existence of a nation.[4] Rossiter's definition helps refine what an emergency can be, but ultimately the

possibilities remain open to interpretation. Is a homegrown attack, like the Oklahoma City Bombing, an emergency? Do the events of September 11 constitute an emergency? How do we determine that the life of a nation is threatened?

It is the responsibility of the government to declare a state of emergency and decide how to react. In deciding how to react, the concept of necessity is often called upon to justify governmental actions: the nation is under threat and therefore it is *necessary* to act. This can be understood from a political perspective – politicians need to be seen acting in the face of an emergency, as it is the responsibility of a nation's government to protect the state. The relocation of Japanese-Americans was deemed necessary. The indefinite detainment of certain Arab-Americans was (is) deemed necessary. Yet, how can one determine what is a necessary action?

Giorgio Agamben, in *State of Exception,* argues, "necessity clearly entails a subjective judgement, that obviously the only circumstances that are necessary and objective are those that are declared to be so."[5] The legal concept of necessity ultimately allows for the exception or interruption to the legal system.[6] Since the government usually has the most information on state security, it makes sense that the decision of necessity is in the executive's hands. Agamben points out necessity is subjective therefore the concept of necessity, coupled with a monopoly on information, can be the basis for manipulation.

Is a homegrown attack, like the Oklahoma City Bombing, an emergency? Do the events of September 11 constitute an emergency? How do we determine that the life of a nation is threatened?

Necessity can also be understood from a security studies perspective. As articulated by the Copenhagen School, 'securitization' is the process by which actors define issues as an existential threat.[7] Through this process of securitization, the public is convinced of the need for extraordinary emergency measures.[8] The framing of the issue often lies at the hands of the political elite, those with the most power. An example of this securitization process is the relocation and exclusion of Japanese-Americans during WWII. Over one hundred thousand people were forcibly relocated and stripped of their civil liberties without due process.[9] The securitization process was completed through rhetoric of Japanese-Americans as enemies of the state.

In hindsight, the Commission on Wartime Relocation and Internment of Civilians analysed the relocation and concluded that it "was not justified by military necessity, and the decisions that followed from it...were not founded upon military considerations. The broad historical causes that shaped these decisions were race prejudice, war hysteria, and a failure of political leadership."[10] Following the attacks on Pearl Harbour, the American government subjectively defined the necessary action as militarily necessary. However, in the long run it became apparent that the 'necessary' relocation and exclusion of Japanese-Americans was not a necessity and did not render the state more secure.

Agamben argues that this call on necessity and the subsequent 'state of exception' we find ourselves in – a kind of no-man's land between politics and law – is becoming the dominant form of governance.[11] This normalization of emergency is obfuscation between normal times and emergency times – over time the distinction between the two becomes unclear and the emergency and emergency measures become the norm. While the Japanese-American relocation measures eventually ended, this form of finite emergency may no longer be the norm. In fact, many scholars on emergency powers corroborate the idea of a normalization of emergency.[12] Add to this trend the current war on terrorism and one can fully understand the claim of normalization. If there is no end to emergencies – as Marilyn Young would see it, no triumph over tactic – how does this affect our response to them?

II. Emergency Responses – The Short and Long Term Effects of Three Options

At the core of the problem is the question of whether the government should act within the bounds of regular legality or extra-legal action. As emphasized in the articles by David Cole and William Scheuerman, as well as from the works of Rossiter, Agamben, Ignatieff, and Tushnet, we can identify three distinct options: wide discretionary power (or constitutional dictatorship), extra-legal measures (acting illegally or outside the legal system), and the rule of law combined with an entrenched bill of rights (liberal constitutionalism). Given that the goal in overcoming the crisis is to return to the way things were before the crisis – in the case of the USA, a liberal democracy – this section will emphasize the short and long term effects of each option.[13]

Wide discretionary powers or constitutional dictatorship stems from the rule of law and goes beyond it. For Rossiter, the primary institution of constitutional dictatorship is martial law, which suspends civil liberties.[14] By providing wide discretionary powers through the legal system and thereby legalizing the suspension of civil liberties it creates a grey area where the executive or constitutional 'dictator' is inside, yet simultaneously outside, the law. As articulated by Agamben, this inside/outside paradox makes the state of exception "neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold [...] where inside and outside do not exclude each other but rather blur with each other."[15] By blurring the sanctioned activity of the government, under the justification of necessity, the legal order is inherently weakened and the potential for the normalization of the state of emergency becomes possible.

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Egypt provides one example of a normalized state of emergency.[16] According to Sadiq Reza, Egyptian emergency rule stemmed from martial law imposed by the British colonialists and lasted on and off for the past 100 years, making Egypt "an example of *endless* emergency."[17] The emergency rule had been used to concentrate power in the hands of the executive and to combat "nonviolent as well as violent political opposition."[18] However it was not clear whether the violence from the political opposition was a justification for necessary repression or if the violence was in reaction to the repressive government itself.[19] This causality dilemma led to the renewal of emergency rule on numerous occasions out of 'necessity' in the face of violence, in essence creating a self-perpetuating emergency.[20]

As was the case with Egypt's endless constitutional dictatorship, citizens were not protected from the whims of their own government and were subject to arbitrary arrests, detentions without trial and torture.[21] Building on Agamben's argument, one can understand the government as being outside the law, yet protected by it. In contrast, the citizen is under or inside the law, yet not protected by it – the government now has the power to take any measures against its citizens yet the citizen must abide by the laws. This leaves the citizen extremely vulnerable and the government as essentially untouchable, free to act as it deems justifiably necessary.

The ability to act in response to an emergency with full flexibility is no doubt a positive aspect of wide discretionary power. The nature of an emergency is its unpredictability – therefore discretionary powers are a potential response to this unpredictability in the short term. More questionable is the effect of discretionary power in the long term. Without restraints, wide discretionary power could lead to the suspension of civil rights, as was the case with Egypt, and this abrogation compromises the legal system's strength and integrity. As Ignatieff points out, "alterations of legal protections like habeas corpus may be necessary, but there is a price to pay when you do. Habeas corpus is weakened because

once it has been suspended, everyone then understands that an important guarantee of freedom is pliable and susceptible to political pressures."[22] Without the rule of law there can be no widespread discretionary powers or an enactment of constitutional dictatorship – thus by providing the means to these measures, the rule of law is compromised.

In the long term, the nation's legal system is weakened. Contrary to the belief that civil liberties are suspended in order to ultimately preserve them, the reality may well be that the belief and trust in civil liberties is destroyed. Given that there are minimal to no restraints on discretionary powers, the long term effects on society and the legal system could prove to be more systemically harmful than the emergency itself. In the context of the growing war on terrorism, this normalization of emergencies changes the temporal aspect of a suspension or alteration of civil liberties: the short term begins to blur with the long term.

A second response involves the executive acting outside the legal order or, as Mark Tushnet posits, acting extra-constitutionally.[23] For Tushnet, these actions are neither legal nor illegal because the extra-constitutional powers are "reviewed [...] by a mobilized citizenry."[24] This provides an extremely flexible response not unlike discretionary powers, yet it does not, according to Tushnet's interpretation, undermine the legal system. This approach is adopted by those that believe the legal system has been "polluted by emergency-era statutes and precedents which extend the scope of executive prerogative and are allowed to remain on the books well after the crisis which generated them subsides."[25] The argument is that by knowingly acting outside the law, unlike discretionary powers that stem from the law, emergency measures will remain confined to emergency times. The legal system is not remoulded to reflect the emergency as the measures are taken beyond its scope. Yet, as aforementioned, emergencies are arguably becoming normalized. In light of this, the legitimacy of extra-constitutional actions must be critically analysed.

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Extraordinary rendition – the transferring of someone from one country to another, usually for the purposes of torture – provides a useful analysis of this measure. This rendition is extraordinary or extrajudicial because it is done outside the scope of the law, and the individual being transferred is not given any legal proceedings.[26] A prime example here is the extraordinary rendition of Canadian-Syrian Maher Arar. While changing planes at the JFK airport in New York, Arar was interrogated and eventually deported to Syria, despite his express fear of being tortured there.[27] While Arar was suspected of being a danger to the state, no evidence was ever brought forth that supported this claim, and his deportation to Syria instead of his home in Canada violated international law. This extra-legal measure stripped Arar of his civil liberties, right to due process, and subjected him to torture for over a year.[28]

Emergency measures under extra-constitutional responses can take any form; extraordinary rendition is but one example, a much sought after flexibility for the short term. The constitution is not needed to foresee every possible need for future emergencies – the government simply acts outside the law.[29] While this option provides the government with full flexibility to respond to the crisis, mirroring the benefits of wide discretionary powers, this approach can pose multiple problems.

Tushnet does not elaborate on his claims of a 'mobilized citizenry', which is problematic because this is the main restraint mechanism given for extra-constitutional measures. There are numerous examples of governments conjuring up "the spectre of crisis – real or otherwise – to generate 'vigilant' public support while undertaking illegal and unconstitutional action."[30] Emotions run high during a crisis, and these emotions will play into citizens' decisions. Furthermore, minorities within a population remain a target of emergency measures, as the example of Japanese-Americans in WWII illustrates, and the majority may opt for their own security over the liberty of the minorities.[31]

Scholars in support of extra-legal measures propose, according to Scheuerman, "open acknowledgement of their questionable legal status should discourage policy makers from unnecessarily employing [emergency powers]."[32] The restraint in this option is supposedly to come from transparency and publicity of the extra-legal measures being taken.[33] Arguably, a politician would be unwilling to blatantly act outside the law, instead attempting to "latch onto some meagre legal precedent and simply declare even the most outrageous emergency actions legal."[34] Margaret L. Satterthwaite's article, *Rendered Meaningless: Extraordinary Rendition and the Rule of Law,* suggests precisely that the US government attempts to find lacunae in the law to justify their extra legal action.[35] Thus, without appropriate restraint mechanisms, extra-legal actions are left completely unchecked. Furthermore, considering the monopoly the state has over security information and the role it plays in framing issues, any restraint mechanism is weakened by the subjective claims of necessity.

As was the case with Maher Arar, US Authorities deported him to Syria based on 'secret evidence,' allowing them to claim Arar's deportation as necessary.[36] To build further on Agamben's inside/outside concept, the government in this context is fully outside the law and not fully protected by it, but can rely on the claim of necessity to protect itself. The person, in this case Arar, is left under the law and now under the illegal actions of the government as well. Finally, with a lack of restraint mechanisms in a time of indefinite emergencies, it is difficult to stipulate when the government must once again be confined by the legal system.

A third option is adherence to liberal constitutionalism, which restrains emergency powers through the rule of law and an entrenched bill of rights. According to Jules Lobel, liberal constitutionalism seeks to balance normalcy and emergency "by positing a boundary line separating and protecting the normal constitutional order from the dark world of crisis government."[37] The rule of law provides us with this boundary line. By having clearly demarcated emergency law and normal law within the legal system and in line with the bill of rights, this option seeks to protect civil liberties while minimizing the potential for the normalization of emergency law.[38]

The first problem with this option is that emergencies are by nature unique situations; it is difficult for legislation to foresee the types of emergency laws that will be needed in the future. Scheuerman argues that this is the case in normal times as well, and the judiciary interprets laws based on the context.[39,40] Yet, as David Cole examines, courts do not always protect civil liberties in periods of emergency.[41] This is relevant because, as Cole describes, courts often fall under the sway of emotions and side with the government during emergencies; this phenomenon gives the government some freedom in its response. However, the responses to future emergencies are constrained by court decisions from the past and present.[42]

As we can discern from the past, it is often minorities who find their rights infringed upon.[43] Given this, "constitutional interpretation should give special weight to the rights and claims of those who stand to be arrested, incarcerated or deported in times of emergency."[44] In contrast to Tushnet's view that the restraint should be of a political nature, Cole argues that the restraint should come from the judiciary because "the Court is best suited to protect the interests of those who cannot protect themselves through the political process."[45] By focusing on the constitution and the bill of rights, the long term civil rights of both majority and minority are better protected from political folly. The protection of minority rights is important for the integrity of a liberal democracy – an integrity that is often shaken using absolute emergency powers.

Those opposed to an entrenched bill of rights and the rule of law will state that it is more important to be able to take absolute control in an emergency. Scheuerman and Ignatieff would both respond that the international system, with its rules, norms, and conflict resolution mechanisms help limit the type of behaviour that necessitates absolute rule.[46] An entrenched bill of rights is definitely limited in the short term by its constraints. It is less flexible than discretionary power or extra-legal measures. However, in the long term it trumps the other two options.

To address the long term, one needs to revisit the idea of normalized emergencies and the concept of necessity. The current situation of normalized emergencies and states of exceptions, especially in the context of the global war on terrorism, renders uncertain the return to *status quo ante bellum* - the state things were in before the war.[47] For this reason, the rule of law and an entrenched bill of rights must be the first priority in responding to an emergency. If the rule of law and the bill of rights are not adhered to in emergencies, we run the risk of experiencing a permanent suspension or alteration of civil liberties.

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III. Why the Emergency?

An analysis of possible responses will not suffice to unravel the dilemma of promoting national security while protecting civil liberties. We must question if the security of a nation is the central concern of the executive measures being taken. Suspension of civil rights has to be justified by the ability to protect other rights and the rights of those that abide by the law.[48] Working within the confines of the rule of law and an entrenched bill of rights has its issues, as discussed. However, with the current trend of normalizing emergencies, and the onset of an indefinite war on terrorism, the concern is letting the leash out too far on abrogation of civil liberties. If the emergency is indefinite, the citizens are unable to reclaim their civil liberties.

An emergency is not an isolated incident. War, civil strife, and economic crises are deeply implicated in humankind's actions. It becomes important to understand, as Lobel argues, how a nation's foreign policy plays into its need for and use of emergency powers.[49] In Lobel's understanding of the Cold War, the USA has defined national security in terms of global security.[50] With the war on terrorism and September 11, a critical eye would look to the reasons such an attack took place and the role of foreign policy in shaping the outcome of these events.

Lobel articulates that, beyond a critical analysis of foreign policy, there should be stricter definitions of what constitutes emergencies or crises.[51] This would be a positive step in refining our approaches to emergencies. Building on Cole's argument, one could add that emergency powers and dealing with emergencies is a learning process and a work in progress. Despite each emergency being unique, we need to analyse our previous exaggerated responses and apply that knowledge to current situations.

This paper has argued that the rule of law and adherence to a bill of rights must be the foremost response. If civil liberties are to remain the pinnacle of liberal democracy, they must be theorized as indivisible from their constraints. As Aharon Barak understands it, "a democracy must often fight with one hand tied behind its back."[52] Civil liberties, the protection of minorities, and a theory of rights are not offered up in the fray, but kept safely behind the back of liberal democracy. The foundations and values of the state must be preserved because in a time of indefinite emergencies there might be no return to how things were before.

Notes

1 Michael Ignatieff, The Lesser Evil: Political Ethics in an Age of Terror (Toronto: Penguin Canada, 2004), 1.
2 Marilyn Young, "'I was thinking, as I often do these days, of war': The United States in the Twenty-First Century," Diplomatic History 36.1 (2012): 12.
3 Clinton L. Rossiter, Constitutional Dictatorship: Crisis Government in the Modern Democracies (Princeton: Princeton University Press, 1948), 6.
4 Rossiter goes on to add that natural disasters can and have been dealt with by emergency powers: however, human-made crises will be the focus of this paper.
5 Giorgio Agamben, State of Exception, Trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 30.
6 Ibid., 24-5.
7 Fred Vultee, "Securitization: A new approach to the framing of the 'war on terror,'" Journalism Practice 4.1 (2010): 33-4.
8 Ibid., 33.
9 United States Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians (Washington, D.C.: The Civil Liberties Public Education Fund; Seattle: University of Washington Press, 1997), 2-3.
10 Ibid., 459.
11 Agamben, State of Exception, 1-2, 6-7.
12 See Agamben; Cole 696, 714-5; Ignatieff 30; Lobel 1399-1400, 1402-4; Rossiter 297; Scheuerman 70, 77.
13 This idea builds on Ignatieff's concept of the "effectiveness test", which looks at whether counterterrorism measures will "make the citizen more or less secure in the long run" (24).
14 Clinton L. Rossiter, Constitutional Dictatorship: Crisis Government in the Modern Democracies, 9.
15 Agamben, State of Exception, 23.
16 Egypt's emergency rule expired in 2012 following the Egyptian revolution. Latest accounts – as of January 2013 – indicate emergency rule has been imposed again under President Morsi. See "Egypt: Emergency Powers Excessive".
17 Sadiq Reza, "Endless Emergency: The Case of Egypt," New Criminal Law Review: An International and Interdisciplinary Journal 10.4 (2007): 534-5.
18 Ibid., 545.
19 Ibid.
20 Ibid., 536-7.
21 Ibid., 538-9.
22 Ignatieff, The Lesser Evil: Political Ethics in an Age of Terror, 33.
23 Mark Tushnet, "Emergencies and the Idea of Constitutionalism." The Constitution in Wartime: Beyond Alarmism and Complacency, Ed. Mark Tushnet, (Durnham: Duke University Press, 2005) 46.
24 Ibid.
25 William Scheuerman, "Survey Article: Emergency Powers and the Rule of Law After 9/11," The Journal of Political Philosophy 14.1 (2006): 70.
26 Margaret L. Satterthwaite, "Rendered Meaningless: Extraordinary Rendition and the Rule of Law," George Washington Law Review 75.5/6 (2007): 1336.
27 Ibid., 1339.
28 Ibid.
29 Tushnet, "Emergencies and the Idea of Constitutionalism," 43.
30 Scheuerman, "Survey Article: Emergency Powers and the Rule of Law After 9/11," 74.
31 Ignatieff, The Lesser Evil: Political Ethics in an Age of Terror, 32.
32 Scheuerman, "Survey Article: Emergency Powers and the Rule of Law After 9/11," 73.
33 Ibid., 71.
34 Ibid., 72.
35 Satterthwaite, "Rendered Meaningless: Extraordinary Rendition and the Rule of Law," 1350.
36 Ibid., 1339.
37 Jules Lobel, "Emergency Power and the Decline of Liberalism," The Yale Law Journal 98.7 (1989): 1388.

38 Scheuerman, "Survey Article: Emergency Powers and the Rule of Law After 9/11," 75.
39 If laws are interpreted or if they are strictly applied is a large and complex debate in legal philosophy, and subsequently outside the scope of this paper.
40 Ibid., 65.
41David Cole, "Judging the Next Emergency: Judicial Review and Individual Rights in Times of Crisis," Law and Morality: Readings in Legal Philosophy. 3rd ed. Eds. David Dyzenahus, Sophia Reibetanz Moreau, and Arthur Ripstein (Toronto: University of Toronto Press Incorporated, 2007), 695.
42 Ibid., 696.
43 Ignatieff, The Lesser Evil: Political Ethics in an Age of Terror, 32, 44. Cole, "Judging the Next Emergency: Judicial Review and Individual Rights in Times of Crisis," 717.
44 Ignatieff, The Lesser Evil: Political Ethics in an Age of Terror, 44.
45 Cole, "Judging the Next Emergency: Judicial Review and Individual Rights in Times of Crisis," 696-7, 717.
46 Scheuerman, "Survey Article: Emergency Powers and the Rule of Law After 9/11," 67. Ignatieff, The Lesser Evil: Political Ethics in an Age of Terror, 50.
47 Rossiter argues that constitutional dictatorship seeks the "complete restoration of status quo ante bellum" (7), yet this begs the question of how easy is it to take back power once it has been handed over.
48 Ignatieff, The Lesser Evil: Political Ethics in an Age of Terror, 49.
49 Lobel, "Emergency Power and the Decline of Liberalism," 1397, 1400-4.
50 Ibid., 1426.
51 Ibid., 1424.
52 "Public Commission Against Torture in Israel v. Government of Israel (1999)." Law and Morality: Readings in Legal Philosophy, 3rd ed. Eds. David Dyzenahus, Sophia Reibetanz Moreau, and Arthur Ripstein (Toronto: University of Toronto Press Incorporated, 2007), 759.

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Inclusive Economic Growth in Oil-Rich Nations: Institutional Comparisons between Algeria and Angola

Johann Lingohr

Johann is a fourth year Political Science and Philosophy major at the University of British Columbia. His current academic interests include democratic theory, comparative politics, and global economic governance. After graduation, he intends to continue studying Political Science in graduate school.

This article seeks to understand the large divergence in levels of economic growth between oil-rich nations, despite oil's high value. Case studies using Algeria and Angola suggest that inclusive institutions cause higher levels of economic growth as measured by GDP per-capita and unemployment. These studies further dispute the "resource curse" hypothesis in which high rent resources lead to poor governance and thus low economic growth. Transitioning to inclusive institutions is therefore not only important for economic growth in oil-rich nations, but as Algeria demonstrates, is a real possibility.

Resource-rich nations, particularly mineral- and oil-rich ones, account for some of the world's poorest and most unequal countries, as seen in the Democratic Republic of Congo, Liberia, and Niger. However, many of the world's richest nations, such as Canada and Norway, also possess these resources. Why do we observe such a drastic difference in economic growth between nations endowed with similar natural resources? Since many resource-rich nations contain a large proportion of the world's poor, it is important that we understand the mechanisms that will enable them to utilize their economic potential. Isolating these mechanisms can enable governments and agencies to work on policy prescriptions to properly address these issues. However, we must first understand why they are so situated.

Case studies using Algeria and Angola suggest that institutional variation best explains differences in economic growth in oil-rich nations. I will first outline two theories of economic development and justify using unemployment levels to support gross domestic product (GDP) per-capita as a measurement of economic growth. I then show how transitioning from extractive to inclusive institutions causes growth through a temporal analysis of Algeria. Finally, I reinforce this argument through a comparative analysis between Algeria and Angola. Findings suggest that transitioning to inclusive institutions is not only important for economic growth in oil-rich nations, but as Algeria demonstrates, is a real possibility.

Theories of Economic Development

This section considers two views explaining why oil-rich nations experience different levels of economic growth. One view argues that the resource curse, the paradoxical relation between possessing high-rent resources and poor growth,[1] best explains variation in economic growth. One version posits that possessing such resources enables rent-seeking behavior, absolving government from levying taxes and providing investment. Rents then go towards patronage payments as bribes to retain political

power.[2] Paul Collier argues that rents actually "erode checks and balances,"[3] thus "[making] democracy malfunction."[4] This is because "oil... [is] particularly unsuited to the pressures generated by electoral competition."[5] In fact, he claims that resource-rich nations are "likely to misuse [their] opportunities in ways that make [them] fail to grow."[6] Thus, nations fail to experience economic growth because high-rent resources have destabilizing affects on institutions, leading to corruption and poor development in other areas of the economy.

An alternative view argues that differences in institutions best explain differences in economic growth. Daron Acemoglu posits that we must distinguish between inclusive (good) and extractive (bad) institutions. He argues that inclusive political institutions must broadly distribute *de jure* power, power by law, to a plurality of political coalitions. A plurality of political coalitions and the law then constrain political dominance, making institutions pluralistic.[7] Furthermore, inclusive political institutions must sufficiently centralize state power to enforce "law and order to support economic activity...or even the basic security of its citizens."[8] Without monopoly over the legitimate use of power, states can fall into anarchy. Through institutional complementarity, the idea that similar institutions reinforce one another and create "disincentives to radical change,"[9] Acemoglu argues that inclusive political institutions will establish inclusive economic institutions. Inclusive economic institutions must enable individuals to make free choices in order to encourage public participation in economic activities.[10] They secure property rights to prevent fear of government expropriation, provide a fair and just legal system, and give equal opportunity to people to make exchanges.[11] Thus, they broadly distribute *de facto* power, power from available resources and the ability for collective action. Since inclusive political institutions broadly distribute *de jure* power, they prevent political actors from rent-seeking behavior. If so, then GDP growth and revenue come from human output and productivity. Optimizing and increasing output requires investment in capital as well as investment in innovation and technology, which increases total factor productivity. Private investors, however, often operate on a profit-motive and require efficient property rights. Inclusive political institutions therefore establish inclusive economic institutions to secure property rights, thus leading to growth.

Political institutions that limit *de jure* power to a narrow elite or lack state centralization are extractive.[12] Since power is limited, elites face little opposition or political constraints. This enables them to establish complimentary extractive economic institutions by erecting barriers and suppressing the markets' functions, while extracting resources from society.[13] By extracting society's resources, they limit *de facto* power, increasing their own wealth to "help consolidate their political dominance."[14] Extracting resources from society is possible when there is a lack of efficient property rights. This enables rent-seeking behavior and acts as a disincentive against innovation by deterring investment. Low investment leads to low development, and therefore low human output. Long-term GDP growth is then limited and short-term growth comes instead from reallocating resources. Acemoglu notes that "inclusive economic institutions will neither support nor be supported by extractive political ones."[15] They are non-complimentary and undermine one another. There would either be a shift to extractive economic institutions, benefitting narrow interests, or a destabilization in extractive political institutions, "opening the way for the emergence of inclusive political institutions."[16]

An analysis of Algeria and Angola suggests that differences in institutions better explains variation in economic growth in oil-rich nations. As of 2012, Algeria and Angola have similar levels of proven oil reserves at 12.20 and 10.47 billion barrels.[17] Each exports respectively 700,000 and 1.5 million barrels per day, which accounts for a large portion of their GDP.[18] Given their respective populations of 35.98

million and 19.62 million,[19] Angolan oil exports more than double Algeria's, yet Angola has just over half the population. Further, Algeria and Angola have a similar GDP per-capita, respectively $5,503 and $5,314 in 2011.[20] In 1980 however, they had a GDP per-capita of $2,269 and $604.[21] Although Angola has clearly increased GDP per-capita, matching Algeria's, I believe this growth is not inclusive because of stark differences in unemployment levels. Algeria's unemployment rate in 2011 was 10%,[22] a significant drop from 27.3% in 2001.[23] Angola's unemployment rate however was 26% in 2011.[24] Although this is a drastic decline from 40% in 2001,[25] unemployment is still a significant problem. If we consider population, Algeria creates almost twice as many jobs than Angola when unemployment decreases by 1%. This discrepancy is particularly worrying since they have a similar GDP per-capita.

Since Angola is able to increase its GDP per-capita but fails to provide employment, I argue that GDP per-capita insufficiently distinguishes between inclusive and exclusive growth. Inclusive growth occurs when governments publicly invest revenues to foster job creation, contributing further to future GDP. Thus, GDP growth occurs while lowering unemployment levels. Exclusive growth however, occurs when governments fail to publicly invest revenues, resulting in slower job creation. Increased growth would not benefit the broader population because this would imply increasing wealth for the unemployed. In the absence of a strong welfare state, we can assume that the unemployed are unlikely to receive any benefits from redistribution. Thus, GDP growth occurs but high unemployment rates persist. Because oil extraction is a capital-intensive industry, rather than labour-intensive, oil-rich nations can increase GDP per-capita with minimal increases in labour, blurring the distinction between inclusive and exclusive growth. I therefore incorporate unemployment levels alongside GDP per-capita to help isolate this problem.

Through institutional complementarity, the idea that similar institutions reinforce one another and create "disincentives to radical change," […] inclusive political institutions will establish inclusive economic institutions.

Institutional Transitions in Algeria

This section argues transitioning from extractive to inclusive institutions causes inclusive economic growth through a temporal analysis of post-independence Algeria. I divide this analysis into pre- and post-1999 to emphasize Algeria's transitional period. After French colonialists fled Algeria, Ben Bella consolidated power in the *Front de Libération Nationale* (FLN), becoming president in 1963 and beginning the FLN's single-party state dominance.[26] Political institutions limited *de jure* power, restricting opposition and political dissent. Houari Boumediene and the *Armée de Libération Nationale* led a military coup against Bella in 1965 and quickly moved to restructure institutions, establishing the military's dominance until 1999.

Extractive political institutions established extractive economic institutions. Boumediene pursued two Four-Year-Plans between 1970 and 1977, intending to invest in various economic sectors. However, Algeria nationalized the energy sector in 1971, absorbing many foreign owned firms without compensation.[27] This suggests that foreign companies had little economic protection, thus deterring foreign investors and resulting in insufficient investment in non-energy sectors.[28] Between 1970 and 1980, hydrocarbons doubled their contribution to GDP from 14.2% to 32.1% while GDP per-capita grew by a factor of seven from $324 to $2,268.[29] Further, oil rents made up an increasing proportion of government revenues, up to 60% by 1980.[30] The government accordingly invested 22% of GDP in the hydrocarbon sector, while industry as a whole received 53%.[31] The growing reliance on oil rents

resulted in oil-dependency and the rentier-state. However, Algeria managed to reduce unemployment during this period from 28.5% to 16.2%.[32] Boumediene masked remaining social problems by earmarking oil revenue for social programs, temporarily broadening *de facto* power. However, since oil rents fund these programs, the 1986 collapse in oil prices crippled the Algerian economy, causing massive social cutbacks and unrest.[33] Figure 1 shows GDP per-capita and unemployment levels since 1980. It demonstrates how extractive economic institutions enable rent-seeking behavior and fail to create sustainable inclusive growth, a consequence of focusing on the capital-intensive oil sector.

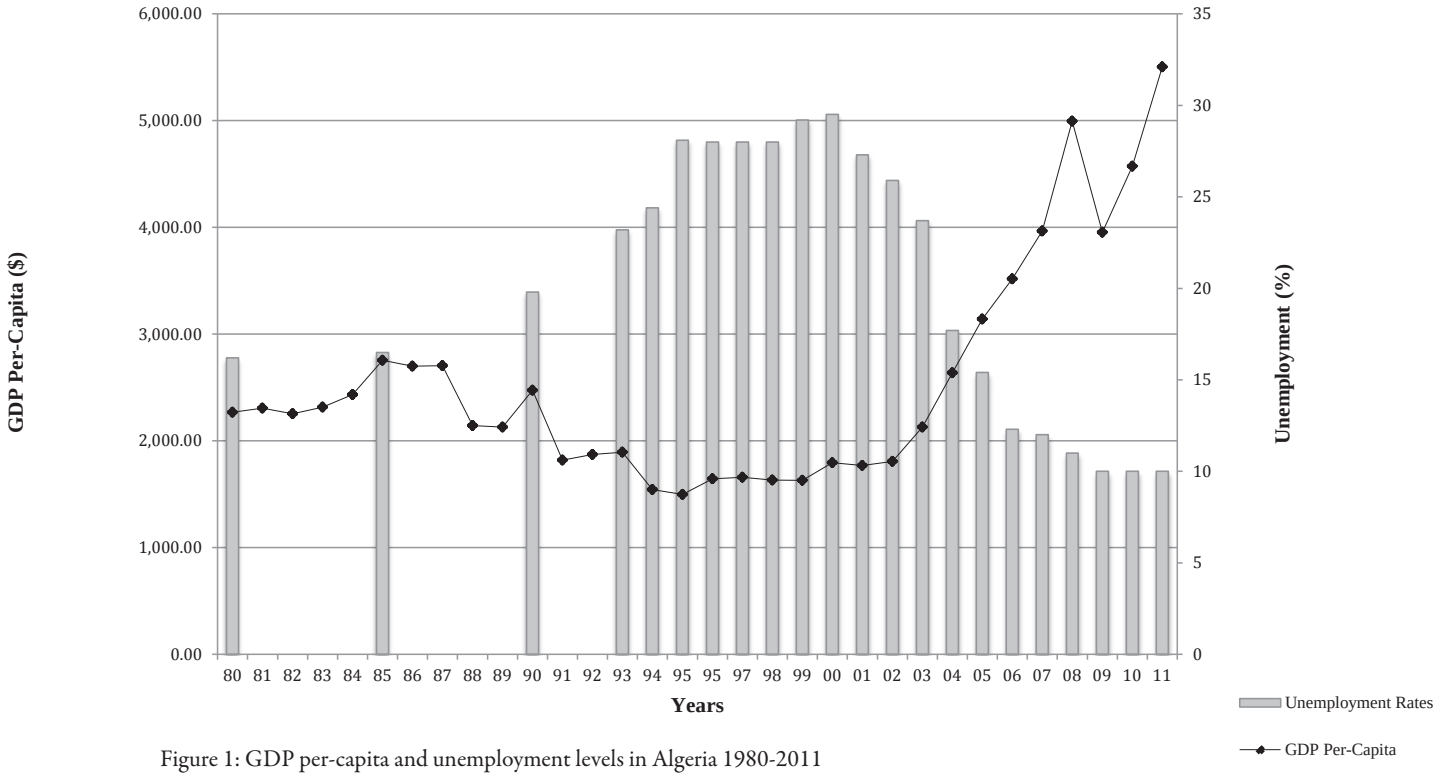

Figure 1: GDP per-capita and unemployment levels in Algeria 1980-2011

Sources: Data from IMF "World Economics and Financial Survey," 2012; IMF "Algeria: Statistical Appendix," *IMF Country Report No. 98/87,* 1998; IMF "Algeria: Statistical Appendix," *IMF Country Report No. 01/163,* 2001.

The government tried to rescue the economy and secure investment through multiple initiatives. The 1986 hydrocarbon law tried to induce foreign investors by repaying foreign companies for the government's past expropriation of gas findings.[34] This was insufficient to secure the economy, forcing the government to "reform the state-engineered economy," which itself was problematic since Algeria's private sector included only 27% of the workforce.[35] Algeria eventually entered a Stand-by Agreement (SBA) with the International Monetary Fund (IMF) in 1989, conditioned on pursuing greater economic liberalization. The government passed the 1990 Law of Money and Credit, which separated the finance minister from the central bank and reduced the government's ability to "fleece the state's coffers."[36] The 1986 hydrocarbon law, reforming the state-centered economy, and Law of Money and Credit all represent moves towards inclusive institutions. They better secure property rights, broaden *de facto* power, and increase government transparency.

Economic problems persisted however, and together with civil dissatisfaction, created pushes towards inclusive politics, resulting in the *Front Islamique du Salut* winning multi-party elections in 1991. However, the Haut Comite d'Etat (HCE) carried out another military coup, limiting *de*

jure power through extractive political institutions. Algeria entered the 'age of terror'[1] between 1992 and 1998, making it "one of the deadliest countries in the world."[37] The military ruled under several leaders, some whose views strayed from the HCE's. Mohamed Boudiaf for example, aimed to restore government legitimacy through debate and democracy.[38] The HCE assassinated him, creating fear in foreign investors over political instability.[39] Presidency went to Belaid Abdessalam, who retrenched Boudiaf's attempts for inclusive institutions by implementing "draconian measures" under the "anti-terrorist law."[40] He took over as minister of finance and enabled authorities to determine what "constituted a threat to state security" for themselves.[41] Figure 1 marks this period as Algeria's lowest GDP per-capita and some of its highest unemployment levels. Problems were so bad that the "industrial base declined by 1.1[%]...while GDP rose by only 0.1[%]."[42]

Conditions worsened during this period when foreign debt reached $26 billion in 1994,[43] accounting for 80% of GDP.[44] The IMF pushed for increased "liberalization and transparency,"[45] leading to inclusive economic institutions with efficient property rights. Sonatrach ended its energy monopoly, increasing foreign investment into the energy sector. Algeria further removed trade barriers and increased investment in technologies, credit, and capital,[46] creating an influx of financial and pharmaceutical firms, as well as thousands of small businesses.[47] By 1999, commerce and services made up 25.4% of GDP and 20% of employment, of which 74% was private employment.[48] Had institutions and property rights not improved, we would not expect to see this influx because businesses would fear expropriation and not invest. However, escalating employment suggests growth was still largely exclusive. One reason is that the hydrocarbon sector made up only 2% of employment, yet accounted for 30% of GDP in 1999.[49]

Increasingly inclusive economic institutions and extractive political institutions however, are non-complimentary. Broadened *de facto* power and increasing unemployment levels created unrest. Algerians exercised their *de facto* power through collective action by mobilizing their resources and pushed for inclusive political institutions. This resulted in the 1996 constitution, which set executive term limits and established a proportionally represented bicameral legislature.[50] *De jure* power broadened by allowing a plurality of party coalition to stand in government. Further, the HCE's inability to defend "a beleaguered population"[51] and restore the economy resulted in presidential elections in 1999 without military representation or interference. Abdekaziz Bouteflika won Presidency with 74% of the vote,[52] signaling the transition to inclusive political institutions and civilian leadership. Bouteflika's 1999 Law on Civil Concord and 2005 Charter for Peace and National Reconciliation further gave amnesty to terrorists and state militants, centralizing the state.[53]

Continually changing the balance of de facto and de jure power can create pushes for inclusive political and economic institutions. Increasingly pluralistic governments in oil-rich nations must diversify the economy and foster job creation or face political opposition and civil dissatisfaction.

Unfortunately, unemployment rates peaked at around 30% in 2000. Politically constrained by *de jure* power and accountable to citizens, Bouteflika diversified the energy sector and privatized communications and transportation to create inclusive growth. The 2006 "Association Agreement with the European Union" placed even greater emphasis on diversifying the economy, transitioning to a market economy, and liberalizing trade.[54] To ensure these initiatives succeed and create inclusive growth, Bouteflika would have to strengthen inclusive economic institutions that protect property

1 This period marks a guerilla war between the military government and Islamic radicalism, which spread internationally. Link with Al-Qaeda were established and a state of emergency declared. The war dragged on until Bouteflika granted to insurgency groups. The state of emergency was not lifted until 2011.

rights and invest revenues in areas that foster job creation. If not, power could change to opposition coalitions in upcoming elections. As figure 1 shows, transitioning towards inclusive political and economic institutions led to unprecedented inclusive growth seen in lower unemployment levels and higher GDP per-capita.

Growth Variation between Algeria and Angola

This section reinforces the argument that different political and economic institutions explain variation in economic growth through a comparative analysis of Algeria and Angola. The above analysis shows inclusive institutions in Algeria created inclusive growth by increasing GDP per-capita to $5,503 in 2011, while decreasing unemployment to 10%. Angola however has extractive institutions, resulting in high unemployment levels of 26% despite rapid GDP per-capita growth to $5,314 in 2011. After independence, Angola entered a socialist period between 1975 and 1990 under President José Eduardo dos Santos and the governing *Movimento Popular de Libertação de Angola* (MPLA). Dos Santos fully controlled *de jure* and *de facto* power, creating extractive political institutions by placing supporters in positions of power.[55] Further, the state lacked centralization during this time because of a civil war between the MPLA and the *União Nacional para a Independência Total de Angola* (UNITA).[2] Although UNITA leader Jonas Savimbi's death in 2002 increased state centralization, economic conditions improved very little after the 27-year civil war.

However, dos Santos promised for reforms in 1990, legalized opposition parties in 1991, and held elections the following year.[56] This only slightly broadened *de jure* power since elections are infrequent. Kristen Reed claims this only increased "petrodollar patronage," by merely increasing the number of bribed officials.[57] The United Nations deemed the elections "free and fair,"[58] but corruption remained prevalent. When the IMF pushed for privatization in 1994, dos Santos merely distributed state-owned enterprises to "favoured party members, government officials, and military officers."[59] Even if elections broadened *de jure* power, since oil revenue is "channeled…into patronage networks," *de facto* power remains exclusive.[60] These revenues come from bribes and contracts between the national oil company Sonangol and transnational oil corporations (TNOCs) ExxonMobil, British Petroleum, Shell, and Total.[61] Although the MPLA makes enormous revenues from these contracts, it fails to publicly invest most growth,[62] resulting in gross underdevelopment and poverty. TNOCs are further required to donate to dos Santos' charity, the Fundação Eduardo dos Santos, in order to operate in Angola, which merely functions as a "patronage mechanisms for the president."[63] This has led to some calling Angola a "successful failed state."[64]

Rampant corruption and a strong authoritarian regime continue to siphon off revenues, like when the IMF discovered $4.2 billion in oil revenues missing between 1998 and 2002.[65] This goes towards patronage in $30,000 cash payments to poorly paid civil servants and $70,000 automobiles to "Ministers of Parliament unable to afford the maintenance costs."[66] In stark contrast, the broader population earns the "official minimum wage" of $1,200 per year.[67] Following institutional complementarity, extractive political institutions established extractive economic institutions. Extractive political and economic institutions lead to exclusive growth, seen when half the population was unemployed in 2007,[68] yet GDP per-capita was $3,443.[69] This created a growing informal sector of merchants, who account for two-thirds

2 After gaining independence from Portuguese colonialist in 1975, civil war between the MPLA, composed predominantly of the Ambundu ethnicity, and UNITA, predominantly composed of Ovimbundu, quickly erupted. This was fueled by oil-rents and diamond-rents. Estimates place casualties between 1 and 3 million, further displacing several millions of citizens, and destroying agriculture and infrastructure.

of all transactions.[70] Reed notes that these merchants fear "harassment and extortion exacted by the fiscal police,"[71] exemplifying that Angola's extractive institutions lack efficient property rights.

If inclusive institutions cause long-term inclusive growth, then we would expect less inclusive growth in countries with extractive institutions. Angola has extractive institutions. Dos Santos and the MPLA have unconstrained *de jure*, which they use to establish extractive economic institutions, further controlling *de facto* power. This enables rent-seeking behavior to capture oil-rents, which dos Santos retains for patronage. He fails to invest growth, thus limiting *de jure* and *de facto* power while reinforcing his dominance. Further, the World Bank's "Doing Business Report" ranked Angola 172nd (out of 185 countries) in the ease of doing business and 183rd in enforcing contracts,[72] suggesting insufficient protection from government expropriation. This is deterring investors, resulting in little private investment and development outside the oil sector. Since investment opportunities go unexploited, developing labour-intensive industries remains slow, resulting in little growth from human output. Most of Angola's GDP growth comes instead from reallocating resources to the capital-intensive oil sector. As such, world oil prices and Angola's capacity to extract oil determine GDP growth rather than human output. Since extractive political and economic institutions complement and reinforce one another, there is little pressure for change by the government, and citizens are unable to exercise *de facto* power through collective action. Even though GDP per-capita has grown nine times from $621 to $5,314 between 1980 and 2011,[73] unemployment rates remain high at 26%.[74]

Unlike Angola, Algeria transitioned towards inclusive institutions and is experiencing inclusive growth even in non-energy sectors. Algerians exercised their *de facto* power through collective action, successfully pushing for inclusive economic institutions. This further increased *de facto* power through inclusive growth found in increased employment. As *de facto* power increased, citizens pushed for inclusive political institutions, eventually expanding *de jure* power to a plurality of government parties. As institutional complementarity suggests, inclusive political and economic institutions would enforce one another, leading to increased inclusive growth. Algeria has since developed efficient property rights, seen when the "Doing Business Report" ranked Algeria 150th in the ease of doing business in 2012 and 125th in enforcing contracts.[75] This led to an increase in private investment to develop more labour-intensive industries. Since transitioning to inclusive institutions, unemployment has dropped nearly a third, reaching 10% in 2009, while GDP per-capita growth has nearly tripled to $5,503 since 1999. Inclusive institutions have enabled Algeria to escape the destabilizing affects of natural resource on growth that the resource curse suggests.

Conclusion

I have argued that differences in institutions best explain differences in economic growth in oil-rich nations. Inclusive institutions broadly distributing *de jure* and *de facto* power, as in Algeria, ensure political stability and efficient property rights. This induces private investment, leading to development in more labour-intensive sectors. Unemployment accordingly decreases, creating inclusive growth. Extractive institutions constraining *de jure* and *de facto* power, as in Angola, fail to ensure political stability and efficient property rights. This deters investment, leading to poor development in labour-intensive sectors. As such, governments must rely on capital-intensive oil revenues for growth, which leads to high unemployment and exclusive growth.

Furthermore, Algeria shows that oil-rich nations can escape the destabilizing effects of the resource curse and experience inclusive growth. Continually changing the balance of *de facto* and *de*

jure power can create pushes for inclusive political and economic institutions. Increasingly pluralistic governments in oil-rich nations must diversify the economy and foster job creation or face political opposition and civil dissatisfaction. If they do not, unemployment and exclusive growth will increase, resulting in low support during elections and a change in power. As such, the destabilizing effects of oil-rents result from extractive institutions in oil-rich nations. Unless *de jure* or *de facto* powers shift, as they did in Algeria, many oil-rich nations will not realize their economic potential. They will continue experiencing exclusive growth and poor development, benefitting wealthy elites to the detriment of the poor.

Notes

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2 Paul Collier, The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It, (New York: Oxford University Press, 2007), 44.
3 Ibid., 46.
4 Ibid., 42.
5 Ibid., 43.
6 Ibid., 51.
7 Daron Acemoglu and James Robinson, Why Nations Fail, (New York: Crown Business, 2012), 80.
8 Ibid.
9 Peter Hall and David Soskice, Varieties of Capitalism: The Institutional Foundations of Comparative Advantage, Oxford Scholarship Online, (2001), 64.
10 Ibid., 74.
11 Ibid., 75.
12 Daron Acemoglu and John Robinson, Why Nations Fail, 80-81.
13 Ibid., 81
14 Ibid.
15 Ibid., 82.
16 Ibid.
17 Organization for Petroleum Exporting Countries, "Algeria Facts and Figures," (2012).
18 OPEC, "Angola Facts and Figures," (2012).
19 World Bank, "Algeria ," (2012); World Bank, "Angola," (2012).
20 International Monetary Fund, "World Economic and Financial Survey."
21 Ibid.
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23 OECD, "Algeria", in OECD/African Development Bank, African Economic Outlook 2005, OECD Publishing, (2005): 70.
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27 Le Sueur, Between Terror and Democracy, 23.
28 Ibid., 22.
29 Ibid., 10.
30 Ali Aissaoui, Algeria: The Political Economy of Oil and Gas, (Oxford: Oxford University Press, 2001), 231.
31 Ibid., 229.
32 Ibid.
33 Le Sueur, Between Terror and Democracy, 33.

34 Ibid., 28.
35 Ibid.
36 Ibid., 33.
37 Le Sueur, Between Terror and Democracy, 5.
38 Ibid., 56.
39 Ibid., 60.
40 Ibid., 60-61.
41 Ibid., 61.
42 Ibid.,105.
43 Ibid., 108.
44 Ibid., 109.
45 Ibid., 108.
46 Ibid., 115.
47 Ibid., 117.
48 Ali Aissaoui, Algeria: The Political Economy of Oil and Gas, 291.
49 Ibid., 290.
50 Le Sueur, Between Terror and Democracy, 70.
51 Ibid., 72.
52 Ibid., 76
53 Ibid., 77-90.
54 IMF, "Algeria: Selected Issues," IMF Country Report No. 06/101, (2006), 15.
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56 Kristin Reed, Crude Existence, 40.
57 Ibid., 30.
58 Ibid.
59 Ibid.
60 Ibid., 30.
61 John L. Hammond, "The Resource Curse and Oil Revenues in Angola and Venezuela," Science & Society- Vol. 75, No. 3, (2011), 355.
62 Ibid., 356.
63 Kristin Reed, Crude Existence: 33.
64 Oliverei in John Hammond, "The Resource Curse and Oil Revenues in Angola and Venezuela," 361 and Kristen Reed, Crude Existence, 2.
65 Kristen Reed, Crude Existence, 32.
66 Ibid., 30.
67 Ibid.
68 Ibid., 29.
69 IMF, "World Economic and Financial Survey," 2012.
70 Kristin Reed, Crude Existence, 29.
71 Ibid.
72 World Bank, "Economic Rankings."
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Overcoming the United States: An Analysis of the Native Hawaiian Sovereignty Movement

Roopa Mann

Roopa is a third year International Relations student with a minor in Political Science, originally from North Delta, British Columbia. Her greatest academic interests include international law and women's human rights. Following the completion of her undergraduate degree, Roopa plans to pursue higher education in the fields of law and public policy.

This article analyzes the ways in which international and American domestic law have been used by the Native Hawaiians in their struggle to regain their sovereignty. A legacy of settler colonialism and American denial of international law have produced circumstances under which Hawaiian independence may not be attainable. This article argues that the United States is more likely to be open to claims that cannot lead to an alteration of its borders; however, because acquiring federal recognition would eliminate any possibility of achieving independence at the international level, domestic policy proposals are highly controversial among Native Hawaiians.

The island territories on the west coast of the United States, which presently constitute the state of Hawaii, were annexed by the US in 1898, subjecting Hawaii to settler colonialism.[1] As a result, the indigenous peoples of Hawaii have been marginalized in their own homeland[2] where they currently account for approximately only one fifth of the state's population.[3] The movement toward seeking the re-establishment of Native Hawaiian sovereignty has been driven by these conditions; however, thus far the movement has been limited in its successes. This paper will make the distinction between colonialism and settler colonialism, in order to illustrate the reason why traditional decolonization was not a viable option for the Native Hawaiians. It will then analyse how other avenues, both in international law and in American domestic law, have been used by factions of the Native Hawaiian population seeking sovereignty. The fact that domestic avenues have been viewed as secondary to those of the international sphere is illustrated by a select group of determined Native Hawaiians who have refused to give up on the international route, in spite of its failure to produce meaningful results. This paper argues that, although domestic avenues of regaining sovereignty were reserved until after international avenues had seemingly failed, there has been a greater measure of progress for the movement in the domestic sphere than in the international sphere. The Native Hawaiian reluctance to focus on domestic means, and the slightly greater government response by the US to domestic claims, can be attributed to the fact that using structures within the state allows the US government to retain ultimate control over the movement's progress. This has given the US the ability to withhold rights which may threaten their authority in the Hawaiian territory. The inspiration for this paper comes from a desire to support a means of achieving sovereignty which is practically attainable under current international and domestic law, thereby ensuring the protection of human rights for the Native Hawaiians.

The Colonization of Hawaii

In 1778, James Cook arrived in Hawaii and claimed its land on behalf of the British Empire.[4] Within the next 100 years, as much as 95% of the indigenous Hawaiian population was killed by diseases introduced by the European explorers, and 75% of Hawaii's land was owned by foreigners. One hundred and fifteen years after the first European explorers had arrived in the Kingdom of Hawaii, the American military overthrew the Hawaiian monarch, Queen Lili'oukalani.[5] The following year, a provisional government was established by those who had overthrown the Hawaiian Kingdom. This government then transferred control of Hawaii to the US federal government during the 1898 annexation. The annexation was illegal under international law given that no treaty was signed with the Native Hawaiians authorizing the transfer of control of their land.[6]

At the time of the arrival of the European explorers, the indigenous Hawaiians had been on the islands for over 1,000 years, founding the basis for their claims to being indigenous to the territory. Additionally, the Hawaiians were recognized as being sovereign by the US given the signing of treaties between the two nations from 1826 to 1887.[7] US President Grover Cleveland declared his opposition to the illegal annexation of the Hawaiian nation on the basis that the unjust overthrow of a "feeble but friendly" people would reflect poorly upon the US in the international community; however, this was not enough to change the future of the Native Hawaiians.[8] Instead, the indigenous peoples of Hawaii have been forced to fight to reclaim their sovereignty. Throughout their struggle for sovereignty, the Native Hawaiians have been forced to deal with a range of obstacles and oppressive systems. Hawaiian land rights, as determined by the American government, pose one example of the oppressive nature of the new Hawaiian leadership. Private land ownership was introduced in Hawaii by the Americans, and resulted in an alteration to traditional land use patterns. The Wardship policy, an oppressive government system imposed in 1959, has denied Native Hawaiians the right to control their land and resources. The governing institutions which have acted as the trustees in this fiduciary relationship have allocated large parcels of the Hawaiian trust lands for the use of the American military, while thousands of Native Hawaiians have been left waiting for a homestead. In 1989 it became legal for Native Hawaiians to sue for misuse of the trust lands; however, a successful lawsuit simply led to the given parcel of land being returned to the trustees. Essentially, Native Hawaiians, although no longer forbidden from taking legal action against this injustice, were restricted from winning the cases which they made against the state.[9] The Wardship policy has impacted Native Hawaiians' land rights but also links to other adversities, such as higher rates of unemployment, homelessness, incarceration, and death than the general state population.[10]

Decolonization and Human Rights: The Failure of International Law for the Native Hawaiians

Colonialism and settler colonialism are distinct structures despite the fact that both are forms of imperialism. The critical difference between colonialism and settler colonialism is that in the latter the formal dominance of the colonizers over the original inhabitants is purposefully eroded in order to produce a structure which is "natural" and unchallenged within the society. This is done through the elimination of the distinction between the two groups, a process which is continued until the colonizers can refer to the territory as "postcolonial." As Veracini states, "Colonialism *reinforces* the distinction between colony and metropole, settler colonialism *erases* it."[11] This can be illustrated by strategies of assimilation such as the banning of the language of the indigenous Hawaiians in Hawaiian schools.[12] According to Patrick Wolfe, the strategies being employed against the Native Hawaiians are

powered by the "logic of elimination." Wolfe compares the use of race by the US government in dealing with African Americans and Native Americans, and notes that while it was historically in the interest of US society to have more Africans, thereby producing more labour; it was similarly in their interest to have fewer Natives. This is due to the fact that reducing the number of people who could make claims to the land would free up the territory for their own use. Both of these interests were reflected in US policies, as a single African ancestor would qualify someone to be Black under US law, while having too few Native ancestors would disqualify a Native American from claiming Indian status through the federal government.[13] This can be seen in the US' ongoing blood quantum legislation, which dictates who is legally considered to be a Native Hawaiian. This legislation requires that an individual's ancestry is at least half comprised of the descendents of indigenous Hawaiians, with the indigenous being defined as those who had been living in Hawaii prior to European contact in 1778.[14] Through assimilation and legal means, the Native Hawaiians continue to be strategically incorporated into the broader American population.

The Hawaiians were no longer viewed by the international community as being a distinct people, but as a population of the US. Instead of independence, the bestowal of statehood upon Hawaii in 1959 was viewed as the "decolonization" of the Hawaiian Islands.

After the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples was issued in 1960, almost every colony seized the opportunity to reclaim their independence from their colonizers. Indigenous peoples were not a part of this process, as they were classified as domestic populations, as opposed to peoples, and therefore were not included in the mandate of the Declaration.[15] This is where the distinction between colonialism and settler colonialism became especially critical. The Hawaiians were no longer viewed by the international community as being a distinct people, but as a population of the US. Instead of independence, the bestowal of statehood upon Hawaii in 1959 was viewed as the "decolonization" of the Hawaiian Islands. Through this process the territory formally became a state of the US, rather than a colonial possession. Unlike the decolonization of other colonies, Hawaii's decolonization ultimately gave its colonizers *greater* control over the territory.

The indigenous Hawaiians were not given the opportunity to decide what form decolonization would take. Although a vote was held on whether Hawaii would become a state, each individual resident of Hawaii was given equal participation in the decision making process. This was problematic for the Native Hawaiians, as the settler population of Hawaii outnumbered the indigenous Hawaiians by a large margin. As Anaya notes,

> International practice outside the Hawaiian context has proscribed settler participation in decolonization plebiscites, where settler participation could potentially nullify the indigenous vote. The choice between the status quo and statehood was perhaps meaningful to those who assumed a priori United States sovereigntyoverHawaii,butitwasmuchlessmeaningfulasanactofself-determination to indigenous Hawaiians on whom United States rule had been imposed.[16]

Given that the Native Hawaiians never agreed to give up their sovereignty, they should be considered a non-self-governing people by the United Nations.[17] This status, reserved for those who have been denied their sovereignty, would confer certain rights pertaining to the protection of their land.[18] However, this status was withdrawn when Hawaii became a US state, as it had legally been

decolonized.[19] Decolonization through independence was, therefore, not a viable option for the Native Hawaiians. In this respect, the voices of the colonized have gone unheard, causing statehood to continue to be viewed as illegitimate by much of Hawaii's indigenous population.[20] In addition, in the years that have followed the bestowal of statehood, participating states have ensured that the United Nations Declaration on the Rights of Indigenous Peoples does not include a right to secession.[21]

Tools of international law which are not reserved for indigenous or colonized peoples have similarly failed to protect the rights of Native Hawaiians. The treatment of the indigenous peoples of Hawaii has violated articles of UN legal instruments, including the United Nations Charter and the International Covenant on Civil and Political Rights. Both of these documents call for the right to self-determination. Self-determination, which is based upon the values of freedom and equality, conceptually encompasses a multitude of other rights pertaining to the practice of culture, access to land and resources for economic and cultural purposes, and self-government. The United States is obligated to ensure that these rights are fulfilled,[22] and yet, as is noted by Goldstein, the federal government has "carefully avoided any possibility that international law might take precedence in such matters."[23] The effects of international legal institutions are often limited by the extent to which domestic governments allow them to be applied.[24] This is the case in the United States where denial of binding international laws has allowed the state to maintain full control over Hawaii.

It has become evident that, without US cooperation, international human rights law will not lead to the re-establishment of Hawaiian sovereignty.

Given that colonialism and settler colonialism are distinct structures, Veracini notes that each requires a different response from colonial subjects seeking justice. In the case of settler colonialism, the indigenous inhabitants of the territory must maintain their "survival" as a separate people from the settlers in order to prevent the colonizers from absorbing them into the broader population.[25] It has become evident that, without US cooperation, international human rights law will not lead to the re-establishment of Hawaiian sovereignty. As a result, many Native Hawaiians have been attempting to work within the US government structures to find the means to successfully reclaim their sovereignty. Although the government of the United States undoubtedly has an obligation to ensure that the international rights of indigenous peoples are fully applied to the Native Hawaiians,[26] their sustained resistance to comply has led many Native Hawaiians to focus on being recognized as a nation in the more limited domestic sphere. Operating within the domestic sphere is a compromise in that the Native Hawaiians are working within the structures which have been carefully crafted to oppress them.[27] Nevertheless, many have turned in this direction because it may be the only way to have their international right to self-determination fulfilled.

Hawaiian Sovereignty Organizations: Divided between the International and the Domestic

It has been said that, "One of the most persistent and pernicious myths of Hawaiian history is that the... Native Hawaiians passively accepted the erosion of their culture and the loss of their nation."[28] On the contrary, there is a vast collection of evidence of Hawaiian resistance throughout its history of colonial experiences.[29] Although it is evident that resistance has been ongoing since the initiation of colonialism, Kauanui identifies the early 1970s as the point of origin of the sovereignty movement in its current form.[30] As a result of a lack of US state cooperation, decolonization and international human rights have not produced the results the Native Hawaiians have been seeking. Meller and Lee note that, "Sovereignty is, at best, an ambiguous term; what is most significant in considering the debate in Hawaii is how sovereignty is

viewed."[31] James Anaya defines self-determination as having a government based on the "will of the people, or peoples, governed," and being a structure under which the people can continually be developing.[32] Although it is clear that it had originally been hoped that self-determination would be derived from the re-establishment of an independent Hawaii, many Native Hawaiians are now looking for self-determination through self-government within the United States' domestic framework, in anticipation of greater progress.

In response to demands for self-government, the Office of Hawaiian Affairs (OHA) was established in 1978 with the claimed intention of representing Native Hawaiian interests; however, the formation of the OHA was not enough to quell the movement for self-determination. The organization was described as "an extension of the state," as well as being "powerless as a mechanism of self-government."[33] One critical flaw of the OHA was that it did not give the Native Hawaiians greater control of their land.[34] In 1920, the Hawaiian Homes Commission Act had designated certain public land for the Native Hawaiians' use.[35] As noted by Trask,

> By law, the Hawaiian Home Lands are supposed to be just that: the land base upon which individual Hawaiians can build their homes and the Hawaiian nation can reconstitute itself. Instead, Hawaiians have been systematically denied access while any corporation that could devise a way to reap a profit from our land has been allowed to use it however they saw fit. And that's not to mention military usage or other governmental enterprises. Native Hawaiians are kept in a state of perpetual dispossession...[36]

Not only was the OHA incapable of giving the Native Hawaiians control over this land, but trustees of the organization were found to be supporting developmental projects which were detrimental to the environment. This stance was starkly opposed to what the majority of Native Hawaiians believed should be done.[37] Given the importance of land in Native Hawaiian culture, Anaya states that, "Access to and protection of sacred sites... have been matters of particularly intense struggle for Native Hawaiians."[38] Due to the fact that much of the Home Lands have been granted to non-Native actors, many Native Hawaiians do not have access to the land that was claimed to have been set aside for their use.[39] Without land, the Native Hawaiians are unable to practice and preserve their culture, leaving it vulnerable to assimilation and manipulation by the tourist industry. As Trask notes, "Land is now called real estate rather than Papa, our mother."[40] The loss of sovereignty over land is a central feature of settler colonialism, and is responsible for much of the suffering that the Native Hawaiians continue to endure. Therefore, it is critical that the right to control the land be returned.

The Native Hawaiian dissatisfaction with the OHA led to the establishment of other groups, many of whom have their own vision for Hawaiian sovereignty, ranging from some form of self-government within the US to full independence through secession.[41] Perhaps the most popular group formed at this time was Ka Lahui, which seeks to have the indigenous Hawaiians federally recognized as a nation within a nation. This recognition would be based on the model of the hundreds of other US Native tribes which have been recognized under the Bureau of Indian Affairs. Self-determination in this case can be defined as "the ability of a people who share a common culture, language, value system and land base, to exercise control over their land and lives, independent of other nations."[42] Anaya argues that the Native Hawaiians possess all of the necessary characteristics to be considered a people,[43] and should therefore qualify for the status of nationhood. In addition to this recognition, Ka Lahui seeks the return of control of Hawaiian land.

Although Ka Lahui may be one of the most powerful proponents of Hawaiian self-determination, it has not been the only group to seek some form of sovereignty for the Native Hawaiians in this renewed movement. Among the other organizations is the Institute for the Advancement of Hawaiian Affairs, which has not yet given up on the possibility of a fully independent Hawaii under international law.[44] Organizations such as this one are opposed to seeking federal recognition for the indigenous Hawaiians as a Native nation. Reconciling within the domestic sphere, as Ka Lahui is attempting to do, would limit the indigenous Hawaiians from making claims to statehood under international law. Essentially, this would rule out any remaining possibility of Hawaiian independence.

What must be acknowledged is that the possibility of independence being achieved under the current international system, whether the Hawaiians have reconciled at the domestic level or not, is extremely minimal. In regards to maintaining international order, "An indigenous right of self-determination, especially an unqualified one, could [have] potentially destabilizing effects on the internal situations of a number of states."[45] Given that states are the dominant actors in international law, any claims which may threaten the state structure are unlikely to be addressed in the favour of indigenous peoples.[46] To protect its own interests, the US government is bound to be more responsive to claims made for self-determination when the potential outcomes are limited to solutions within the state. Even if the Hawaiians were ever to be given a plebiscite to determine whether or not independence would be granted, there is a significant possibility that all of the residents of Hawaii would be able to vote.[47] The outcome of such a referendum would more likely than not result in the maintenance of the status quo given that the majority of the Hawaiian population consists of non-indigenous settlers.[48] It should be noted that seeking recognition as a nation within a nation will limit the Native Hawaiians to the domestic sphere in the sense that independence will not be a possibility. However, achieving domestic recognition can be viewed positively as a different route towards the ultimate goal of ensuring that the rights of indigenous peoples, as they are laid out in international law, will be protected.[49]

Achieving domestic recognition can be viewed positively as a different route towards the ultimate goal of ensuring that the rights of indigenous peoples, as they are laid out in international law, will be protected.

The Limited Progress of the Domestic Route

In 1993 the Apology Resolution was issued by the government of the United States for being party to the extinguishing of Native Hawaiian sovereignty. The Resolution formally acknowledged that Hawaiian sovereignty had existed before it was illegally overthrown in 1893. Although the text explicitly stated that the Resolution could not be used by the Hawaiians to make a case against the US for the restoration of their sovereignty, the document itself is a mark of progress for the domestic Hawaiian sovereignty movement. While the US having full control over how much progress is allowed to be made is far from ideal, in the case of Hawaii, small steps like this one are more likely to lead to results than the grand gestures at the international level which the US has continually refused to comply with.

Several years later, in 2000, there was a step backwards in the movement towards Native Hawaiian self-determination. In the case of *Rice v. Cayetano*, the US Supreme Court ruled that refusing to allow Rice, a non-indigenous resident of Hawaii, to vote in the elections for the Office of Hawaiian Affairs, violated the 15th Amendment of the US Constitution. The court ruled that Rice, who sought to have a voice in state affairs based on his self-identification as a Hawaiian, could not be denied participation in the election based on his race, in spite of the fact that the OHA was mandated to reflect the interests of *Native* Hawaiians. Allowing non-indigenous residents of Hawaii the right to participate

would inevitably dilute the indigenous voice within the OHA. This further limitation on the representation of Native Hawaiian interests exacerbated dissatisfaction with the OHA and motivated further action within the sovereignty movement.

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However, the Apology Resolution, coupled with this reversal in progress, led to the establishment of the Task Force on Native Hawaiian Issues by Senator Akaka, a Hawaiian Democrat. The Akaka Bill, formally the Native Hawaiian Government Reorganization Act, would create a "nation within a nation model of self-governance" much like the ones of the American Indian nations who have already been formally recognized by the US federal government.[50] This is similar to what Ka Lahui has been advocating for. Currently, the Native Hawaiians are not listed by the US Department of the Interior's Bureau of Indian Affairs as being a federally recognized Native tribe.[51] The Akaka Bill seeks to establish this recognition, and has made its way to the Senate on multiple occasions; however, the proposed legislation still faces significant political opposition. Senator Akaka has made it clear that the bill would not cause a transfer of privately owned land, as has been feared by land owners in the state. Additionally, and perhaps most importantly to US state interests, the Akaka Bill does not seek Hawaiian independence. Although many Native Hawaiians are believed to be in favour of the Akaka Bill, support for the proposed legislation is not unanimous. The opposing groups include Native Hawaiians who do not wish to see the possibility of independence taken away,[52] as well as those who may be in support of federal recognition, but who do not support the Akaka Bill on the premise that the Native Hawaiians were given minimal influence in its production.[53] This division among Native Hawaiians, along with Senator Akaka's recent retirement, pose two significant challenges to the sovereignty movement at the present.[54]

With these challenges comes progress at the state level where the state of Hawaii recently recognized the Native Hawaiians as the indigenous population of Hawaii. It is important this recognition be achieved at the federal level in order for the Native Hawaiians to qualify for the domestic right to self-governance. It is hoped that the state level decision will lead to further progress by making it more difficult for the federal government to avoid recognizing the Native Hawaiians as a nation.[55]

Conclusions: The Future of Hawaiian Sovereignty

The claims of Native Hawaiians for the right to exercise their sovereignty are undoubtedly valid given their colonial past; however, up to this point, the movement has met with limited successes. In the case of Hawaii, the US went unchallenged by the United Nations when it failed to fulfill its moral duties as a state by using statehood to remedy the colonization of Hawaii.[56] This paper has argued that, although the Native Hawaiians waited to use domestic routes of reclaiming their sovereignty until after it became evident that the international avenues were not able to deliver results without US cooperation, the US government has actually been more responsive within the domestic sphere. The US has been resistant to giving into domestic claims as well, but a slightly greater degree of progress has arisen out of these efforts. This is largely due to the fact that working within its own domestic structures has given the US more control over the implications of Hawaiian sovereignty claims.

These issues have all stemmed from the fact that Hawaii was not included in the decolonization movement, leaving the Native Hawaiians to find an alternative avenue to regain their sovereignty.

This has resulted in the formation of multiple groups, each with their own vision of what Hawaiian sovereignty should entail. Given that federal recognition would eliminate any possibility of success for claims to independence made at the international level, those pursuing domestic avenues have met with passionate resistance from a select group of Native Hawaiians. This division has decreased the effectiveness of the movement and will have to be overcome if the oppression of Native Hawaiians is to be stopped. Based on history, it will likely be more effective if these factions unify in using the domestic level to regain self-determination, given that the United States has been more open to claims which have absolutely no possibility of altering its borders.[57] Ultimately, the Native Hawaiians will have to continue to work within the structures which have oppressed them in order to eventually overcome the United States and have their right to self-determination fulfilled.

Notes

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3 James Anaya, "The Native Hawaiian Peoples and International Human Rights Law: Toward a Remedy for Past and Continuing Wrongs," Georgia Law Review 28 no.2 (1994). 317.
4 Wende Elizabeth Marshall, "Remembering Hawaiian, Transforming Shame," Anthropology and Humanism 31 no. 2 (2006): 185.
5 International Work Group for Indigenous Affairs (IWGIA), Hawai'i: Return to Nationhood (Copenhagen: IWGIA, 1994), 16-18.
6 Kauanui, "The Multiplicity of Hawaiian Sovereignty Claims," 286.
7 Nancy Carol Carter, "Native Hawaiians," Legal Reference Services Quarterly 21 no.1 (2002): 6-9.
8 Trask et al., Islands in Captivity, 194.
9 Ibid, 275-82.
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12 Marshall, "Remembering Hawaiian, Transforming Shame," 190.
13 Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," Journal of Genocide Research 8, no. 4 (2006):387-88.
14 Carter, "Native Hawaiians," 16.
15 James Youngblood Henderson, Indigenous Diplomacy and Rights of Peoples: Achieving UN Recognition (Saskatoon: Purich Publishing Ltd., 2008), 27.
16 Anaya, "The Native Hawaiian Peoples and International Human Rights Law," 333-35.
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19 Trask et al. Islands in Captivity, 283.
20 Anaya, "The Native Hawaiian Peoples and International Human Rights Law," 361.
21 Mauro Barelli, "Shaping Indigenous Self-determination: Promising or Unsatisfactory Solutions?" International Community Law Review 13 (2011): 422.
22 Anaya, "The Native Hawaiian Peoples and International Human Rights Law," 320-60.
23 Alyosha Goldstein, "Where the Nation Takes Place: Proprietary Regimes, Antistatism, and U.S. Settler Colonialism," South Atlantic Quarterly 104 no.7 (2008): 842.
24 Sylvia Arzey and Luke McNamara, "Invoking International Human Rights Law in a 'Rights-Free Zone': Indigenous Justice Campaigns in Australia," Human Rights Quarterly 33 no. 3: 749.
25 Veracini, "Introducing Settler Colonial Studies," 3-5.
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27 Trask et al., Islands in Captivity, 301.

28 Noenoe K. Silva, Aloha Betrayed: Native Resistance to American Colonialism (Durnham: Duke University Press, 2004), 1.
29 Ibid, 2.
30 Kauanui, "The Multiplicity of Hawaiian Sovereignty Claims," 286-87.
31 Meller and Lee, "Hawaiian Sovereignty," 167.
32 Anaya, "The Native Hawaiian Peoples and International Human Rights Law," 320.
33 IWGIA, Hawai'i: Return to Nationhood, 23.
34 Ibid.
35 Anaya, "The Native Hawaiian Peoples and International Human Rights Law," 316.
36 Trask et al., Islands in Captivity, 191.
37 IWGIA, Hawai'i: Return to Nationhood, 23-24.
38 Anaya, "The Native Hawaiian Peoples and International Human Rights Law," 318.
39 Trask et al., Islands in Captivity, 192-95.
40 Ibid, 258-64.
41 Kauanui, "The Multiplicity of Hawaiian Sovereignty Claims," 287.
42 IWGIA, Hawai'i: Return to Nationhood, 24-25.
43 Anaya, "The Native Hawaiian Peoples and International Human Rights Law," 323-24.
44 IWGIA, Hawai'i: Return to Nationhood, 24-28.r
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46 Arzey and McNamara, "Invoking International Human Rights Law in a "Rights-Free Zone," 746.
47 Kauanui, "The Multiplicity of Hawaiian Sovereignty Claims," 289-92.
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Shifting Paradigms: The War on Terror and the Bush Administration's Universal Morality

Divia Mattoo

Divia Mattoo is a fourth year student at the University of British Columbia studying International Relations and Political Science. Her interests include IR theory, international security issues and international development. Born in Moscow, Russia she spent one year on exchange at Sciences Po in Paris. Upon graduation, she plans to pursue a Masters degree in public policy centring around international development.

The events of September 11 led the Bush Administration to alter American security posture from one based on hard-headed national interest considerations to utilising preventative war as an instrument of foreign policy. The shift in paradigms occurred when long-standing realist assumptions gave way to neoconservative ideology advocating an aggressive approach to foreign policy and strategic reliance on force. This article examines the legal and ethical underpinnings that led to the invasion of Iraq in 2003 and argues that moral absolutes rather than careful considerations of national interest were used to justify the war, a concept which carries dangerous implications.

> "Yet the war on terror will not be won on the defensive. We must take the battle to the enemy, disrupt his plans and confront the worst threats before they emerge. Different circumstances require different methods but not different moralities. Moral truth is the same in every culture, in every time and in every place."
>
> – George W. Bush (2002)[1]

Since the end of the Cold War, the security challenges that confront America have profoundly changed. Realist concepts of deterrence and containment no longer easily apply to terrorist networks operating across the globe that are not bound by territorial borders and represent no singular nation. The events of September 11, 2001 radically transformed the manner in which the United States defined threats to its national security and it found itself in a "new war" that required new thinking. Secretary of Defense Donald Rumsfeld confirmed this notion when he wrote, "this will be a war like none other our nation has faced."[2] This war was the War on Terror and it gave rise to a new national security paradigm where different ethical, legal and military standards applied. This was articulated in George Bush's now widely known speech at West Point and in *The National Security Strategy of the United States*.[3] The war against terrorism led the Bush Administration to alter American security posture from one based on hard-headed national interest considerations to utilizing preventative war as an instrument of foreign policy, as was seen most clearly in its invasion of Iraq in March of 2003. The long-standing realist assumptions of national interest and prudence gave way to neoconservative ideology advocating an aggressive approach to foreign policy and strategic reliance on force. This shift shook the moral and philosophical grounds underpinning not only American but international norms.

The new national security strategy gave the government the right to act 'preemptively' against an impending terrorist attack, "even if uncertainty remains to the time and place of the enemy's attack."[4] Historically, and in accordance with just war theory, however, there has been a distinction between *preemptive* and *preventive* uses of military force.[5] Preemptive use of force has been generally understood as force that is directed against a clear and present danger, whereas preventive force as directed against possible emerging threats that may or may not become a threat in the future. In most instances the former would be considered as legal under international law, while the latter would not.[6] The NSS 2002 blurs the distinction between these two uses of force because it defines what has been traditionally considered preventive as preemptive force. Somewhat shocking was the Bush Administration's insistence on the unquestionable legality of this act, in spite of just war theory, and its appeal to principles of universal morality to justify the war. In this essay, I will argue that America's inability to fully justify its war on terror using the traditional realist and just war paradigms led to the use of moral imperatives to guide its foreign policy decisions as embodied by neoconservative ideology. Moral absolutes rather than careful considerations on a case-by-case basis were used as a pretext for starting the war as manifested in Iraq. Overall I seek to show that war, especially in the form of a 'preemptive' attack as defined in NSS 2002, traditionally seen as a measure of last resort, was made to look as an attractive and perhaps only option when dealing with the war on terror which carries very dangerous implications for any future conflicts not only in America, but around the globe.

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'Taking the battle to the enemy': When Traditional Paradigms No Longer Apply

Let us first turn to some of the reasons for the decline of realism as a strategic national security paradigm after the Cold War. Realism, which came to the forefront during the Second World War, played a key role in American foreign policy and national security considerations throughout the Cold War era. It was effective because it was able to successfully contain the Soviet Union and deter a potential attack in a bipolar world order. Its focus was primarily on maintaining the relative power balance against a clearly defined threat: the USSR.[7] This was no longer the case after the end of the Cold War as there was no clearly defined threat to be balanced and contained. Traditionally realism focuses on hard-headed calculations of national interest, balance of power and security, and does not see ethics as playing a large role in world politics.[8]

For realists, every state aims to maximize its chances of survival by becoming as powerful as possible in order to deter the aggression of other states. Along this line of reasoning, each state should therefore put its own interests above all other considerations and act with prudence to achieve the most desirable outcome. Henry Kissinger, a renowned realist, believed that the key to success for any statesman rests in understanding the nature of the epoch.[9] For Bush, realism failed as a suitable paradigm because it does not deal well with non-state actors such as terrorist networks and gives no prescription on how to respond to such a threat. Bush saw himself as part of a new epoch that needed a new approach to new threats. By redefining the concept of a 'preemptive attack', the administration was also forced to address complex questions of justice and morality implicit in the just war doctrine. Ethical questions are not central in realism which is rooted in non-teleological assumptions and allows room for some moral relativity because it essentially sees each nation as a self-interested entity seeking to survive in an anarchic world. Realism, therefore, does not provide a justification for preventive warfare unless it can be clearly shown to be in the

nation's interest. The rhetoric of the Bush administration, however, was loaded with references to duty, moral obligation, and universal justice – all deontological concepts far removed from realism.

The Bush Administration, as was seen by the President's speech at West Point, tried to redefine the just war doctrine to make it compatible with its concept of preemption.[10] Just war theory dictates the legitimacy of preemption only on the existence of an imminent threat. The United States argued, however, that since the preparations of terrorists and rogue states will not be visible, the concept of an imminent threat must be adapted to the capabilities and objectives of today's adversaries.[11,12] Much room is left for potential debate on whether U.S.'s attempt to redefine preemption was successful, with some scholars arguing that just war theory is too ambiguous and cannot serve as a reliable guide because it is too permissive.[13] However, the reaction of the international community to the invasion of Iraq which was perceived as illegal and in violation of the UN Charter (which relies on the just war doctrine to define aggression) points to the fact that one cannot simply disregard or attempt to unilaterally amend the just war tradition. It still remains a very powerful tool in guiding policy makers today and it is this perceived illegality of its actions by the international community that did not permit the United States to fully justify the invasion. It, therefore, had to seek other forms of justification to make the subsequent unilateral invasion of Iraq appear legitimate and garner support both at home and abroad. The United States chose to appeal to moral imperatives to justify their actions and it is this aspect that I turn to next.

By redefining the concept of a 'preemptive attack', the administration was also forced to address complex questions of justice and morality implicit in the *just war doctrine*.

The Turn to Moralism: Bush's Use of Moral Imperatives to Justify the War on Terror

On September 20, 2001 in his address to a joint session of Congress, George Bush put forth an ultimatum to the rest of the world: "Every nation in every region now has a decision to make: Either you are with us or you are with the terrorists."[14] In the same speech he spoke about an irrevocable quest for justice, "whether we bring our enemies to justice or bring justice to our enemies, justice will be done."[15] Two years later in his State of the Union address, Bush spoke about freedom as ultimately coming from God, "Americans are a free people, we know that freedom is the right of every person and the future of every nation. The liberty we prize is not America's gift to the world; it is God's gift to humanity."[16] The rhetoric in Bush's speeches after 9/11 takes a sharp turn after his initial election in 2000, which he won promising to assume a less interventionist posture on the global stage and being critical of what he saw as the Clinton Administration's over-deployment of troops on "nation-building" missions.[17] Similarly, during the election campaign then candidate for Vice President Dick Cheney asserted that the United States, "should not act as though we were an imperialist power, moving into capitals in that part of the world, taking down governments."[18] After the attacks of 9/11, however, the Bush Administration changed its foreign policy objectives. All of a sudden the war on terror started to embody a moral crusade with frequent religious references rather than the traditional realist hard-headed calculation of national interest. Posing the issue in terms of moral absolutes was the strategy used to justify the invasion of Iraq which most realists opposed on the grounds that Saddam's regime was being successfully contained and consequently did not offer a 'clear and present danger' to the security of the region or to Western interests.[19] The Bush Administration's insistence on toppling Saddam Hussein was presented as a 'crusade' against terrorism and an 'axis of evil.[20]

The shift to a moralistic rhetoric also marked a shift in paradigms. Neoconservatism has experienced a revival since the times of Ronald Reagan during the Cold War and came to the forefront in the years following September 11.[21] It is a doctrine rooted in interventionism and strong nationalist views that combines the teleological aspects of the liberal position (from which it originated) with strategic reliance on force of the realist position.[22] It sees ethics as playing a primary role in political life, often with moralism as the driving force behind its actions. Moralism can be understood as being different from morality in that it advocates a strict, inflexible adherence to and insistence upon a given moral standard that always takes precedence.[23] Its rhetoric, therefore, often carries religious undertones and references, as was seen in various addresses of President Bush mentioned above. Neoconservatives derive their standards of right and wrong from a higher universal morality, such as religious dogma, and hence can be classified as adopting a deontological ethical stance. This type of thinking allows one to claim that they have reached an ultimate end or hold the key to universal moral principles, as the Bush Administration was doing by claiming that moral truth is the same in every culture and place. When religious dogma is behind these assumptions it can be very hard to see any shortfalls of a particular course of action because it is based on a 'universal' moral imperative that is accepted as the absolute truth.

The rigid dichotomy of 'good versus evil' or 'us versus them' that was present in the rhetoric of the Bush Administration resulted in an oversimplification of the much more complex reality.

The rigid dichotomy of 'good versus evil' or 'us versus them' that was present in the rhetoric of the Bush Administration resulted in an oversimplification of the much more complex reality. In his speech to Congress, nine days after 9/11, the president said that "freedom and fear, justice and cruelty, have always been at war, and we know that God is not neutral between them."[24] Put in these terms, the issue of war becomes black and white leading to the 'you are with us or against us' apotheosis. Perhaps not surprisingly, therefore, the neoconservative ideology has low tolerance for diplomacy and most means of intellectually based negotiation believing its presumptions to be the ultimate truth. Emphasis is put on U.S. unilateral action and its 'Manifest Destiny', often stressing its 'special' role as the world's sole hegemon and superpower. Neoconservatism has a disdain for multilateral organizations seeing them as unimportant actors in the international system, which partly explains U.S.'s decision to invade Iraq unilaterally.[25] Throughout the Bush years in office, priority was given to the Middle East with Iraq as the regional foe. The 2003 invasion of Iraq can, therefore, be seen as the ultimate triumph of the neoconservative ideology during the years of the Bush Administration.

Conclusion

By adopting the neoconservative paradigm, the Bush Administration embraced moralism rooted in a deontological view of ethics which had grave implications on its foreign policy decisions. As my analysis in this essay has shown, ethical calculations based on moral principles should be used to help guide policy makers to choose the best policy option and not as ideologically or normatively driven agendas. The neoconservative ideology tended to favour interventionist tactics, relying on military rather than diplomatic strength and was also used as a convenient cover up for particularist interests, such as the United States' intention of reshaping the Middle East into a more amicable regional ally through Iraq. Ultimately, as Hyde-Price writes, "terrorism is, by definition, a political act" and terrorist methods, although cruel and morally repugnant, are best understood in the context of a political strategy.[26]

Therefore, rather than treating terrorism as an evil that must be defeated worldwide, an effective counter-terrorist strategy must be sought that is attuned to the distinctive political, strategic and socio-economic context within which terrorists organize and operate. This often means, as James Rubin argues, that they must be engaged politically and diplomatically and not only by military means.[27] The assumption that moral truth is the same in every culture and in every place hindered the ability of the Bush Administration to respond to the threat of terrorism by failing to recognize its polycentric nature.

George Bush's strategy of preventive war as defined in *The National Security Strategy 2002* carries dangerous implications for future conflicts. Although just war theory is not perfect, it is rooted more firmly in a position aimed at making war the option of last resort for policy makers. Despite its limitations, it may serve to better restrain heinous behaviour and the frequency of armed conflict. Ultimately the war on terror, as Bush pursued it, carried a moralistic approach to foreign policy that backfired as an effective strategy to address the issue of world terrorism. Ethical traditions are not simply checklists or codes of conduct, they are tools for evaluating options and assessing behaviour and, as the last ten years have taught us, there are no universal solutions and each conflict demands its own analysis.

Notes

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The Moral Implications of the American Use of Armed Drones

Carly Peddle

Carly Peddle is pursuing a Political Science Honours degree at UBC and is currently in her fourth year. She is interested in issues of international conflict and peacekeeping, critical IR theory, environmental politics and issues of international justice. Carly is planning on working towards an international law degree in human rights or environmental law.

Armed drones began being utilized in conflict for the first time by U.S. forces following the attacks on September 11 2001. The American use of armed drones during the War on Terror has set a dangerous precedent for drone use in the future by both state and non-state actors worldwide. This article examines the socially and historically constructed identities that allowed the U.S. to deploy drones under a rhetoric of justice, while lacking transparency and accountability. I argue that this has aggravated the horrors of war and has generated severe repercussions for the compliance with international norms in the future, such as national sovereignty and territorial integrity.

After the terrorist attacks on September 11, 2001, there was a tremendous shift in thinking about many global issues, especially issues of national security. One response to this threat, the American use of unmanned aerial vehicles (UAVs), commonly referred to as drones, has specific ethical repercussions both domestically and internationally, as drones were armed with missiles and used for killing for the first time following 9/11. There is an increasing trend for both state and non-state actors to obtain drone technology for use in conflict. Thus, it is important to understand the ethics involved in drone use, and examine the context which has set a precedent for the continued use of armed drones world-wide. First, the historical and socially constructed identities that became recurrent and exaggerated following 9/11 will be examined. These identities permitted the first drone strikes to occur under a rhetoric of justice which has ramifications for the observance of international norms such as national sovereignty, both now and in the future. Second, the advantages of deploying drones on military missions, including new attack capabilities and the supposed increases in transparency and accountability will be discussed. The American use of drones during the War on Terror has set a dangerous precedent for drone use in the future, despite the rhetoric of morality surrounding the war. While claiming that drones increase transparency and accountability, this rhetoric hides the way that drones are actually deployed, and the abundance of civilian casualties involved with drone strikes, in order to feign American legitimacy. Finally, the operation of these drones creates a "playstation mentality" which can result in a lower threshold for attack, resulting in increased civilian casualties.[1] These factors combine to allow the creation of a dangerous international norm which allows state and non-state actors to utilize UAVs with incredible attack and surveillance capabilities wherever and whenever they need, trumping the norm of national sovereignty, removing transparency and accountability for the outcomes of UAV strikes and exacerbating the horrors of war.

Drones were initially used for surveillance purposes or aerial reconnaissance by the U.S. military during the Bosnia and Kosovo campaigns in the 1990s.[2] Following the attacks of September 11 2001, American drones began being armed with laser- guided missiles which, after President Bush signed a secret Memorandum of Notification, permitted drones to strike and kill suspected terrorists in preemptive self defense.[3] The first missile launched by a drone was in Afghanistan less than one month after 9/11.[4] UAVs are increasingly being produced and deployed in the ongoing War on Terror; today the U.S. Military has more than 7 000 drones.[5] According to the New American Foundation, from 2004-2007, the United States launched nine drone strikes, in 2008 there were thirty-three, in 2009 there were fifty-three, and in 2010 that number more than doubled to one-hundred and eighteen strikes.[6]

Drones are deployed near war-zones while being controlled about 12 000 km away by three individuals sitting in front of computer screens in the United States.[7] UAVs are utilized three ways: first, they can act similar to any other military aircraft to drop bombs or launch missiles when ground troops attack or are being attacked.[8] Second, drones are able to constantly survey large portions of land and upon discovering suspicious activity, drones can engage missiles.[9] Lastly, drones can be used in planned missions of targeted killings of suspected combatants or terrorists.[10]

Advantages of Drone-Use

Advances in drone technology have increased military capabilities and changed modern warfare.[11] Advocates of drones argue that compared to piloted aircrafts, UAVs are much cheaper to build and operate and involve less risk.[12] UAVs do not require troops to be near the ground target and they remove the possibility that pilots will be killed or captured in the war-zone.[13] Drones surpass the skills and endurance of human pilots and enable more attacks on more targets than ever before because they are ideally suited for dirty, dull or dangerous missions which are too hazardous, monotonous or inaccessible for human pilots.[14] Drones can fly at over 33 000 feet and hover over targets for up to 40 hours in hazardous conditions, allowing long-term surveillance.[15] [16] Advocates of drones argue that the level of removal of the operators allow drones to be used more selectively, with fewer civilian casualties and without the psychological and emotional factors involved with the operators being located in a war-zone; therefore, drones may increase compliance with the laws of war.[17] Advocates argue that virtual technologies are increasing the transparency and accountability of military operations while reducing cost and risk.[18] Drone advocates also argue that drones offer a specific strategic advantage, which is their ability to conduct a limited, covert strike in order to avoid a larger war.[19] They argue that drone technology "provides leaders with a minimally violent means of addressing a perceived threat", thus reducing overall military force and deployment while still counteracting the threat.[20]

Drones and American Rhetoric

Despite the perceived advantages of deploying drones in military operations, there are specific problems and implications with the American use of armed drone technology in the War on Terror. Many of these problems stem from the circumstances under which armed drones first began being used. After September 11 2001, there was a dramatic shift in the way that the United States treated and responded to security threats.[21] Prior to 9/11, the American government was in opposition to targeted killings because they were perceived to be violations of international law.[22] After 9/11, American policy has been modified to permit extrajudicial killings, which critics have argued are merely illegal targeted assassinations.[23] After 9/11, President Bush told Congress that, "enemies of freedom committed an

act of war against our country," he claimed that the War on Terror was "the fight of all who believe in progress and pluralism, tolerance and freedom."[24] After the attacks and throughout the first years of the War on Terror, the United States was designated the victim, while the perpetrators and the states that they came from, were cast as aggressive, immoral and ineradicably threatening, not just to the United States but to all human values and all human kind.[25] The language that the United States utilized bisected the moral universe, where all virtue, purity, fairness and tolerance was placed with the United States, and all evil, wrongdoing and immorality lay with the 'terrorists.'[26] By asserting American policy as universal morality and justice, the complicated relationships, history, culture, power and values involved were concealed. By utilizing rhetoric which divided the world, the United States constructed their national goals as goals of all people in the world who consider themselves 'good' and 'moral' and therefore, their actions as justifiable.

The language that was used when describing the War on Terror or al-Qaeda constructed war not only as a rational response to a national security threat, but as a moral imperative.[27] Moreover, the possibility of meaningful critique has been stymied because of the powerful position of the United States in international relations coupled with language that merges American national security with universal justice, language that invokes a 'with us or against us' mentality. With these two constructed identities, the hegemon as a propagator of democracy, freedom and all virtue, and the other the essence of evil, it can become easy to condone any effort, such as the use of UAVs, for the former to overtake the latter. Yet, things turned out to be far less simple than this binary of 'good' and 'evil.'[28] If the American drone operations were not defending American homelands from terrorists, spreading democracy, freedom and equality but instead perpetrating extrajudicial assassinations and destruction in a war that may not in fact be justified, serious moral implications arise.

Drones and National Sovereignty

The consequences stemming from the use of drones in the War on Terror become even more serious when one takes into account the fact that the international norms of national sovereignty and territorial integrity are being violated.[29] Under international law, a state's sovereignty "extends vertically to the point at which atmospheric conditions prevent aircraft maintaining flight, approximately 100 km above sea level" and any violation of this is considered to violate national sovereignty.[30] After 9/11, for the first time the Bush administration promoted the idea that in certain circumstances the norm of sovereignty does not apply.[31] Territorial integrity and sovereignty were constructed as contingent on certain obligations and responsibilities, which were not decided by the state itself, but by another, in this case, the United States.[32] This suggests that in the post-9/11 world, sovereignty can be acquired or lost based on the subjective values or will of a more powerful state. During the War on Terror, the U.S. military deployed UAVs based in Afghanistan to target potential terrorist threats in Pakistan; these attacks suggest that the United States considers its own security more important than the national sovereignty of another less powerful state.[33] This was framed as justified and 'right' during the War on Terror because of the socially constructed binary identities, the moral rhetoric of the United States, its current position of power in the international system, and the casting of any person or state who disagreed as on the wrong side of morality. If the roles were reversed and Pakistan was violating the sovereignty of the United States for reasons of its national security, it is doubtful that the U.S. would accept the contingency of their own sovereignty. By utilizing drones for targeted killings under the specific circumstances of battling terrorism, the United States set a precedent, especially because of its current status as the hegemon, that

It is impossible to evaluate whether drone operations have met their political and military objectives, let alone whether they succeeded in reflecting necessity, proportionality or discrimination between combatants and non-combatants

it may not be so willing to accept when other countries, whose values may not align with the United States', have armed drones and can perpetrate targeted killings on individuals who they vaguely deem 'against national security.'[34]

The precedent that the United States set during the War on Terror erodes international norms and sets a dangerous standard for any state or non-state actor targeting foreign-based threats or advancing policy objectives. Especially because of the advantages that UAVs provide, such as removing much of the possibility of exposing one's own troops to danger, drones can act as an easy and inexpensive means to engage in conflict in terms of both human life and defense costs which may make states more likely to engage with violence to address minimal threats that would not be worth the cost of conventional conflict. This may increase the instances of violence worldwide. Coupled with the heightened attack and surveillance capabilities of drones, this could be highly problematic for the observance of national sovereignty. Based on the example set by the hegemon, states that obtain drones can seemingly deploy them whenever and wherever they want. Therefore, as drones are obtained by more and more states, the observance of international norms may continue to decline.

Drones and Transparency and Accountability in the Democratic Process

Advocates of UAVs claim that drone technology increases the transparency and accountability of U.S. military operations because drones provide more real-time data of all activities and because operators are located closer to, and are more easily connected with headquarters.[35] However, because the operation of drones is shrouded in secrecy which hides the reality of drone strikes, it becomes difficult to accept that drone-use increases transparency or accountability. Since the deployment of armed drones after 9/11, the U.S. Congress has never debated the drone strikes, even in Pakistan's ungoverned tribal territories.[36] [37] Furthermore, by placing the CIA, a non- military actor, in charge of these operations, the activities then lack the very transparency and accountability to the rules of warfare that they claim to heighten.[38] Under the Obama administration, the CIA drone programs are hidden under a veil of secrecy which prevents officials from even speaking openly about drone strikes that allegedly occur, making meaningful review and accountability extremely restricted.[39] This means that it is impossible to evaluate whether drone operations have met their political and military objectives, let alone whether it succeeded in reflecting necessity, proportionality or discrimination between combatants and non-combatants.[40]

As the War on Terror continues, more individuals are being considered legitimate targets, and drones-strikes are being operated in a larger context that does not just include high ranking terrorist leaders.[41] The use of drones has also made the likelihood of capturing targets or terrorist combatants highly unlikely when it is easier and cheaper to just kill them using drone strikes. This changes the objectives and consequences of warfare and prevents review on whether targeted individuals meet the necessary criteria. While drone-advocates may argue that these individuals are legally expendable, the women, children and other innocent civilians that are killed by drone strikes are not, and actually provide extremist groups with propaganda and recruitment tools. Furthermore, the Obama administration has utilized a count method that categorizes all military-age males in a strike zone as combatants.[42] This politicization of the word "militant" effectively changes the meaning of the word and thereby constructs all innocent male civilians within a drone strike zone as terrorists.

Coupled with this lack of accountability and transparency, the official rhetoric to refer to drone strikes utilizes language that portrays the strikes as completely justified, precisely targeted, accurate, and almost error-free.[43] This effectively removes the accountability of the United States for civilian deaths in strike zones while simultaneously limiting review or discussion about whether all of the killings or drone strikes are justified and reflect the necessary conditions for a just war. The form of casualty categorization used by the Obama administration and the operational context under which armed drones are employed can conceal the reality of the war and can be used to protect U.S. interests in order to justify their actions and limit public debate regarding international norms of drone use. Furthermore, there is currently no international system of accountability to manage and regulate drone activity which can lead to, and exacerbate, the horrors of war.

Drones and the Horrors of War

One of the most notable 'horrors of war' is the risk of civilian casualties. Accurate and reliable figures for drone strikes are difficult to obtain because of the secrecy surrounding the strikes and because of their use in remote areas.[44] Moreover, no computational system can discriminate between combatants and civilians, sensing systems are inadequate in discrimination, which can even be difficult for experienced troops on the ground.[45] While advocates and officials utilize language such as 'precision strikes', 'accuracy' and 'specific targets' in official statements, the reality for citizens residing within the war zones is quite different.[46] An estimate from the New America Foundation suggests that about one-third of all casualties resulting from drone strikes are civilians, while Pakistan Body Count suggests the figure is closer to 50 civilians per militant killed.[47] Drone strikes provide extremist groups with images of dead children, women and civilians and can be used across the world to unite individuals under extremism and anti-American sentiment, and may therefore be counterproductive to American goals.[48] The lack of reliable figures is problematic for national or global debate regarding the use of drones, especially considering the civilian casualty count methods and the lack of transparency or accountability.

Another problem with the use of unmanned armed drones is it creates a "playstation mentality" because of the low levels of risk associated with operation.[49] Although advocates of drones argue that the drones actually increase the discrimination of attacks, the psychological and geographical distance between the drone operator and the target has been said to lower the threshold of launching an attack, leading to what some call "a culture of convenient killing."[50] Drones therefore may increase the likelihood of situations where operators are conditioned or attracted to the idea of killing, much like in a video game, regardless of the fact that there are civilians present.[51] For example, a military inquiry into a February 2010 drone attack in Afghanistan where twenty-three civilians were killed found that drone operators understated the risk of civilian death because they desired the attack the go forward.[52] U.S. army chaplain and ethics professor, Keith Shurtleff, has argued that, "as war becomes safer and easier, as soldiers are removed from the horrors of war and see the enemy not as humans, but as blips on a screen, there is very real danger of losing the deterrent that such horrors provide."[53] Combined with the mentality of war where the enemy is dehumanized and 'othered', this 'playstation mentality' can be very problematic.

Drones may increase the likelihood of situations where operators are conditioned or attracted to the idea of killing, much like in a video game, regardless of the fact that there are civilians present

Advocates of drones argue that drones have the potential to save lives by reducing the necessity of large scale invasions. However, states may engage in conflict using UAVs where before they would have not engaged at all: because UAVs are cheap and effective, states may use them to address minimally threatening situations, where conventional tactics would have been too costly to justify action. While drone advocates argue that drones provide a minimally violent means of addressing a threat, the very nature of the technology, specifically the formation of a 'playstation mentality', indicates that drone use may increase civilian casualties, exacerbate the horrors of war and anti-American backlash.

Conclusion

Despite the perceived benefits of using virtual drone technology, the official rhetoric and language of justice surrounding the War on Terror has set a dangerous standard on which future military decisions will be based by states and non-state actors around the world. Through utilizing rhetoric which divided the world into 'good' and 'evil' and defining these terms based on one state's objectives and values, the War on Terror became shrouded in a veil of imitation justice and morality, which was argued to be universal while remaining in reality, completely particular.[54] Violations of national sovereignty, now constructed as contingent on obligations to a more powerful state, were committed with no retribution or punishment, because of constructed moral imperative to end terrorism.[55] Combined with the fact that the United States held a strategic advantage over these Middle Eastern states internationally in regard to power, respect and legitimacy, the forums for public debate on the morality of using UAVs, both domestically and internationally, have been stymied.[56] "Targeted killings," which are illegal assassinations, further complicate the implications on international norms. The U.S. has set the example that any state with enough military might to procure armed drones can violate the sovereignty of any nation they choose, target and assassinate any individual within that nation, with no international punishment for vague and subjective reasons of 'national security.'[57] This is even more alarming because of the heightened attack and surveillance capabilities of these drones. Due to the circumstances under which UAVs first began being utilized for killing, any state or non-state actor that can acquire this cheap and less risky technology in order to pursue their particular goals will be in a position to do so based on this American-created norm. The use of language which portrays the attacks as precise and accurate along with the Obama administration's preferred count method, hides the reality of civilian casualties and furthers the construction of the United States as justified , concealing the implications of drone use in the future.[58] [59] Finally, the operation of drones can create a "culture of convenient killing" which can have dire consequences in both the War on Terror and later conflicts. Therefore, the use of drones in the War on Terror is unethical, and until a system of accountability, transparency and an international regulatory framework for who can operate armed drones, where they can be used and when, as well as the implications for national sovereignty and territorial integrity are established, the use of armed drones by states or non-state actors is both frightening and dangerous.

Notes

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4 Chris Cole, et al., "Convenient Killing: Armed Drones and the 'Playstation' Mentality," 7.
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6 Daniel Brunstetter and Megan Braun, "The Implications of Drones on the Just War Tradition," 341.
7 Chris Cole, et. al, "Convenient Killing," 6.
8 Ibid.
9 Ibid.
10 Ibid.
11 Jack M. Beard, "Law and War in the Virtual Era," The American Journal of International Law 103, no. 3 (2009): 409-45. 410.
12 Ibid, 414.
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14 Ibid, 413-415.
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16 Jack M. Beard, "Law and War in the Virtual Era," 413-415.
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23 Ibid.
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28 Robert Sparrow, ""Just Say No" to Drones," IEEE Technology and Society Magazine 2012, no. 1 (2012). 58.
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40 Ibid, 354.
41 Ibid, 354.
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48 Ibid, 8.
49 Ibid, 10.
50 Ibid, 4.
51 Daniel Brunstetter and Megan Braun, "The Implications of Drones on the Just War Tradition," 349.

52 Chris Cole, et al., "Convenient Killing," 10.
53 Chris Cole, et al., "Convenient Killing," 16.
54 Anthony Burke, "Just War or Ethical Peace?," 344.
55 Ibid, 344.
56 Daniel Brunstetter and Megan Braun, "The Implications of Drones on the Just War Tradition," 355.
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58 Jo Becker and Scott Shane, "Secret 'Kill List.'"
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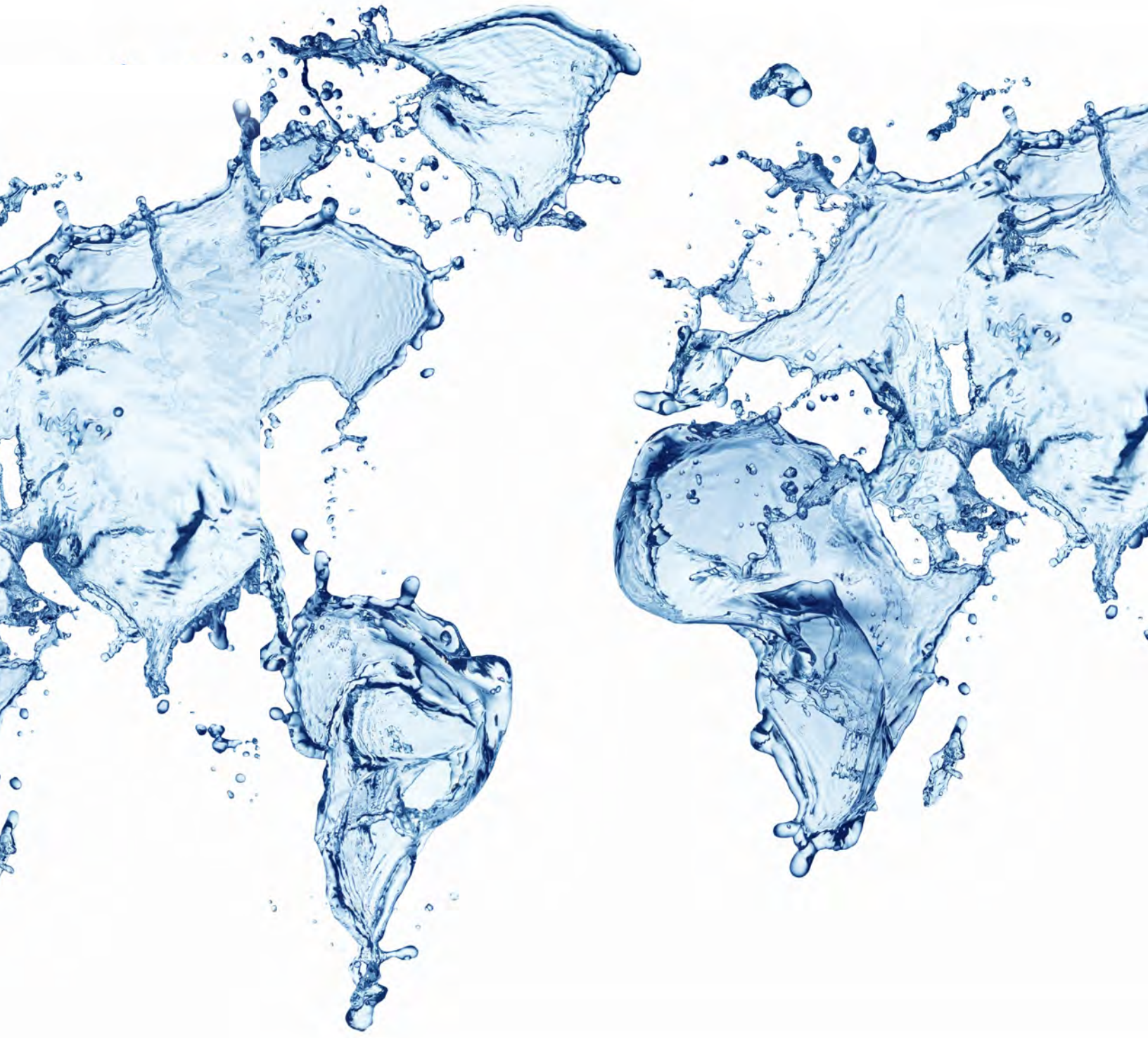

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